Re Conville

IN THE MATTER OF:

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

and

Steven George Conville

2013 IIROC 05

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

Heard: January 16, 2013
Decision: February 12, 2013

Hearing Panel:
Thomas J. Lockwood, Q.C. (Chair), Leo Ciccone, F. Michael Walsh
Appearances:
Rob DelFrate, for IIROC
Steven George Conville, in Person

DECISION AND REASONS

A. HISTORY OF PROCEEDINGS

¶ 1 On December 5, 2011, the Investment Industry Regulatory Organization of Canada ("IIROC") issued a Fresh as Amended Notice of Hearing against Steven George Conville (the "Respondent") making the following Allegation:

> "Between March 2009 and May 2009, the Respondent participated in and facilitated a scheme in which two friends of his would obtain a mortgage based on fraudulent grounds and use the proceeds to purchase the Respondent's residence, thereby violating Dealer Member Rule 29.1."

¶ 2 The Hearing took place in Toronto over the course of three days, from February 21, 2012 to February 23, 2012. There was extensive evidence presented to the Hearing Panel, both in viva-voce and documentary form.

¶ 3 In a written Decision and Reasons, dated June 11, 2012, the Hearing Panel concluded, in part, as follows:

> (a) We have carefully scrutinized the evidence, both documentary and testimony. We gave special attention to the viva voce testimony given by the Respondent before us. After a thorough analysis, we are, unanimously, of the view that the contravention alleged by Staff in the Fresh as Amended Notice of Hearing has been established.
>
> (b) We find that: "Between March 2009 and May 2009, the Respondent participated in and facilitated a scheme in which two friends of his would obtain a mortgage based on fraudulent grounds and use the proceeds to purchase the Respondent`s residence, thereby violating Dealer Member Rule 29.1", which provides, in part, that a "Registered Representative . . . (i) shall observe high standards of

ethics and conduct in the transaction of [his] business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute . . . as is consistent with the standards described in clauses (i) and (ii) or may be prescribed by the Board."

¶ 4 On the issue of Penalty, we stated, as follows:

(a) During the course of the Hearing, the Respondent tendered significant testamentary evidence as to his career in the financial services industry, his community activities, as well as his various charitable and philanthropic endeavours.

(b) We have made no finding, or given any consideration, as to what should be the appropriate penalty, if any, in all of the circumstances of this case.

(c) We are prepared to hear both evidence and submissions from the parties on the question of penalty. We would ask Counsel to confer as to how much time should be set aside for the Penalty Hearing and when the parties are ready to proceed with same.

(d) If the parties are unable to agree, we will hear submissions and make the appropriate Order with respect to the Penalty Hearing.

¶ 5 The Penalty Hearing was, initially, scheduled for September 11, 2012.

¶ 6 The Hearing was adjourned to November 7, 2012, with the Consent of the Respondent, owing to health issues relating to IIROC Counsel.

¶ 7 On October 22, 2012, Counsel for the Respondent requested that the Hearing be re-scheduled. IIROC Counsel consented. The Hearing was re-scheduled to December 12, 2012.

¶ 8 By Notice of Intention to Act in Person, dated December 3, 2012, the Respondent advised of his intention to represent himself at the Penalty Hearing.

¶ 9 The Submissions of Staff, with respect to Penalty, are dated December 3, 2012.

¶ 10 On December 5, 2012, the Respondent forwarded an e-mail to the National Hearings Co-Ordinator requesting an adjournment of the December 12, 2012 Penalty Hearing. IIROC Staff opposed this request.

¶ 11 The Hearing Panel advised the parties that it would hear and consider the request for an adjournment at the opening of the proceedings on December 12, 2012.

¶ 12 On December 12, 2012, the Hearing Panel heard extensive oral submissions from both the Respondent and IIROC Staff. After considering the submissions, the Hearing Panel adjourned the Penalty Hearing to January 16, 2013. The Respondent confirmed that this adjournment would permit him a reasonable period of time in which to prepare his submissions and arrange for witnesses to attend and testify on his behalf.

¶ 13 The Hearing Panel set aside two full days to ensure that both parties would have a full opportunity to address the issue of Penalty.

¶ 14 The Penalty Hearing took place on January 16, 2013. The Respondent called four character witnesses and made extensive written and oral submissions with respect to Penalty. IIROC Staff did not call any viva voce evidence on Penalty but made extensive written and oral submissions.

¶ 15 At approximately 6:00 p.m. on January 16, 2013, the Hearing Panel reserved its Decision on Penalty. We advised that our Decision, as well as written Reasons for same, would be issued in due course.

¶ 16 The following constitutes our Decision and Reasons.

B. APPLICABLE PRINCIPLES

¶ 17 The parties agreed on the General Principles which should guide the Hearing Panel in determining the appropriate Penalty. They, however, disagreed upon what the results should be when these principles are applied to the facts of the case before us.

¶ 18 In Re Derivative Services Inc. [2000] I.D.A.C.D. No. 26 at page 3, a Hearing Panel found that the following are the main concerns when determining an appropriate penalty:

(a) protection of the investing public;

(b) protection of IIROC's membership;

(c) protection of the integrity of IIROC's process;

(d) protection of the integrity of the securities industry; and

(e) prevention of a repetition of conduct of the type under consideration.

¶ 19 IIROC has issued a document entitled the "Dealer Member Disciplinary Sanction Guidelines". This is a Staff produced document and is a compilation of guidelines which may be taken into account by a Hearing Panel when determining Penalty. The Guidelines are neither exhaustive nor determinative but are a useful tool in assisting a Hearing Panel in making an appropriate decision in a particular case.

¶ 20 The Guidelines provide, in part, as follows:

> "Sanctions should be based on the circumstances of the particular misconduct by a respondent with an aim at general deterrence.
>
> General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations. As was observed by the Hearing Panel in Re Mills, [2001] I.D.A.C.D. No. 7, April 17, 2001, at p. 3:
>
> > 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."

C. POSITION OF THE PARTIES

¶ 21 IIROC Staff requested that the following penalties be imposed on the Respondent:

(a) A permanent bar on the Respondent's approval with IIROC.

(b) A fine in the amount of $75,000.00; and

(c) Costs in the amount of $35,204.50.

¶ 22 The Respondent submitted that, in all of the circumstances of this case, the Hearing Panel should not impose any further penalty by way of bar, suspension, supervision or fine. He offered to pay $5,000.00 by way of costs.

D. FACTORS CONSIDERED

¶ 23 The IIROC Sanction Guidelines set out a number of factors which it was felt the Hearing Panel should consider when determining penalty. Both Staff and the Respondent made oral and written submissions with respect to the factors which each felt were applicable in the instant case. In addition, there were a number of other factors which guided our thinking.

¶ 24 Some of these factors we considered to be of an aggravating nature calling for a more serious penalty. Some of these factors were, on the other hand, of an ameliorating character. We carefully weighed all of the following factors in coming to our decision on Penalty:

A. Aggravating

1) Harm to Clients and/or the Securities Market

¶ 25 The Respondent submitted that there was no harm to clients, employers or the securities market. We disagree.

¶ 26 As submitted, in part, by Staff:

> "Registrants hold a privileged position in the securities industry. Those privileges are balanced by responsibilities set out in the Dealer Member Rules, including the obligation to observe high standards of ethics and conduct, and to not engage in any business conduct or practice which is unbecoming or detrimental to the public interest."

¶ 27 We also agree with Staff that, in part, it was the Respondent's status as a registrant which allowed him to participate in and facilitate the attempted mortgage fraud. The documents which were submitted to the Bank of Nova Scotia included a fictitious Portfolio Evaluation from Blackmont Capital Inc., the Respondent's then current Dealer Member firm, as well as a fraudulent employment letter on the letterhead of HSBC, his former Dealer Member firm.

2) Blameworthiness and Degree of Participation

¶ 28 We found that the Respondent participated in and facilitated a scheme in which two friends of his would obtain a mortgage based on fraudulent grounds and use the proceeds to purchase the Respondent's residence. In his submissions, the Respondent agreed that the misconduct has an element of criminal or quasi-criminal activity.

3) Extent to Which the Respondent was Enriched by the Misconduct

¶ 29 Although no funds were ultimately advanced, it is clear the Respondent was intended to be the major beneficiary of the transaction. We do not accept his assertion that, should the transaction have been approved, it would have just consolidated existing debts. In addition to the potential monetary benefits, his misconduct would have allowed him to maintain his personal and professional reputation, avoid embarrassment and save his family home.

4) Acceptance of Responsibility, Acknowledgement of Misconduct and Remorse

¶ 30 The Respondent has never fully and unequivocally accepted responsibility for his actions. He has not shown remorse for the conduct established. He has accepted responsibility only for his actions as he has defined them.

5) Previous Regulatory Decisions in Similar Circumstances

¶ 31 Both Staff and the Respondent provided us with a number of previous IIROC Decisions. Several of the cases dealt with forgery of documents in a professional setting. None dealt with forgeries in the particular circumstances of the facts of this case. That having been said, forgery is always serious and any sanction must reflect this fact.

B. Ameliorating

1) No Prior Discipline Record

¶ 32 The Respondent has no prior disciplinary record. In all of the circumstances of this case, this, to us, is a significant factor.

¶ 33 As stated in the Sanction Guidelines:

> "The fact that a respondent has no prior disciplinary record should, in the absence of evidence to the contrary, lead a panel to a presumption that the respondent was of good moral character prior to the misconduct. A first conviction may be seen as a measure of punishment in and of itself, given the attendant stigma attached to the process of charging, finding of guilt and imposition of sanction."

¶ 34 The Respondent and his firm first received notice of the IIROC investigation into his alleged conduct in July of 2009. The Respondent was immediately put under supervision by the firm. For a variety of reasons, the matter was not finally put before the Hearing Panel for a determination until February of 2012. The Respondent remained under supervision until he lost his employment on October 25, 2012, a period of approximately 40 months.

¶ 35 The Sanctions Guidelines also state that:

> "a good employment or internal discipline record should be a mitigating factor because it demonstrates responsibility and conformity to professional norms, which are the antithesis of the misconduct."

¶ 36 The uncontradicted evidence of the Respondent was that he had a spotless compliance record as an Advisor and a Branch Manager. He stated that:

> "Several months prior to the investigation, I went to my CEO and our National Sales Manager and explained my difficult financial situation. Compliance at that time reviewed the previous 24 months of my transaction history and was extremely confident that at all times I acted in a compliant, ethical manner, and always put my client's interests first. I went through such a review several times as well as after the investigation in 2009 and never had any issues."

¶ 37 The Hearing Panel was very impressed with the 4 witnesses who provided viva voce testimony at the Penalty Hearing as to the character of the Respondent. They detailed many of his public, private and philanthropic activities. They provided first-hand insights into his character. They did not seek to diminish his wrong-doing but urged us to provide him with an opportunity to restore his reputation and position in the investment community.

2) Co-Operation

¶ 38 The Respondent co-operated with the lengthy IIROC investigation which commenced in July of 2009.

3) Harm to Clients

¶ 39 The Respondent's wrong-doing did not involve his securities clients.

4) No Financial Loss to Firm

¶ 40 The Respondent's securities firm did not suffer any financial loss.

5) Loss of Employment

¶ 41 The Respondent lost his employment in the securities industry on October 25, 2012. He is not currently employed in the industry.

6) Client Portfolio

¶ 42 As a result of the loss of his employment, the Respondent has lost his client portfolio.

E. DECISION

¶ 43 In assessing all relevant factors, in light of the conduct of the Respondent, we believe that the following is an appropriate sanction:

(a) A six month suspension on the Approval of the Respondent to act as a partner, director, officer or employee of a Dealer Member. As the Respondent lost his employment on October 25, 2012, and is still not working in the industry, the suspension will be back-dated to October 25, 2012, and will conclude on April 25, 2013.

(b) A fine in the amount of $50,000.00.

(c) As a condition of re-registration, the Respondent must successfully complete the following courses, offered by the Canadian Securities Institute:

(i) Ethics, Regulation and Professionalization of the Advisor; and

(ii) Fraud in the Securities Industry.

Should either or both of the said courses not be available within a reasonable period of time, the Respondent shall be at liberty to substitute one or more equivalent courses with the written consent of IIROC.

(d) Costs in the amount of $15,000.00.

¶ 44 We believe that these sanctions, while less than requested by Staff and more than suggested by the Respondent, will convey to the investment community the fact that significant sanctions will be imposed on individuals who engage in similar conduct and that they will act as a deterrent. The sanctions, however, will enable the Respondent, if he is so inclined, to re-enter the securities industry and seek to re-establish his prior position with the full knowledge that should there be any future misconduct of a similar nature, the penalty outcome would likely be considerably more severe.

F. PUBLICATION OF DECISION AND REASONS

¶ 45 On June 11, 2012, this Hearing Panel submitted its Decision and Reasons to IIROC on the issue of liability. We assumed that, in a reasonable period of time, a date for a Penalty Hearing would have been established and our Decision and Reasons would have been released to the public.

¶ 46 In fact, as indicated above, a date for the Penalty Hearing was set for September 11, 2012, which date was subsequently adjourned, either on consent or by Order of the Hearing Panel.

¶ 47 What we only became aware of recently was that our Decision and Reasons were not released to the public until October 25, 2012, some 4½ months after the Hearing Panel had submitted to IIROC the results of its deliberations.

¶ 48 This lengthy delay does appear to be unseemly for an organization that justly prides itself on transparency.

¶ 49 While there may have been cogent reasons for the delay in making the Decision and Reasons public, in the future, we suggest that consideration be given to bringing a Motion before the Hearing Panel so that the public interest aspects of those reasons can be appropriately considered.

DATED the 12th day of February, 2013.

Thomas J. Lockwood, Q.C., Chair

Leo Ciccone, Member

F. Michael Walsh, Member