

Re Hoshizaki

IN THE MATTER OF:

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

and

Vance Virgil Hoshizaki

2017 IIROC 52

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

Heard: November 15, 2017
Decision: December 13, 2017

Hearing Panel:

Martin L. Friedland, C.C., Q.C. (Chair), Neil Murphy, Jane Waechter

Appearances:

Paul Smith, Senior Enforcement Counsel, IIROC

Vance Virgil Hoshizaki, by teleconference

REASONS FOR DECISION ON SANCTION

Background

¶ 1 This is a continuation of a Hearing that was commenced against Vance Virgil Hoshizaki (“Mr. Hoshizaki” or “the Respondent”) by way of a Notice of Hearing, dated February 11, 2017, and heard by the present Panel on July 18 and 19, 2017. On August 11, 2017, the Panel’s Decision and Reasons for Decision were issued (see *Re Hoshizaki* 2017 IIROC 40). The final paragraph in those Reasons (paragraph 58) states:

“We therefore find that the allegations set out in all five counts have been proven. No submissions were asked for or made with respect to sanctions. We now request the National Hearing Coordinator to set a date for a Hearing on what the appropriate sanctions should be in the circumstances of this case.”

¶ 2 The Penalty Hearing took place on November 15, 2017. The Respondent did not initially appear, although notice of the hearing had been sent to the Respondent by IIROC staff and an email and telephone message had been left by IIROC counsel several days before the Hearing. At the start of the Hearing, the Respondent had not appeared in person or by telephone and after waiting about ten minutes, a telephone call was made by IIROC staff to the Respondent, who did not answer. A message was left for him. After another ten minutes, another phone call was made by IIROC staff. The Respondent answered the phone and said he wanted to take part in the Hearing by teleconference. A similar pattern of conduct by the Respondent in earlier hearings is described in paragraphs 5 and 6 of our August 11, 2017 Reasons.

¶ 3 This is our decision on the appropriate sanctions and the reasons for our decision. We will not repeat here in detail the complicated set of facts set out in our earlier decision. We will, however, set out the Respondent’s background in the securities industry, a brief description of the facts, and the five contraventions that had been alleged by IIROC in the February 1, 2017 Notice of Hearing.

¶ 4 The Respondent was a Registered Representative in the Thunder Bay Branch of Assante Capital Management Ltd. (“Assante”), an IIROC Dealer Member Firm, at the time of the transactions that were the subject of the Hearing. He had been registered as a Branch Manager between July 2006 and January 2008, had been employed in the financial services industry for more than 30 years, and had been registered at Equion Securities Canada Ltd., a predecessor firm of Assante, since January 1997. He has not worked for an IIROC Dealer Member Firm since his position was terminated by Assante on June 17, 2013.

¶ 5 In brief, Mr. Hoshizaki collected a total of approximately \$536,000 from multiple clients to invest in private businesses. The investments were not recorded on the books of the investment firm at which he worked. He has neither returned nor accounted for the money that was entrusted to him by clients.

¶ 6 On February 1, 2017, IIROC issued a Notice of Hearing, alleging that Mr. Hoshizaki committed the following contraventions:

Count 1

“Between 2002 and 2013 Vance Virgil Hoshizaki engaged in undisclosed outside business activity without the consent of his firm contrary to Dealer Member Rule 29.1 by raising capital for a private company that was planning to run an automotive service business.”

Count 2

“Between 2002 and 2013 Vance Virgil Hoshizaki engaged in personal financial dealings with clients without the consent of his firm contrary to Dealer Member Rule 29.1 by having clients deposit funds to a private company that he controlled for the purpose of being invested in another company that was planning to run an automotive service business.”

Count 3

“Between March 2012 and July 2013, Vance Virgil Hoshizaki engaged in undisclosed outside business activity without the consent of his firm contrary to Dealer Member Rule 29.1 by running a personal online securities trading business.”

Count 4

“In March 2012 and March 2013, Vance Virgil Hoshizaki engaged in personal financial dealings with clients contrary to Dealer Member Rule 29.1 by arranging to have clients deposit funds to a private company that he controlled for the purpose of being used for his personal online securities trading business.”

Count 5

“Between March 2012 and June 27, 2013, Vance Virgil Hoshizaki engaged in conduct that was unbecoming or detrimental to the public interest contrary to Dealer Member Rule 29.1 by taking money that was entrusted to him by clients for investment purposes and using it for his personal use.”

¶ 7 The first two counts refer to the following allegations: that starting in 2002 and continuing as late as 2013, the Respondent engaged in undisclosed outside business activities and in personal financial dealings with his clients; that he raised \$413,000 from 14 clients for the operation of an automotive service business, but placed the proceeds into a private company that he controlled; and that his private company then invested some, but not all, of that money in the automotive service business. (See *Re Hoshizaki* 2017 IIROC 40, paragraph 13.)

¶ 8 The last three counts refer to the following allegations: that in 2012 and 2013, the Respondent engaged in further outside business activities and personal financial dealings with three clients when he arranged for the deposit of another \$123,00 into his private company for the purpose of running his personal online trading business; that one of these three clients was among the original group of 14 clients with whom the Respondent had previously engaged in personal financial dealings; and that the Respondent used some or all of this money to pay his personal debts and expenses. (See *Re Hoshizaki* 2017 IIROC 40, paragraph 14.)

¶ 9 Dealer Member Rule 29.1 reads as follows:

“Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their 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 and have such experience and training, as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the [IIROC] Board.”

¶ 10 As discussed in the earlier decision on liability (see paragraph 11), outside business practices and personal financial dealings come within Dealer Member Rule 29.1.

Penalty

¶ 11 Counsel for IIROC proposed the following penalty:

1. a permanent ban on being registered with IIROC in any capacity;
2. a fine of not less than \$550,000; and
3. costs of \$20,000.

¶ 12 We agree that the Respondent should be barred from registration with IIROC in any capacity. His conduct was egregious. Paragraph 6 of part 1 of the IIROC Sanction Guidelines provides that a permanent bar should be considered where:

- the contraventions involve significant harm to the investing public, the integrity of the market or the securities industry;
- the misconduct had an element of criminal or quasi-criminal activity; or
- there is reason to believe that the respondent cannot be trusted to act in an honest and fair manner in their dealings with the public, their clients, and securities industry as a whole.

The Respondent fits, not just one, but all three of those categories.

¶ 13 The Respondent’s conduct was premeditated. It involved numerous clients over a long period of time. Without his firm’s consent he gained personal control over the funds of 14 persons who each invested \$29,500. The clients lost their investments. He used the money for the -most part for his personal expenses. He misled IIROC until IIROC was able to obtain bank records with the assistance of the Ontario Securities Commission that enabled IIROC to identify these personal expenses.

¶ 14 Some of the clients were unsophisticated and vulnerable. One woman who invested in both schemes (the automotive service scheme as well as the later on-line investment scheme) was 79 years old. In our earlier reasons (*Re Hoshizaki* 2017 IIROC 40 at paragraph 30) we stated:

“We agree with Counsel for IIROC that this was ‘misappropriation of funds’ by the Respondent. Counsel also referred to the ‘ponziesque nature of the transactions.’ This was particularly true of the money obtained for the on-line trading business. The Respondent needed money to buy off [two earlier investors], so he started another scheme and induced three people to invest in it.”

¶ 15 He is a person who should clearly not be in the securities industry. In his comments at the Penalty Hearing, he did not argue that he should not be barred from the industry.

¶ 16 Costs of \$20,000 seem reasonable. IIROC staff spent hundreds of hours investigating the Respondent’s transactions. Such a sum will only provide partial recovery.

¶ 17 The main issue for us is the fine that should be imposed. In many of the reported cases the monetary fine is related to the amount involved, whether it is the amount that the Respondent benefited from the transactions or the amount that the clients lost. We know that the clients lost \$536,000. We do not know how much of that the Respondent used for his personal expenses, but we are sure that it was a substantial portion of

that sum.

¶ 18 General deterrence is an important consideration in imposing a fine. As the Guidelines state: “The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence).” We do not have to worry about specific deterrence in this case because the Respondent will not be returning to the industry. But the penalty has to be large enough to send a strong message to others.

¶ 19 We impose a fine of \$500,000. This will provide a measure of general deterrence. We do not expect that the Respondent will ever be able to pay this fine. In his comments to us, he made it clear that he is in no position to pay almost any fine. It is true that the IIROC Guidelines state that inability to pay is a factor when considering an appropriate monetary sanction, but the Guidelines go on to state that ability to pay “should not be considered a predominant or determining factor.” In our view, the more egregious the conduct, the less it should be taken into account. The conduct here involves misappropriation of funds. We do not know, however, how much of the amount given by clients actually went into the automotive service business and how much went into the Respondent’s pocket, so our fine is slightly less than that suggested as a minimum by IIROC. We have chosen a round figure as have many of the other cases we examined. Imposing a fine is not an exact science.

¶ 20 The penalty is also in line with the other cases that were brought to our attention by counsel for IIROC. (See, e.g., *Re Schoer* 2011 IIROC 33; *Re Ryan* 2012 IIROC 29; and *Re Ramsay* 2013 IIROC 41.)

¶ 21 We therefore order that:

1. the Respondent be permanently barred from approval in any capacity with IIROC;
2. the Respondent pay a fine of \$500,000; and
3. the Respondent pay costs of \$20,000.

Dated at Toronto this 13th day of December, 2017

Martin L. Friedland

Neil Murphy

Jane Waechter

Copyright © 2017 Investment Industry Regulatory Organization of Canada. All Rights Reserved.