Re Papp

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Roland Papp

2016 IIROC 41

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

Heard: September 16, 2016
Decision: September 16, 2016
Reasons: October 20, 2016

Hearing Panel:
John Lorn McDougall, QC, Chair; F. Michael Walsh and Nick Savona
Appearances:
Rob DelFrate, Senior Enforcement Counsel
Roland Papp, In Person

DECISION AND REASONS

I. INTRODUCTION

¶ 1 By Notice of Hearing dated July 13, 2016 the Investment Industry Regulatory Organization of Canada ("IIROC") convened a hearing to be held before a Hearing Panel of IIROC ("Hearing Panel") on September 16, 2016 at the IIROC British Columbia Room, 121 King Street West, Suite 2000, Toronto, ON for the purpose of determining whether Roland Papp ("Respondent") has committed the following contraventions that are alleged by the Staff of IIROC ("Staff"):

> **Count #1**
>
> Between February 2005 and June 2014, the Respondent maintained brokerage accounts outside of his Dealer Member, without the knowledge or consent of his Dealer Member, contrary to IIROC Dealer Member Rule 29.1; and
>
> **Count #2**
>
> Between February 2005 and June 2014, the Respondent made untrue and misleading statements to his Dealer Member as well as to the other Dealer Members at which he maintained brokerage accounts, contrary to IIROC Dealer Member Rule 29.1.

¶ 2 The allegations in this matter relate to the Standard of Conduct requirements of the IIROC Dealer Member Rule 29.1 (IDA Bylaw 29.1 prior to June 1, 2008).

¶ 3 Pursuant to IIROC Dealer Member Rule 29.1, Approved Persons, which includes the Respondent, have a duty to:

i. Observe high standards of ethics and conduct in the transaction of business;

ii. Not to engage in business conduct or practice which is unbecoming or detrimental to the public interest; and

iii. Be of such character and repute consistent with these standards outlined in i and ii.

¶ 4 Although terms such as “business conduct or practice unbecoming” and “high standards of ethics” are not clearly defined in the Dealer Member Rules, these are concepts which fall squarely within the Hearing Panel’s specialized knowledge:

> Whether conduct could amount to conduct "unbecoming", in the investment industry, involves a determination by persons in the industry of what are the standards to be expected of persons who deal with investments. See *Milstein v. The Ontario College of Pharmacy* (1977), 72 D.L.R. (3d) 2 (Ont. H.C.); *Matthews v. The Board of Directors of Physiotherapy* (1987), 61 O.R. (2nd) 475 (Ont. C.A.); and *Ripley v. IDA*, [1990] N.S.J. No. 295 (N.S.S.C.) At the very least, basic honesty is required. People who work in the investment industry have occasion to control other people's money. The most fundamental expectation is that they do so honestly.
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> *Peroni (Re),* [2006] I.D.A.C.D. No. 27 at para 60.

¶ 5 While the determination of whether conduct by a registrant is “unbecoming” in the investment industry falls to be determined by a Hearing Panel, it is not a subjective test which should be applied. Instead it should be an objective test, using the much utilized “reasonable person” as the touchstone. In this instance the test might be formulated as: “what would a reasonably informed person with knowledge of the investment industry think of the propriety of the conduct in question”.

¶ 6 As it appears from the affidavit of Katie Trotman dated September 13, 2016, the Respondent was duly served with the Notice of Hearing and acknowledged receipt of it. In the event, the Respondent appeared at the hearing on September 16, 2016 and participated therein as is described below.

¶ 7 From July 2003 to February 2005, the Respondent was registered as an Investment Representative with a Toronto, Ontario branch of BMO Nesbitt Burns Inc., an IIROC Dealer Member. From February 2005 to September 2006, the Respondent was registered as an Investment Representative with a Toronto, Ontario branch of RBC Dominion Securities Inc., an IIROC Dealer Member. From September 2006 to September 2014, the Respondent was registered as a Registered Representative with RBCDS. He has not been registered in the securities industry since that time.

II. PROCEDURAL HISTORY

¶ 8 As mentioned above, Mr. Papp took an active part in the proceedings by making submissions on his own behalf, and cross-examining the IIROC investigator responsible for the file, Ms. Sharon Lloyd-Gyurkovics (“Ms. Lloyd”). Mr. Papp also gave evidence on his own behalf and was cross-examined by Mr. DelFrate. Thereafter, he and Mr. DelFrate each made closing submissions.

¶ 9 Ms. Lloyd was assigned by IIROC as the Investigator on this matter in December 2014. The investigation was commenced as a result of a notice of termination filed by RBCDS with IIROC in which it was stated Mr. Papp had been fired for cause, “primarily misrepresentations to the firm and failing to disclose outside accounts”. During the course of her investigation, Ms. Lloyd obtained documents pertaining to Mr. Papp from each of the Dealer Members involved and conducted an interview of him.

¶ 10 Following the completion of submissions, the Hearing Panel retired to deliberate. Following those deliberations, the Panel returned and advised the parties that there would be a finding of guilt on both Counts and that Reasons for Decision would be delivered in due course. These are those Reasons for Decision.

¶ 11 After the decision on liability was delivered, there followed a discussion as to when the Hearing with respect to sanctions was to be scheduled. On the suggestion of the parties, and which was agreed to by the Hearing Panel, agreement would be sought by Mr. Papp and Mr. DelFrate on the appropriate sanctions to

recommend to the Hearing Panel. A date for the Hearing on Sanctions would be scheduled, with or without such an agreement, following the delivery of these Decision and Reasons.

III. STANDARD OF PROOF

¶ 12 It is now well established that, in civil cases, there is only one standard of proof:

> I think it is time to say, once and for all in Canada, there is only one civil standard of proof at common law and that is proof on a balance of probabilities.
>
> *F.H. v. McDougall,* 2008 SCC 53, at para 40.

¶ 13 This is the standard of proof applicable to IIROC hearings and which the evidence presented in this case must meet in order to support a conclusion that the Respondent engaged in conduct unbecoming as set out in paragraph 1 above.

IV. COUNT #1: MAINTAINING OUTSIDE ACCOUNTS

¶ 14 The RBCDS Investment Advisor Compliance Manual prohibits Investment Advisors and their spouses from "control[ling] or carry[ing] an account, either in their own names or any other name at another investment dealer, including RBC Direct Investing".

> RBCDS Investment Adviser Compliance Manual, s. 7.2.
>
> RBCDS Personal Brokerage Accounts Procedures.

¶ 15 The RBCDS Annual Employee Questionnaires which were completed by the Respondent required him to acknowledge that he was responsible for familiarizing himself and complying with all firm policies and procedures.

¶ 16 Further, the Conduct and Practices Handbook clearly states that registrants are not permitted to have accounts outside of their Dealer Member unless they have received formal written approval to do so.

> Registrants are not permitted to hold (in their own or other names) or to exercise control over accounts at other firms unless they have first obtained the express written permission of their employer. A statement showing all transactions in the account at the other member firm must be provided to the employer by the firm carrying the account at least monthly. All such accounts must also be designated as non-client accounts and as such must be reviewed monthly if they generate a statement, as per the IDA's Policy 2.
>
> Conduct and Practices Handbook, IIROC.

¶ 17 In August 2004, the Respondent opened a margin account at Interactive Brokers Canada Inc. ("Interactive Brokers"). The Respondent's employment status listed in the account opening documents for this account was "unemployed".

¶ 18 In October 2013, the Respondent opened a joint account with his mother at Interactive Brokers. His employment status listed in the account opening documents for this account was "at home trader".

¶ 19 At no time did the Respondent advise Interactive Brokers that he was employed as a registrant in the securities industry. Neither of these accounts was coded by Interactive Brokers as a "Pro" account, which in the lexicon of the investment business signifies that one is, *inter alia,* a Registrant.

¶ 20 At no time did the Respondent advise RBCDS that he had accounts at Interactive Brokers. Between August 2004 and June 2014, the Respondent actively traded in each of the Interactive Brokers' accounts. The securities traded included options, futures contracts, foreign exchange contracts as well as common shares of Canadian and US listed companies.

¶ 21 In September 2011, the Respondent opened a joint RESP account with his spouse at Questrade Inc. ("Questrade"). The Respondent listed his employment status as "Employed with RBC". In response to the

question on the application form for opening the account "Are you or your spouse employed or affiliated with a person who is an employee or a securities broker-dealer or a member of a stock exchange?", the Respondent responded "No".

¶ 22 Similarly, in response to the question "Do you have any accounts or trading authorization in any accounts with brokerages other than Questrade?", the Respondent again responded "No".

¶ 23 In May 2012, the Respondent opened an RRSP account with Questrade. The Respondent listed his employment status as "Administrative with RBC" and again answered "No" to the questions on the opening application form relating to his affiliation with a securities broker-dealer and his other brokerage accounts.

¶ 24 At no time did the Respondent advise Questrade that he was employed as a registrant in the securities industry. Neither of these accounts was coded by Questrade as a "Pro" account.

¶ 25 In October 2012, the Respondent funded the Questrade RRSP account by way of a transfer from his RRSP account previously held at RBCDS. At no time did the Respondent advise RBCDS that he had accounts at Questrade. Between September 2011 and June 2014, the Respondent actively traded common shares of Canadian and US listed companies in each of the Questrade accounts.

¶ 26 On June 2, 2015, the Respondent attended an interview with IIROC Staff for the purposes of providing a statement and answering questions with respect to IIROC's investigation into his conduct, including his accounts held at Interactive Brokers.

¶ 27 At no point during the interview did the Respondent advise IIROC Staff that he held accounts at Questrade in addition to the accounts he held at Interactive Brokers.

¶ 28 Despite the Respondent's assertion during his interview with IIROC Staff, repeated during his evidence at the Hearing, that he had verbally disclosed the existence of his Interactive Brokers account to David Hawkey, his branch manager throughout the time the Respondent was a Registrant with RBCDS, Mr. Hawkey advised Ms. Lloyd in writing that he did not recall any such conversation. Mr. Hawkey also advised that had the Respondent disclosed outside accounts to him, he would have "contacted Compliance and requested permission for him to maintain the outside account" and "would have required him to also include this on the Annual Employee Questionnaire".

Email from Natalie Marshall, RBCDS, September 13, 2015 with attachment.

¶ 29 The Respondent's assertion that he had verbally disclosed the Interactive Brokers account is also inconsistent with the explanation that he provided during his interview with RBCDS. When asked about the Interactive Brokers account and advised "in order for you to have this account…you have to obtain permission", the Respondent, tellingly, did not say he had obtained permission. Instead, he responded "No I did not because I've had that account even before I started working in the industry". He also advised that the account did not need to be disclosed because the Respondent was "joint on that account with my mom" and "it's not even my account it's [sic] joint with my mom".

Roland Papp Transcript of Interview with Royal Bank Corporate Investigation Services, June 19, 2014.

¶ 30 Further, the Respondent did not disclose, either verbally or in writing, nor did he obtain approval for: 1) the second Interactive Brokers account he opened; or 2) either of the Questrade accounts that he opened. These accounts were all opened by the Respondent well after he joined RBCDS.

¶ 31 Although the trading in the Respondent's margin account at Interactive Brokers consisted primarily of currency and futures transactions, the Respondent did make a number of option and common share transactions in the account while he was registered with RBCDS. Further, there were no restrictions on the accounts that prevented the Respondent from trading in any type of securities and no way for RBCDS compliance staff to monitor the activity in this account.

V. COUNT #2: THE RESPONDENT MADE NUMEROUS MISREPRESENTATIONS

¶ 32 This count is closely related to Count #1. In both, the essence of the allegation is concealment of prohibited activities. In the case of Count #1, as discussed above, the act was the hiding of the existence of outside accounts. In the case of Count #2, the essence is the active dissembling to RBCDS, Interactive Brokers, Questrade and the IIROC investigator.

¶ 33 The allegation is that Mr. Papp actively misrepresented his true situation in respect of his outside accounts in his dealings with his employer, the regulator and other Broker Members. However it goes further, as it appears that Mr. Papp was involved in some problematic activities in regard to currency deposits in his RBC personal bank account. It was this activity which led to the investigation conducted by RBC, which in turn resulted in his dismissal by RBCDS for cause.

¶ 34 Mr. Papp, beginning in January 2014, made deposits of $9,000 in cash in his RBC personal account to a total, ultimately, of approximately $136,300.00. These deposits were made at various RBC branches in Toronto, each time by $9,000 in cash in order not to cross the $10,000 threshold under the money laundering regulations. When Mr. Papp was interviewed by RBC on June 19, 2014 he explained that the money belonged to his mother-in-law. He stated that the money was derived from her clothing business and that he used these funds to buy her Euros.

¶ 35 At the conclusion of the RBC interview, Mr. Papp was asked to provide proof of the source of the $136,300.00 deposited in his personal account. Mr. Papp, by email dated June 19, 2014, responded to RBC as follows:

> Dear Mr. Currier:
>
> Please see below the information you had requested in regards to the cash deposits made to my personal banking account with RBC.
>
> January 06, 2014 … personal savings
>
> January 06, 2014 … wedding gift
>
> January 06, 2014 … advance rental payment
>
> January 15, 2014 … personal savings
>
> January 17, 2014 … baptism gift
>
> January 20, 2014 … wedding gift
>
> January 23, 2014 … Christmas gift
>
> May 26, 2014 … wedding gift
>
> May 26, 2014 … wedding gift
>
> May 27, 2014 … sale of car/savings
>
> May 28, 2014 … baptism gift
>
> May 29, 2014 … wedding gift
>
> Jun 04, 2014 … personal savings/gifts
>
> Jun 05, 2014 … wedding gift
>
> Jun 06, 2014 … wedding gift
>
> The cash was deposited over several days as I did not want to be carrying around large amounts of cash with me for safety reasons, that is why I decided to do them in small batches, and also for the fact that I am allowed to deposit cash under $10,000 over a 24 hour period, I do not see any wrongdoing on my part. The funds above were accumulated over the years as gifts on behalf of my family and personal savings.

Thank-you for your attention to this matter.

Sincerely,

Roland Papp, CMT

¶ 36 At the hearing on September 16, 2016, Mr. Papp was asked to again explain where the $136,300 came from. He gave the following evidence in response:

> THE WITNESS: Well, the difference was I had thought it did come from my mother-in-law's clothing store because I claimed there was a third party deposit, right?
>
> THE CHAIR: Okay.
>
> THE WITNESS: Okay. When I had gone to the interview, the interviewer asked me to provide proof; okay? So I asked my wife, "Please" -- I told her that I was under an interview and they need proof of the source of these funds. And that's when she told me what those funds actually – where those funds actually came from.
>
> THE CHAIR: All right.
>
> THE WITNESS: That's the difference, but I can elaborate on that if you like. I mean, the majority of that was my wife's money that – it was under her trust as she looks after our two kids; right? So I was not aware of the fact that she had lent the money to my mother-in-law to have bought this place.

¶ 37 Whatever else can be taken from these three explanations, it is obvious that the complete story underlying the surreptitious deposit scheme has not been revealed. Mr. Papp's explanations are contradictory and make no sense in the overall picture. Therefore, in the absence of a rational explanation for the making $9,000 cash deposits to avoid the money laundering rules and regulations, the Hearing Panel has concluded that the misrepresentations made by Mr. Papp with respect to his behaviour constitute conduct unbecoming within the meaning of IIROC Dealer Member Rule 29.1.

¶ 38 In addition to not disclosing the existence of the accounts described above under Count #1 and concealing their existence by untruthfully answering the various questionnaires attendant on their openings and subsequent documentation, including the Annual Questionnaires, the Respondent also made numerous misrepresentations to RBCDS, Interactive Brokers, Questrade and IIROC Staff.

¶ 39 More specifically, in the account opening documents for the accounts held at Interactive Brokers and Questrade, the Respondent concealed his status as a registrant, and misrepresented his employment status as being someone uninvolved in the securities industry. He also failed to disclose to each of these Dealer Members that he held accounts at other Dealer Member firms.

¶ 40 With respect to the RBCDS Annual Employee Questionnaires which the Respondent filled out during his employment with RBCDS, the Respondent falsely responded to the question whether he held or controlled any accounts outside RBCDS. On each occasion he completed such forms, he failed to fulfil his obligation to disclose the accounts he held at Interactive Brokers and Questrade.

¶ 41 During the interview of the Respondent by IIROC in June of 2015, the Respondent failed to disclose the existence of the Questrade accounts, something that was then unknown to the IIROC investigator.

¶ 42 The essence of the Respondent's defence was that, while he didn't disclose the existence of his outside accounts, RBCDS knew or should have known about them. In that regard he gave the following evidence at the Hearing:

> MR. PAPP: "The Respondent's failure to disclose his outside accounts and his failure to abide by RBC's prohibition of maintaining accounts at outside firms amounts to conduct unbecoming." I think that's a bit unreasonable to state that just having an outside account and not telling your employer about it is conduct unbecoming when nothing – there was no abuse of the public's

> trust, no abuse of any client money or any of their funds.
>
> These restricted personal accounts that I was not even able to have that my employer, as RBCDS does not offer online futures trading, nor does it offer competitive commissions. It is a far stretch for IIROC counsel to claim that having outside trading accounts is conduct unbecoming when the trades in these accounts had no shade of impropriety whatsoever.

The Hearing Panel rejects this attempt by Mr. Papp to justify his misconduct.

VI. CONCLUSION

¶ 43 In *Morrison (Re)*, [2009] IIROC No. 4 at para 51, the Hearing Panel wrote the following which is apposite in the present case:

> The securities industry is a business of trust and confidence. Approved Persons must above all conduct themselves with trustworthiness and integrity, and act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole. Approved Persons have agreed to abide by and comply with the Association's By-laws, and that includes the duty to cooperate in any investigation. As was said in *Re Stewart* (supra), there is a general principle that the requirement to cooperate in any investigation is fundamental to maintaining an efficient, competitive market environment, and also to maintain the integrity of the securities system and protect the public interest.

¶ 44 It is clear beyond any reasonable doubt that the Respondent felt no obligation to behave in the fashion mandated in the *Morrison* case *supra.* Instead, he distained his professional obligations in a number of ways, the most egregious of which were his ignoring of the rules against having outside accounts and the duty to be forthright and honest with his employers and regulator. Instead, he sought, totally unsuccessfully, to suggest it was the employers' duty to divine his failures to abide by the rules. Taking all the foregoing into account, the Hearing Panel is of the view that the findings of guilty on Count #1 and Count #2 are fully justified and more than meet the applicable standard of proof. The Hearing Panel therefore hereby confirms their previous findings to that effect.

¶ 45 The matter of sanctions is to be dealt with at a Sanctions Hearing to be scheduled. If there is no agreement on the sanctions to be recommended to the Hearing Panel, Mr. Papp may deliver a written response to Staff's request for sanctions within two weeks from the date herein.

DATED this 20th day of October, 2016.

John Lorn McDougall

Chair

F. Michael Walsh

Panel Member

Nick Savona

Panel Member