

Re Blanchard

IN THE MATTER OF:

The By-Laws of the Investment Dealers Association of Canada

and

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

and

Shelley Blanchard

2013 IIROC 23

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

Heard: April 9, 2013
Decision: April 10, 2013

Hearing Panel:

The Honourable John B. Webber, Q.C. (Chair), Richard Austin, Daniel Iggers

Appearances:

Ms. Kathryn Andrews, Senior Enforcement Counsel

The Respondent did not appear nor was she represented by counsel

DECISION

¶ 1 As set out in the Notice of Hearing dated January 25, 2013, it is alleged by Staff of IIROC that the Respondent in or about July 2008 in furtherance of a misappropriation transferred funds out of a client's account without the client's knowledge or consent, contrary to IIROC Dealer Member Rule 29.1.

¶ 2 The Respondent was served with a Notice of Hearing on January 29, 2013 together with a letter dated January 28, 2013, which indicated that the first attendance on February 26 at the IIROC office in Toronto was to schedule a hearing date and not for the actual hearing of this matter.

¶ 3 On the date fixed for the first attendance an email dated February 26, 2013, 8:32 a.m. was sent by the Respondent to Enforcement Counsel. She indicates that she would be unable to attend the first attendance. In that email the Respondent made this comment:

... I do not plan to get counsel or dispute anything at the hearing. I understand that there will be repercussions from my actions and that I will have a lifetime ban on working in the industry. I also understand that there will be a monetary fine.

¶ 4 Upon receiving this information the Panel set a new hearing date for April 9, 2013 at 10:00 a.m. In accordance with the Panel's instructions Enforcement Counsel sent an email to the Respondent on Wednesday, February 27, 2013 confirming that the Panel had selected a hearing date of Tuesday, April 9, 2013. In addition, on Tuesday, March 5, 2013 the Hearing Coordinator of IIROC sent a memorandum to the Respondent confirming the date and place of the hearing on April 9, 2013. The Panel convened the hearing at 10:00 a.m. on

April 9, 2013. The Respondent failed to attend and failed to contact Enforcement Counsel or the Panel. Enforcement Counsel requested that the matter proceed on April 9, 2013.

¶ 5 After a delay of 15 minutes the Panel granted this request and conducted the hearing, pursuant to the powers granted to it pursuant to the Rules, as set out in the Notice of Hearing as follows:

FAILURE TO RESPOND OR ATTEND HEARING

TAKE FURTHER NOTICE that if the Respondent fails to serve a response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5:

- (a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions alleged by the Association in the Notice of Hearing; and
- (c) order penalties and costs against the Respondent pursuant to By-law 20.33, 20.34 and 20.49.

¶ 6 Enforcement Counsel referred the Panel to Rule 13.5 which reads 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.

¶ 7 In addition Enforcement Counsel referred the Panel to Rule 7.2 which reads as follows:

7.2 Failure to Serve Response

If a Respondent served with a Notice of Hearing fails to serve a Response in accordance with Rule 7.1:

- (a) the Organization may proceed with the hearing of the matter as set out in the Notice of Hearing without further notice to and in the absence of the Respondent; and
- (b) the Hearing Panel may, accept as proven the facts and violations alleged by the Organization in the Notice of Hearing, and may impose penalties and costs pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.

¶ 8 Acting upon these two Rules, the submissions of Enforcement Counsel and the Respondent's full admission of the contraventions in her email of February 26, 2013 as noted above, the Panel accepted that the contravention had been proven in accordance with the onus of proof on a balance of probabilities.

¶ 9 We then invited Enforcement Counsel to make submissions as to the appropriate sanctions, including costs. Enforcement Counsel requested the following sanctions.

- (a) A permanent prohibition upon the Respondent from conducting securities related business in any capacity while in the employ of or associated with any IIROC Member.
- (b) Costs of \$5,000.00.

¶ 10 In support of this submission Enforcement Counsel filed a Brief of Authorities which contained Rule 20.3.3 which deals with penalties; the sanction guidelines and general principles; certain reported decisions as to penalties imposed by other hearing panels. In addition, Enforcement Counsel provided a bill of costs in the

amount of \$18,006.00 supported by the affidavit of Ricki Ann Newmarch, sworn the 8th day of April 2013. The Panel observes that the full costs are not sought. Enforcement Counsel is seeking \$5,000.00 for costs.

¶ 11 Enforcement Counsel in her careful and thoughtful submissions discussed a number of aggravating factors. The Respondent was both a bank employee and a registered representative who intentionally misappropriated funds from various vulnerable clients' brokerage and bank accounts over a lengthy period of time. None of the money misappropriated appears to have been recovered. Mitigating factors were also reviewed which included Enforcement Counsel's position that the specific amount misappropriated to be considered was limited to \$35,000.00 from a single client. The Respondent not only has no previous disciplinary history with IIROC but she fully cooperated with the investigation and admitted her misappropriation.

¶ 12 Enforcement Counsel made compelling submissions as to the Respondent's personal circumstances which were reviewed in an *in camera* portion of the hearing, which in our view are extenuating circumstances which should be taken into account. The Respondent's appreciation of the significance of her improper activity is documented in the email of February 26, 2013.

¶ 13 In considering the penalties requested we have considered the protection of the investing public, the integrity of the capital markets, general deterrence, the protection of the IIROC membership and the protection of the integrity of the IIROC enforcement process. In addition, the Panel took into consideration IIROC's "Dealer Member Disciplinary Guidelines" and considered related decisions provided by Enforcement Counsel in IIROC's Brief of Authorities.

¶ 14 The Panel recognizes that these are serious allegations. We are also concerned about damage that may be caused to the integrity of the capital markets. The penalty that is imposed must deter other persons who would act in a similar manner. This is very blameworthy conduct. It is unknown whether the Respondent's sponsoring Member firm has repaid the capital amount lost by the client. The Respondent has made absolutely no financial contribution to the client.

¶ 15 Notwithstanding these concerns we observe the prior decisions have been made which do not impose a fine. We were referred to the decision of *Re Mills*, [2001] I.D.A.C.D. No. 7, April 17, 2001, which states as follows;

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 Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council 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. (Emphasis added)

¶ 16 Enforcement Counsel does not seek a fine. Our review of the matter led the Panel to conclude that normally a fine would be appropriate. However the submissions of Enforcement Counsel as to the way this matter has proceeded, including the personal circumstances of the Respondent, leads the Panel to conclude that under these limited circumstances and not as a precedent that no fine is entirely appropriate.

¶ 17 Based on these considerations and the submission of Enforcement Counsel the Panel imposes the following penalties:

- (a) A permanent prohibition upon the Respondent from conducting securities related business in any capacity while in the employ of or associated with any IIROC member.
- (b) Costs of \$5,000.00.

Dated at Toronto, this 10th day of April 2013.

The Honourable John B. Webber, Q.C., Chair

Richard Austin, Member

Daniel Iggers, Member

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