Re Steer

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Douglas Terrence Steer

2015 IIROC 09

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

Heard: January 27, 2015
Decision: February 17, 2015

Hearing Panel:
Leon Getz, Q.C. (Chair), Barbara E. Fraser and Brian Field
Appearances:
Paul Smith, Enforcement Counsel for IIROC
No appearance for the Respondent, Douglas Terrence Steer

DECISION ON LIABILITY AND PENALTY

I. THE FACTS

A. Introduction

¶ 1 The Notice of Hearing in this matter, issued on December 9, 2014, gave notice of a hearing to determine the following two Counts alleged against Mr. Steer by the Staff of IIROC, namely, that from April to September 2009 (which we will describe as "the Relevant Period"):

(i) contrary to IIROC Dealer Member Rule 1300.1 (a), he facilitated the deposit of share certificates in six client accounts, and the subsequent sale of those securities and withdrawal of the proceeds of sale, without using due diligence to learn essential facts relative to his clients and/or their orders; and, contrary to IIROC Dealer Member Rule 29.1, without properly acting as a gatekeeper to the capital markets by making diligent inquiries to reasonably assure himself that the transactions were being made for legitimate investment purposes, in circumstances which necessitated such inquiry (Count 1); and

(ii) contrary to IIROC Dealer Member Rule 29.1, he effected transactions in his clients' accounts based on instructions that he accepted from an individual who was not authorized to give instructions on the account (Count 2).

¶ 2 The Notice of Hearing advised Mr. Steer that under the Rules of Practice and Procedure, if he failed to make a Response or to attend the hearing, the Panel could, in accordance with those Rules, (a) proceed with the hearing without further notice, (b) accept as proven the facts and contraventions alleged against him, and (c) make orders as to penalties and costs against him.

¶ 3 Mr. Steer did not make any Response and accordingly we proceeded with the hearing on January 27, 2015. He did not he attend either personally or by counsel. Accordingly, as permitted under the Rules, being satisfied that Mr. Steer had been properly served with the Notice of Hearing and after considering (a) Particulars alleged in the Notice, (b) certain exhibits entered into evidence including extracts from the transcripts of several interviews of Mr. Steer conducted early in the investigation by IIROC and (c) the careful submissions of Mr. Smith, counsel for IIROC, we accepted as proven the facts and contraventions alleged against him.

¶ 4 Our reasons follow.

B. The clients

¶ 5 During the Relevant Period Mr. Steer was an RR working at the Vancouver head office of Canaccord where he was responsible for the client accounts of some 23 different corporations, each incorporated in Panama and each managed by the same Panamanian corporate trust and services firm.

¶ 6 The beneficial owner of three of these corporations, one of which had opened an investment account at Canaccord in 2000, was EE, who Mr. Steer understood to be a Hungarian national residing in Rome and in Hungary. Mr. Steer knew virtually nothing about EE but thought that he was a retired businessman and an investor who lived off his investments.

¶ 7 The beneficial owner of two other of the corporations, one of which had opened an account at Canaccord in 1999, was EE's wife.

¶ 8 The beneficial owner of another two of the corporations was UA. Mr. Steer knew that UA was a Swiss national residing in Italy and understood him to be a colleague of and an assistant to EE.

¶ 9 UA's daughter, BA, was the beneficial owner of two of the corporations and her husband of one of them. Mr. Steer understood that BA was a ballet instructor, that her husband was a chef and that they both lived in Italy.

¶ 10 EH, a Hungarian national who Mr. Steer understood to be a friend of EE, was the beneficial owner of another two of the Panamanian corporations.

¶ 11 Mr. Steer did not know why EE owned Panamanian corporations or why EE and the corporations he beneficially owned first came to deal with and have investment accounts at Canaccord. He was equally ignorant of why any of the others owned Panamanian corporations or why those corporations opened investment accounts at Canaccord. He supposed that they had done so because EE had done so.

¶ 12 By 2008, Mr. Steer was the RR responsible for 19 investment accounts at Canaccord for these Panamanian companies, including ARDE, beneficially owned by EE, and FRIB, beneficially owned by UA. In March that year he opened investment accounts for a further four companies, each incorporated in Panama, managed by the same Panamanian trust company and with the same address in Panama: MARE, beneficially owned by EE, BELL, beneficially owned by BA, BIGB, beneficially owned by EH, and DIOM, beneficially owned by UA.

¶ 13 Each of MARE, BELL, BIGB and DIOM passed Director's resolutions and signed account opening documents on March 10, 2008. Each of them, together with ARDE and FRIB, indicated that they held bank accounts at the same bank in Hungary. Mr. Steer did not know why Italian residents who beneficially owned Panamanian entities would have bank accounts in Hungary. He supposed it was because that is where EE had bank accounts.

¶ 14 Mr. Steer signed New Client Account Forms for each of the six companies to open their investment accounts at Canaccord.

C. The transactions

i. General

¶ 15 On eight days during the Relevant Period, share certificates for a total of 194 million shares of

Spongetech Delivery Systems Inc., a company that traded on the Over-The- Counter Bulletin Board (OTCBB), were delivered into the six accounts identified in paragraph 13, above, and almost immediately thereafter the shares were sold into the market for proceeds of approximately $15,000,000. Within days of the settlement of the trades, on the instructions of UA, all of the proceeds were wired to bank accounts in Switzerland, Liechtenstein or Hungary. UA was not authorized to provide such instructions on any of the accounts.

ii The first 157 million shares and the 600% price increase

¶ 16 Certificates for the first 124 million shares were received between April and June 2009 as follows:

Date	**Shares**	**Account**
April 16	20,000,000	BELL
April 21	30,000,000	BIGB
May 21	20,000,000	MARE
	20,000,000	DIOM
June 26	17,000,000	MARE
	17,000,000	DIOM

¶ 17 Between April 16 and July 9, 2009, Mr. Steer accepted orders for these four Panamanian companies to sell these shares into the market in a coordinated and orchestrated manner, all of the shares deposited into one account – BELL -being sold first followed in sequence by all of the shares deposited into the other accounts. Mr. Steer knew that this selling was being directed by EE.

¶ 18 Almost immediately after the shares were sold and in most instances before the trades had settled, the Mr. Steer accepted instructions from UA, who was not authorized on the accounts, to wire the proceeds of sale totalling $6,301,500, to different European banks as follows:

Account	**Settlement date of last trade**	**Date of wire instruction**	**Bank location**	**Amount**
BELL	April 23	April 20	Switzerland	$341,239
BIGB	May 1	April 29	Switzerland	$465,237
MARE	June 1	May 27	Switzerland	$800,399
DIOM	June 4	June 5	Switzerland	$751,919
MARE	July 7	July 7	Liechtenstein	$800,000
MARE	July 7	July 7	Liechtenstein	$1,216,526
DIOM	July 14	July 13	Hungary	$800,000
DIOM	July 14	July 13	Hungary	$1,126,579

¶ 19 During the period of this selling the market price of Spongetech rose more than 600% from 1.83 cents to over 11 cents.

¶ 20 On July 3, 2009 and again on July 8, 2009 Canaccord's compliance department, having noted that both the MARE and DIOM accounts had each received 37 million shares of Spongetech which represented 5.1% of Spongetech's 723 million outstanding shares, questioned Mr. Steer as to whether the beneficial owners of those companies were insiders of Spongetech. He told Compliance that neither company had beneficial owners who were insiders of Spongetech and claimed that both had sold shares into the market before they acquired

additional shares. In fact he did not know how or when either of them had acquired these shares.

¶ 21 Mr. Steer did not tell Compliance that he knew that MARE, DIOM, BELL and BIGB were all connected to the same individual beneficial owner and were acting in concert. The 40 million shares deposited to DIOM and MARE accounts on May 21, 2009 in fact represented more than 5.5% of the outstanding shares of Spongetech.

iii. The next 33 million shares

¶ 22 Following the Compliance inquiry, further share certificates were deposited into the accounts of the Panamanian entities. Certificates for 16,500,000 shares were deposited into the accounts of each of MARE and DIOM on July 14 and 16, respectively.

¶ 23 In connection with these two deposits, Mr. Steer signed and submitted a Certificate Deposits of US OTC Issuers Compliance Letter. This purported to confirm that all these shares had been acquired in a private transaction with RM Enterprises, which was an affiliate or insider of Spongetech.

¶ 24 As in the case of the first 124,000,000 shares, the 33,000,000 shares were sold in an orchestrated and coordinated manner over consecutive trading days between July 14 and July 21 and the proceeds of $3,190,637 were wired to a bank in Hungary. First, MARE sold its shares exclusively on four consecutive market days (August 19, 20, 21, and 24). On August 25 MARE continued selling until it had sold all of its shares. After MARE had finished selling its shares, DIOM started selling its shares, later on August 25. DIOM continued the selling and sold exclusively on two August 26 and 27 until it had sold all of its shares. The Proceeds of $5,109,563 from these sales were immediately wired to a bank in Hungary.

¶ 25 Mr. Steer did not know, and made no enquiries to find out, how any of these accounts had acquired any of the first 157,000,000 shares.

iv. A further 37 million shares and a $3 million insider discount

¶ 26 Certificates for a further 37,000,000 Spongetech shares were deposited as follows: on August 18, 33 million shares – 16,500,000 into the accounts of each of MARE and DIOM; and on September 4, 4,000,000 shares - 2,000,000 into the accounts of each of ARDE and FRIB.

¶ 27 In connection with the deposit of the certificates for 4,000,000 shares into the accounts of ARDE and FRIB, Mr. Steer once again signed and submitted a Certificate Deposits of US OTC Issuers Compliance Letter (the "Second Compliance Letter") that purported to confirm that all these shares had all been acquired in private transactions with RM Enterprises.

¶ 28 As before, this Second Compliance Letter was accompanied by Stock Purchase Agreements, which as before were unsigned by the relevant Panamanian companies, and a letter from Spongetech's counsel. As before, the stock purchase agreements were not executed by or on behalf of any of the purchasers. Moreover, the Compliance Letter indicated that all of the shares had been acquired on August 10 at a price of $0.01 per share. The market price of Spongetech shares on that date was more than $0.10.

¶ 29 Mr. Steer knew nothing about any relationship among RM Enterprises, MARE and DION that would explain what seemed on its face a discount of approximately $3,000,000; and he made no enquiries into the subject.

¶ 30 The Stock Purchase Agreement accompanying the Second Compliance Letter was dated September 3, 2009 and indicated that ARDE and FRIB would acquire the shares from RM Enterprises, as noted above, an insider of Spongetech. It provided for three different agreed prices at which the shares would be acquired (1.25 cents/share, 12.5 cents/share, and 7.5 cents/share).

¶ 31 Mr. Steer had no knowledge of and did not question how ARDE or FRIB came to know RM Enterprises or what its relationship was to Spongetech.

¶ 32 Mr. Steer then accepted orders from ARDE and FRIB to sell the 4 million shares into the market on

September 11, 2009. The proceeds of $576,446 from these sales were later wired to a bank in Hungary.

D. Actions by the United States Securities and Exchange Commission ("SEC")

¶ 33 On October 5, 2009, shortly after Mr. Steer had completed his sales of Spongetech shares, the SEC temporarily suspended trading in Spongetech shares because of questions raised about the accuracy and adequacy of publicly disseminated information related to it.

¶ 34 In May 2010, the SEC filed a Civil Complaint against several parties, including RM Enterprises, alleging that they had participated in a scheme to pump Spongetech's share price and then dump shares by illegally selling them to the public through affiliated entities in unregistered transactions. Five individuals have since pled guilty in related criminal proceedings.

¶ 35 The SEC Civil Complaint named MARE and DIOM as examples of transferees who received shares that had restrictive legends improperly removed, but none of the Panamanian entities or individuals associated with them named in these Reasons were defendants in the SEC's Civil Complaint or in the related criminal proceedings.

E. Commissions earned

¶ 36 The sales of Spongetech shares described above generated gross commissions of US$129,245. Mr. Steer earned 50% of those gross commissions as income. At the time of the transactions the value of one US dollar ranged between $1.10 and $1.20 Canadian dollars**.**

II. LIABILITY

Count 2

¶ 37 IIROC Dealer Member Rule 29.1 provides, in part, as follows:

> [E]ach . . . Registered Representative . . . (i) shall observe high standards of ethics and conduct in the transaction of their business, [and] (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest

¶ 38 The facts recited make it clear beyond doubt that, as alleged in Count 2, Mr. Steer effected transactions in his clients' accounts based on instructions that he accepted from an individual who was not authorized to give instructions on the account. It is in our view almost self-evident that such conduct is a breach of Dealer Member Rule 29.1

¶ 39 We conclude, therefore, that Count 2 is fully made out.

Count 1

¶ 40 Count 1 alleges that Mr. Steer facilitated the deposit of share certificates in six client accounts, and the subsequent sale of those securities and withdrawal of the proceeds of sale, without:

(a) using due diligence to learn essential facts relative to his clients and/or their orders, in breach of IIROC Dealer Member Rule 1300.1 (a); and

(b) properly acting as a gatekeeper to the capital markets by making diligent inquiries to reasonably assure himself that the transactions were being made for legitimate investment purposes, in circumstances which necessitated such inquiry, contrary to IIROC Dealer Member Rule 29.1.

¶ 41 We have already quoted the relevant language of Dealer Member Rule 29.1. Dealer Member Rule 1300.1(a) is brief and to the point: "Each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted."

¶ 42 The nub of the two allegations in Count 1 is the same: a failure on the part of Mr. Steer to use due diligence to be fully informed about his clients and their trading activities.

¶ 43 In our view it is beyond argument that Mr. Steer failed in each of the respects alleged and that in each

case that failure amounted to a violation of the express terms of the relevant IIROC Dealer Member Rule invoked and in particular that those failures together constituted a failure to perform his "gatekeeper" obligations.

¶ 44 In these circumstances we do not consider it necessary or helpful to embark upon an analysis of the meaning or scope of the word "gatekeeper" in this context.

¶ 45 We conclude, then, that Count 1 has been fully made out.

III. SANCTIONS

¶ 46 The following considerations seem relevant to our determination of the appropriate sanctions.

¶ 47 First, Mr. Steer was no novice in the securities industry. He was first registered in 1990 and at the time of the events in question had worked as a registered representative at the Vancouver head office of Canaccord for almost 20 years. In these circumstances, it is impossible to conclude that he was unaware of or did not understand his obligations as such.

¶ 48 Second, in July 2007 Canaccord had made clear in writing its expectations as to what was required of registered representatives dealing in OTCBB securities. A memorandum to all staff reminded registered representatives that it was "imperative" for them to "know the account" and "know how the client came by the securities". It continued:

> You must thoroughly understand the business your clients are asking you to transact so that you do not find yourself an unwitting participant in a manipulative or law breaking scheme.

¶ 49 Third, almost everything that on the evidence Mr. Steer knew, thought he knew, or assumed about his clients, the individuals behind them and their trading activities, reeked of impropriety and illegality. They cried out for further enquiries. Mr. Steer, however, remained assiduously uncurious and indifferent, all the while facilitating his clients in preying upon the susceptibilities of a gullible public, and in the process and as a result, as is clear from paragraph 37 above, earning a substantial income for himself.

¶ 50 Moreover, as is clear from the facts set out in paragraphs 20, 21, 28 and 29 above, Mr. Steer knowingly gave false or misleading information to Canaccord's Compliance Department.

¶ 51 At the hearing, while counsel for IIROC seemed to acknowledge that on the facts a permanent ban could be supported, he proposed only that Mr. Steer be suspended for 3 years.

¶ 52 In our view, just about every aspect of Mr. Steer's conduct in connection with the accounts and transactions that have been referred to was so egregious and outrageous that it demands unqualified denunciation. A 3-year suspension, holding out, as it does the possibility, however remote, of reinstatement, simply does not meet the requirements of the case.

¶ 53 We are reinforced in our view by a consideration of the decisions in *Re Toban*, [2007] I.D.A.C.D. No. 9; *Re Georgakopoulos*, 2009 IIROC 25 and 41 and *Re Myatovic & Lowe*, 2013 IIROC 17. In each of those cases a permanent ban was imposed (though one of the respondents in *Re Myatovic & Lowe* received only a 3-year suspension). While the facts of every case are different, there is a sufficient overall relevant similarity between their facts and those here, to conclude that a permanent ban on Mr. Steer is appropriate. We so order.

¶ 54 IIROC seeks to have Mr. Steer fined $75,000 and in this connection referred us to the decisions referred to in the preceding paragraph. We have reviewed those decisions and have concluded that it is an appropriate order in the circumstances of this case. Accordingly, we so order.

¶ 55 IIROC has sought an order that Mr. Steer disgorge $71,000. A disgorgement order is appropriate. It is elementary that wrongdoers should not be allowed to benefit from their misconduct. The disgorgement calculation is based upon 50% of the gross commissions referred to in paragraph 37, converted into Canadian dollars at $1.10 and rounded. We so order.

¶ 56 Dealer Member Rule 20.49 permits a Hearing Panel to assess and order IIROC "investigation and

prosecution costs determined to be appropriate and reasonable in the circumstances." IIROC has presented us with a Bill of Costs. Although details of investigative and prosecutorial costs aggregating $14,355 are provided, IIROC only seeks reimbursement of $10,000. The notes to the Bill disclose that (i) the activities listed represent "the minimum essential required activities", (ii) that "the hours recorded for each activity represent a significant reduction from the actual time spent", and (iii) that certain related activities were included in the costs that Canaccord had agreed to pay in an accepted Settlement Agreement.

¶ 57 We have no ground to question any of the information contained in the Bill of Costs and accordingly we accept it, and order that Mr. Steer reimburse IIROC in a total amount of $10,000 on account of its costs.

¶ 58 In summary, we order that Mr. Steer must:

(a) be permanently banned from approval in any capacity by IIROC;

(b) pay a fine of $75,000;

(c) disgorge the sum of $71,000; and

(d) pay the sum of $10,000 to IIROC by way of partial indemnification for its costs incurred in connection with the investigation and prosecution of the matters canvassed in this Decision.

As of January 27, 2015

Leon Getz, Q.C., Chair

Barbara E. Fraser

Brian Field