

Re Jory Capital Inc.

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Jory Capital Inc.

2012 IIROC 70

Investment Industry Regulatory Organization of Canada
Hearing Panel (Alberta District Council)

Hearing: December 13, 2012

Decision: December 13, 2012

Hearing Panel:

D. Brian Foster, Q.C., Chair, Brad Whyte, Donald Milligan

Appearances:

Lorne Herlin, Enforcement Counsel for The Investment Industry Regulatory Organization of Canada
Art Stacey, Counsel for the Respondent, Jory Capital Inc.

DECISION

I. INTRODUCTION

¶ 1 Pursuant to a Notice of Application dated December 10, 2012, the Investment Industry Regulatory Organization of Canada ("IIROC") brought an application for an Expedited Hearing for relief against Jory Capital Inc. ("Jory") pursuant to Dealer Member Rules 20.41, 20.42 and 20.45 and Rule 16 of the Rules of Practice and Procedure. The Dealer Member Rules are hereinafter referred to as the "Member Rules". The application was heard on Thursday, December 13, 2012 in Winnipeg. The relief requested in the Notice of Application is:

- 1) that pursuant to IIROC Dealer Member Rule 20.45(1)(a) Jory's membership with IIROC be immediately suspended;
- 2) that pursuant to IIROC Dealer Member Rule 20.45(1)(b) Jory must continue to maintain and preserve all of its books and records (including those in electronic form) for a period of seven years from the date that the books and records came into existence and that on demand these books and records shall be made available within a reasonable period of time to IIROC Staff and any other person or entity that has a legal right to access Jory's books and records;
- 3) that pursuant to IIROC Dealer Member Rule 20.45(1)(d) Jory be directed to immediately cease dealing with the public;

- 4) that pursuant to IIROC Dealer Member Rule 20.45(1)(e) IIROC Staff may take any action to facilitate the orderly transfer of Jory's client accounts from Jory's Carrying Broker, National Bank Correspondent Network to another Dealer Member; and
5. such further and other relief that counsel may request and that the Hearing Panel may permit.

¶ 2 In support of the application IIROC relies on an Affidavit of Robert DeGoeij, Manager of Financial and Operations Compliance, Prairie Region, for IIROC, that was sworn December 7, 2012 (the "DeGoeij Affidavit") and an Affidavit of Shannon Mathieson, Administrative Assistant with IIROC, sworn December 11, 2012 (the "Mathieson Affidavit").

¶ 3 No oral evidence was given at the Application.

¶ 4 No person attended the Application on behalf of Jory. There are emails attached as Exhibits to the Mathieson Affidavit that show that Jory and its counsel were aware of this application and the relief claimed. At the Application Mr. Herlin, counsel for IIROC, provided us with further emails dated December 11 and December 12, 2012. In an email dated December 12, 2012 counsel for Jory confirmed that he had spoken to Patrick Cooney ("Cooney"), the Chairman, CEO and President of Jory, and had also forwarded to Cooney the Notice of Application. Counsel for Jory advised Mr. Herlin on December 12, 2012 that he no longer acted for Jory and that he understood that Cooney would appear at the Application. In an email dated December 13, 2012 that was provided to us at the Application, a member of the law firm that formerly acted for Jory advised that contrary to the advice given by Cooney to his counsel that Cooney would attend at the Application, Cooney now advised his former law firm that he would not attend the Application. The former counsel for Jory stated that they expected that no-one would appear on behalf of Jory. As a result, the Hearing proceeding without any representative of or counsel for Jory.

¶ 5 On December 13, 2012 this Hearing Panel held that on the evidence before us it was appropriate for the protection of the public, of other Dealer Members and IIROC that Jory's membership in IIROC be immediately suspended and that Jory immediately cease dealing with the public. It was also ordered that there be an order granting the other relief requested. We advised that written reasons would follow and below are our reasons.

II. EVIDENCE

¶ 6 The evidence found in the DeGoeij Affidavit and Mathieson Affidavit is not contested.

¶ 7 Jory's only office is located in Winnipeg. Until recently, it was registered as an investment dealer in Manitoba, British Columbia, Alberta, Saskatchewan and Ontario.

¶ 8 Jory is a Type 2 Introducer/Carrier Broker. Its carrier broker is National Bank Correspondent Network ("NBCN"). Jory is responsible for all compliance requirements and NBCN is responsible for, among other things, custody of Jory's client funds and securities.

¶ 9 On April 23, 2012 the Manitoba Securities Commission (the "Commission") issued a Notice of Hearing giving notice of its intention to hold a hearing to consider, among other things, appeals by Jory of IIROC Hearing Panel decisions dated January 28, 2011, February 14, 2012 and April 11, 2012.

¶ 10 In an Order issued by the Commission, Order No. 6520 dated May 4, 2012 (the "Commission Order"), the Commission stated that it did not proceed with the Hearing and, with the consent of Jory, Cooney and of IIROC staff, the Commission was of the opinion that it would not be prejudicial to the public interest to make the Order that is annexed to this Decision as Schedule "A" in its form as restated on October 15, 2012.

¶ 11 Pursuant to paragraph 2 of the Commission Order, the registration of Jory "shall be cancelled by the Commission immediately" upon the occurrence of any one of a number of events. Registration could be cancelled if Jory's Risk Adjusted Capital ("RAC") is negative and is not restored to a positive value within five (5) business days or such later date as IIROC staff may permit. Paragraph 2 of the Commission Order states:

2. Pursuant to the power vested in the Commission under s.8(1) of the Act, and without the necessity of any further hearing, the registration of Jory shall be cancelled by the Commission immediately upon the occurrence of any of the following events or on such later date as the Commission may permit for the purposes of an orderly wind up of Jory:

- (a) Jory fails to engage the Committee by May 14, 2012, or on such later date as IIROC Staff may permit, in accordance with Schedule "A";
- (b) Jory fails to maintain the Committee as constituted in accordance with Schedule "A";
- (c) Jory ceases to have a Carrying Broker;
- (d) Jory's Risk Adjusted Capital is negative and is not restored to a positive value within five (5) business days or such later date as IIROC Staff may permit;
- (e) Jory fails to engage or ceases to have the services of a Monitor that is acceptable to IIROC Staff in accordance with the terms of Schedule "B";
- (f) Jory fails to have in place an UDP who is approved by IIROC Staff by August 1, 2012 or such later date as IIROC Staff may permit; or
- (g) Jory fails to have in place a CCO who is approved by IIROC Staff by September 1, 2012 or such later date as IIROC Staff may permit.

¶ 12 Member Rule 17.1 requires all Dealer Members to have and maintain at all times RAC greater than zero. If at any time the RAC of a Dealer Member is less than zero, the Dealer Member must immediately notify IIROC.

¶ 13 In addition to the foregoing, Member Rule 2600 requires Dealer Members to report promptly to IIROC any capital deficiency that occurs and to take preventative measures to avoid a capital deficiency.

¶ 14 In his Affidavit, Mr. DeGoeij states in paragraphs 18 and 19:

- 18. The financial requirements described above are essential for the determination of the financial solvency of a Dealer Member and ultimately for the protection of the public, other Dealer Members, IIROC, and the Canadian Investment Protection Fund (CIPF).
- 19. Capital adequacy concerns have caused Jory to be categorized as high risk by the CIPF, and as a result it pays higher assessments.

¶ 15 Paragraph 5 of the Commission Order required Jory to pay to IIROC costs of \$50,000.00. As an accommodation to Jory, IIROC staff adopted the practice of considering Jory to be RAC deficient only after Jory's RAC fell below minus \$50,000.00.

¶ 16 From May 14, 2012 to October 22, 2012, Jory reported a level of RAC that has been below minus \$50,000.00 on 41 business days. Since October 29, 2012, Jory's level of RAC has been continuously below zero. As of November 28, 2012, the last day that Jory filed its daily RAC calculation, Jory's level of RAC was minus \$248,000.00.

¶ 17 On November 22, 2012 the Commission suspended Jory's registration for various reasons, including the continued deterioration of Jory's RAC. In correspondence dated November 22, 2012 to Jory, the Commission referred to other concerns. Included in those concerns was a public interest concern that the checks and balances that were put into place as reflected in the Commission Order did not appear to have been effective in the circumstances.

¶ 18 Manitoba is the principal regulator for Jory. As a result of the Commission suspending Jory's

registration, the registration of Jory as an investment dealer was also automatically suspended in British Columbia, Alberta and Saskatchewan.

¶ 19 On December 6, 2012 the Ontario Securities Commission suspended Jory's registration as an investment dealer.

¶ 20 In an email dated November 29, 2012 counsel for Jory advised that Jory had been unable to proceed with a transaction for the sale of Jory to another party and advised that "in those circumstances the future for Jory is untenable given the state of the RAC." Counsel for Jory also advised that non-essential employees of Jory had been dismissed from their employment.

¶ 21 In correspondence dated November 29, 2012 Cooney wrote to the Commission, with a copy to IIROC, and requested to withdraw Jory's IIROC membership effective November 29, 2012.

¶ 22 In an email dated December 5, 2012 from Jory's counsel to IIROC's counsel, Jory's counsel stated that Cooney had asked if Jory could "simply resign its IIROC membership". Counsel for IIROC advised Jory's counsel in a reply email that since the RAC was deficient, Jory was not able to simply resign its membership.

¶ 23 Cooney has advised IIROC staff that he is attempting to make arrangements with another Dealer Member to assume all of Jory's client accounts. At present, Jory's clients are able to place liquidating trades and to transfer their account to another Dealer Member. Jory is winding down its business and its former Approved Persons are no longer registered and therefore unable to act for Jory's clients.

III. ANALYSIS

¶ 24 Member Rule 20.42 allows a hearing panel to impose any of the penalties prescribed by Member Rule 20.45 where there are the circumstances described in Member Rule 20.42. The relevant circumstances are described in subparagraphs (b) and (d) of Member Rule 20.42:

- (b) The registration of a dealer member as a dealer in securities or commodities under any statute respecting trading or advising in respect of securities or commodities or an underwriter in any statute in respect of securities or commodities has lapsed or is suspended or cancelled;
- (d) Where a Dealer Member is in such financial or operating difficulty that the Hearing Panel determines the Dealer Member cannot be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or the Corporation.

¶ 25 On the evidence, the Member Rule 20.42 circumstances that allow this Hearing Panel to impose penalties prescribed by Member Rule 20.45 have been established. Jory's registration has been suspended by the Commission. Jory has requested that its membership in IIROC be withdrawn. Jory is in financial or operating difficulty and is winding down its business. This Hearing Panel has determined that Jory cannot be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or IIROC.

¶ 26 Member Rule 20.45 allows a Hearing Panel to impose a number of penalties. The penalties can include:

20.45 Powers of Hearing Panel

- (a) suspension of approval or Membership;
- (b) imposition of terms or conditions on a suspension of approval or Membership;
- (d) direction to immediately cease dealing with the public;
- (e) an order with terms and conditions to facilitate the orderly transfer of client accounts from a Dealer Member suspended under this Rule;

¶ 27 During argument at the Application, IIROC's counsel provided the Hearing Panel with decisions of other IIROC Hearing Panels, including *Re Evergreen Capital Partners Inc.* [2008] IIROC No. 31, *Re First Leaside Securities* [2002] IIROC No. 16 and *Re Credifinance Securities Limited* [2009] IIROC No. 16. In

those decisions the Hearing Panels dealt with applications that considered Member Rules 20.42 and 20.45 where substantially the same relief was requested. In the *Re Evergreen Capital Partners Inc.* decision the respondent was unable to provide a current and reliable RAC calculation and had ceased carrying on business. In the *Credifinance Securities Limited* decision the respondent was capital deficient by approximately \$250,000.00 and the respondent had ceased to carry on business with the public and only had two employees remaining. Further, in the *Credifinance* decision the respondent's registration with the Ontario Securities Commission had been suspended. As was stated in the *Credifinance* decision:

The registration of Credifinance has been suspended by the OSC and its RAC has fallen below zero. Either one of these events would be justification enough for the Panel to issue the Order IIROC seeks.

¶ 28 This Hearing Panel finds that the Order that IIROC seeks is justified. The grounds to support the granting of the Order have been established and include:

- (a) The Commission and the Ontario Securities Commission have both suspended Jory's registration;
- (b) Jory's RAC is and has been for some time below zero contrary to Member Rule 17.1; and
- (c) Jory has no Approved Persons to give advice to clients and is in the process of winding down its business.

¶ 29 As a result, the Order granted by this Hearing Panel effective December 13, 2012 is:

- (a) That pursuant to IIROC Member Rule 20.45(1)(a), Jory's membership with IIROC is immediately suspended;
- (b) That pursuant to IIROC Member Rule 20.45(1)(b), Jory shall continue to maintain and preserve all of its books and records (including those in electronic form) for a period of seven years from the date that the books and records came into existence and that on demand, those books and records shall be made available within a reasonable period of time to IIROC staff and any other person or entity that has a legal right to access Jory's books and records;
- (c) That pursuant to IIROC Member Rule 20.45(1)(d), Jory is directed to immediately cease dealing with the public;
- (d) That pursuant to IIROC Member Rule 20.45(1)(e), IIROC staff may take any action to facilitate the orderly transfer of Jory's client accounts from Jory's Carrying Broker, National Bank Correspondent Network to another IIROC Dealer Member; and
- (e) If either IIROC staff, Jory or any other interested party require advice or directions in relation to any of the above, then the matter may be brought back before this Hearing Panel within the next 60 days on notice to the other party.

DATED at the City of Calgary, in the Province of Alberta, this 13th day of December, 2012.

D. Brian Foster, Chair

Brad Whyte

Donald Milligan

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