Re Ramsay

IN THE MATTER OF:

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

and

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

and

Pirkko Ann Ramsay

2013 IIROC 41

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

Heard: May 21, 2013
Decision: July 16, 2013

Hearing Panel:
Edward T. McDermott – Chair, David W. Kerr and Hugh McNabney
Appearances:
Ms. Diana Iannetta, Senior Enforcement Counsel
No one appearing for the Respondent, Pirkko Ann Ramsay

DECISION AND ORDER

INTRODUCTION

¶ 1 This Hearing Panel was constituted pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No. 1 of the Investment Industry Regulatory Organization of Canada ("IIROC").

¶ 2 The Notice of Hearing which initiated this matter states that the purpose of the hearing is to determine whether the Respondent committed the following contraventions as alleged by the Staff of IIROC.

a) In June 2009 and March 2010, the Respondent engaged in personal financial dealings by borrowing funds from two clients, AA and AB, without the knowledge, consent or authorization of her employer Member firm, and in so doing acted contrary to Dealer Member Rule 29.1;

b) In 2009 and 2010, the Respondent misappropriated funds from AA and AB, and in so doing, acted contrary to Dealer Member Rule 29.1; and

c) In April 2012, the Respondent, while a former registrant of IIROC, failed to cooperate with an IIROC investigation by refusing to give information about her conduct, contrary to Dealer Member Rule 19.5.

SERVICE OF NOTICE OF HEARING

¶ 3 The hearing of this matter was originally convened on March 25, 2013 at which time this Hearing Panel determined that, notwithstanding the Respondent was not in attendance at the hearing, the Notice of Hearing to her had not been served in accordance with the provisions of Rule 5.2 of IIROC's Rules of Practice and Procedure (which apply to enforcement proceedings brought under Dealer Member Rule No. 20, Part 10). This Hearing Panel accordingly determined to set future hearing dates of May 21 and 24, 2013. The panel also directed Enforcement Counsel to cause a Notice of Hearing to be served on the Respondent for such dates in accordance with the provisions of Rule 5.2. The hearing was accordingly re-scheduled for May 21 and 24, 2013.

¶ 4 On the return of the hearing on May 21, 2013 no one attended on behalf of the Respondent although the Hearing Panel was provided with a number of letters from the Respondent to IIROC indicating that while she acknowledged that she had borrowed money from the clients at issue without the knowledge, consent or authorization of her employer Member firm and that she knew that such conduct was improper, she never misappropriated or stole money from them and nor did she fail to cooperate with IIROC in the course of its investigatory proceedings.

¶ 5 On the return of the hearing date of May 21, 2013, neither the Respondent nor anyone on her behalf appeared to advance her position or produce any evidence in support of her submissions.

¶ 6 The Hearing Panel then received the sworn affidavit evidence of Lesley Kataric proving that a Notice of Hearing had been served on the Respondent in accordance with the provisions of Rule 5.2 of IIROC's Rules of Practice and Procedure. Ms. Kataric also established that a complete package of the following documents was, on the request of Ms. Ramsay, mailed to her and that she subsequently acknowledged receipt of same:

(1) Hearing Panel decision dated May 28, 2013

(2) Staff's compendium (2 volumes)

(3) Disclosure (multiple volumes)

(4) Staff's Brief of Authorities

(5) Staff's Hearing Brief

(6) Witness Statement of Lesley Kataric

¶ 7 Based upon the foregoing evidence, the Hearing Panel is satisfied that the Respondent was properly served in accordance with IIROC's Rules of Practice and Procedure with a notice of this hearing. She has also been provided with full disclosure of Enforcement Counsel's position and evidence.

RULE 13.5 - ACCEPTANCE OF FACTS AND VIOLATIONS ALLEGED IN THE NOTICE OF HEARING

¶ 8 At this point the Hearing Panel advised Enforcement Counsel that it was prepared to proceed with the hearing in the absence of the Respondent and that the Hearing Panel accepted as proven the facts and violations alleged by IIROC in the Notice of Hearing, all in accordance with the provisions of Rule 13.5 of IIROC's Rules of Practice and Procedure which provides as follows:

> **13.5 Where Respondent Fails to Attend Disciplinary Hearing**
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> 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.

¶ 9 The Hearing Panel then proceeded to review the particulars of the violations set forth in the Notice of

Hearing and to receive the submissions of Enforcement Counsel relative to the penalty to be assessed by the Hearing Panel as a result of these contraventions of the Dealer Member Rules.

THE NATURE OF THE OFFENCES

¶ 10 The background facts giving rise to each of the offences set forth in the Notice of Hearing may be briefly summarized as follows:

A. Borrowing funds from two clients without the knowledge, consent or authorization of the Respondent's Employer Member firm

¶ 11 The Respondent was employed by CIBC Bank and also registered as a Registered Representative ("RR") and employed as a Financial Advisor with CIBC Investors Services Inc. (CIBC-ISI). Her office was located in a bank branch although her supervisor was situated in another branch at a different location. As a result of her dual role, the Respondent had access to both the brokerage and bank accounts of her clients who used the bank.

¶ 12 The two clients in question (husband and wife) were unsophisticated investors who had come into a large sum of money as a result of winning a lottery in or about 2002. During the period 2002 to 2005, the Respondent provided financial advice to these clients in her position as a RR at her previous firm. The Respondent left that firm in 2005 and did not return to the investment industry until August 2008 when she joined CIBC-ISI. Sometime in 2009 the two clients re-initiated their relationship with the Respondent and in May/June 2009 opened both brokerage and bank accounts at CIBC-ISI and CIBC respectively. The clients placed great trust in the Respondent as their financial and banking advisor and they had a close working relationship with her.

¶ 13 In June 2009, without informing her employer Member firm she wrote to the clients requesting that they lend her the sum of $50,000 to renovate her home. She represented to the clients that once the home was completed she would sell it and use the proceeds to pay back the loan. If for any reason the house was not sold right away, the Respondent advised the clients that she would pay them back out of bonuses which would be coming to her from her employer in September and December 2009.

¶ 14 The clients agreed to lend the Respondent the funds and she then issued a promissory note to the clients setting forth the terms of repayment. Interestingly, the bank draft representing the amount of the loan was not made out to the Respondent but at the request of the Respondent, was made payable to her daughter's boyfriend.

¶ 15 Subsequently, in or about November 2009, the Respondent once again requested the clients to lend her the sum of $15,000. The Respondent requested the clients to borrow the sum of $15,000 from Citi Financial (over the longest repayment period possible), remit the monies advanced on the loan to her and she would then repay that loan. She advised the clients that if they wanted to borrow more than the $15,000 from Citi Financial then she would also repay the larger amount and any excess amount (over $15,000) would flow to the clients and be used to offset the amount of the $15,000 loan. In other words, the clients would become the primary debtors for monies borrowed from Citi Financial and the Respondent would receive the proceeds of the loan on the strength of an unsecured promise by her to repay the loan.

¶ 16 While the clients did not agree to borrow the money from Citi Financial they did in fact lend the Respondent the sum of $20,000 on or about March 4, 2010 with the proceeds once again (at the Respondent's request) being payable by bank draft made out to her daughter's boyfriend. The clients were motivated to lend the Respondent the money because she advised them that if she did not secure the loan she would have to leave CIBC and they were concerned that that would leave them without anyone to help them with their investments.

¶ 17 The Respondent has admitted in various correspondence filed in this proceeding that she did borrow these funds from the clients and that she knew it was wrong. At no time did she advise her employer Member about these loans and no money was ever repaid on either loan.

¶ 18 In addition to the foregoing and while it was not particularized in the Notice of Hearing (and does not

form part of this proceeding), in a letter dated March 20, 2013, the Respondent informed IIROC that she had also arranged a third loan of $20,000 with the same clients for which no promissory note was given.

¶ 19 Accordingly, we find that at a minimum, some $70,000 was borrowed by the Respondent from these two clients who had placed great trust and confidence in her, all without the knowledge or approval of her employer Member firm contrary to the provisions of Dealer Member Rule 29.1.

B. Misappropriation of Funds

¶ 20 Since the Respondent was the Financial Advisor to the subject clients and was also employed by the bank, she had access to the brokerage and bank accounts of the clients. From time to time the Respondent (with or without the knowledge of the clients) would sell investments in the brokerage account and then move funds from that account into the clients' bank accounts at the branch. Most of the monies in the bank accounts came as a result of transfers from the brokerage account.

¶ 21 During the months of July and August 2009, as and when the clients wished to make a withdrawal from the bank accounts to pay bills or for other reasons, the Respondent would assist them by preparing a debit memo for the clients to sign in order to obtain a bank draft or money order or to withdraw cash from the accounts. The clients would come to the branch and meet with the Respondent who would have them sign more than one debit memo in blank. One of the debit memos would be legitimately used by the Respondent to effect the withdrawal of the required funds but the Respondent would then use the other blank (signed) debit memo to order a bank draft or money order payable to one of three payees, i.e., (a) her daughter's boyfriend; (b) a friend to whom she owed money; or, (c) that friend's business. The daughter's boyfriend would cash the instrument and deliver the funds to the Respondent and the friend would credit the funds against the amount of the outstanding loan from the Respondent to him.

¶ 22 In the result, monies which predominantly came from the brokerage account, were misappropriated from the bank accounts of the clients for the purpose of diverting such funds to a payee selected by the Respondent (without any record of the monies going directly to the Respondent).

¶ 23 In addition to the above described misappropriation of funds, the Respondent also (during the same period) had the clients provide her with blank signed cheques which she in turn filled out with the amounts being payable to her daughter's boyfriend or the above described friend to whom she owed monies. Once again, when the cheques were made out to the daughter's boyfriend, he in turn cashed the cheques and remitted the money to the Respondent or alternatively, endorsed the cheque to the Respondent. When the Respondent's friend received a cheque he would use it to offset the debt owing to him from the Respondent.

¶ 24 The amounts misappropriated in the above-described manner in July and August 2009, totalled at least $ 64,000 and an additional amount of at least $12,000 was also misappropriated in a similar manner at other times during 2009 and 2010. None of such monies were repaid to the clients by the Respondent.

¶ 25 The Respondent in one of her letters to IIROC prior to the onset of this hearing denies that she ever stole money from the clients. Without providing any details in response to the particulars set forth by IIROC in the Notice of Hearing, the Respondent asserts that she asked them for money and they gave it to her.

¶ 26 No evidence was submitted by the Respondent at this hearing to support her denial of the misappropriation of funds. The Respondent offers no explanation as to why such a circuitous route would be required in order to obtain the funds if in fact the clients had, as she asserts, simply given her the money because she asked for it.

¶ 27 This Hearing Panel finds on the basis of the facts and particulars set forth in the Notice of Hearing that such a misappropriation of funds did occur as alleged contrary to the provisions of Dealer Member Rule 29.1.

C. Failure to Cooperate with IIROC Staff

¶ 28 Dealer Member Rule 19.5 provides in part as follows:

RULE 19

EXAMINATIONS AND INVESTIGATIONS

Investigatory Powers

19.5 For the purpose of any examination or investigation pursuant to this Rule 19, a Dealer Member, registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director, officer, investor or employee of a Dealer Member or any other person approved or seeking approval or under the jurisdiction of the Corporation pursuant to the Rules, may be required by the Corporation:

…

(c) To attend and give information respecting any such matter;

And the person shall be obliged to submit such report, to permit each inspection, provide such copies and to attend, accordingly. …

¶ 29 The particulars set forth in the Notice of Hearing establish that on November 2, 2011, IIROC Staff wrote to the Respondent advising her that an investigation had been commenced with respect to her conduct at CIBC-ISI. Subsequently, on February 29, 2012, IIROC Staff again wrote to the Respondent requesting an interview for the purposes of the investigation.

¶ 30 When no response was received to the letter of February 29, 2012, IIROC Staff again wrote to the Respondent on March 28, 2012 compelling her to attend an interview in Thunder Bay on April 12, 2012.

¶ 31 All of the foregoing written communications were sent by registered mail to the Respondent's last known address on IIROC's registration file and IIROC Staff received confirmation that they were successfully delivered and signed for but no response was received from the Respondent to such written requests.

¶ 32 This Hearing Panel accordingly determines that the Respondent failed to cooperate with IIROC Staff who were conducting an investigation into her conduct as a Registered Representative of IIROC by failing to attend a required interview and give IIROC information relative to the subject matter of the investigation.

¶ 33 It should be noted that the Respondent in one of her communications to IIROC Staff prior to the onset of this hearing indicated that she did not receive the registered letters and does not remember signing for them. The Respondent did not however attend before this hearing in order to give any evidence in support of her position. This Hearing Panel accordingly finds that the contravention of Dealer Member Rule 19.5 by the Respondent has been established.

¶ 34 Accordingly, based upon the facts placed before this Hearing Panel which we have accepted as proven and in the face of the admission of the Respondent to a violation of charge No. 1, this Hearing Panel determines that the Respondent has contravened the Dealer Member Rules of IIROC on all three counts as set forth in the Notice of Hearing and referred to in paragraph 2, *supra*.

PENALTIES AND COSTS

¶ 35 Dealer Member Rule 20.33 sets forth the sanctions a Hearing Panel may impose upon a finding that an Approved Person has failed to comply with the provisions of any Rule of the Corporation:

20.33 **Approved Persons**

…

(2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Approved Person:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $1,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.

(c) suspension of approval for any period of time and upon any conditions or terms;

(d) terms and conditions of continued approval;

(e) prohibition of approval in any capacity for any period of time;

(f) termination of the rights and privileges of approval;

(g) revocation of approval;

(h) a permanent bar from approval with the Corporation; or

(i) any other fit remedy or penalty.

¶ 36 There is little doubt that the normal response where there has been a finding that a registrant committed a fraud or theft on a client is to permanently bar the Respondent from approval with IIROC.

¶ 37 In *Re Evans*, [2007] I.D.A.C.D. No. 53, a Hearing Panel found that the Respondent (who was also dually employed by CIBC and CIBC-ISI) had misappropriated $55,500 from the account of a widow who had a bank account and an investment account with the bank, both of which were serviced by the Respondent. The Respondent was also found to have engaged in unauthorized trading. In imposing a total bar from membership in the Association the Hearing Panel stated as follows:

> **9.** We are satisfied on the evidence, much of which is admissions by the Respondent, that Charges i, ii and iii have been proved. The Respondent used his fiduciary position with the Bank to defraud an elderly customer for his own financial gain. This type of so-called white collar crime is every bit as egregious as the conduct of a common bank robber.
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> …
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> **13.** In addressing penalty, consideration must be given to precluding a repetition of the type of conduct under consideration. That can only be accomplished by a total bar from membership in the Association. The investing public must be protected. Only strong sanctions can protect the integrity of the securities markets.

¶ 38 Similarly in the case of *Re Ryan*, 2012 LNIIROC 29, the Hearing Panel had found that the Respondent had misappropriated almost $1,000,000 from accounts under his supervision with the ultimate beneficiary of the misappropriation being the Respondent or his friends and relatives. In upholding a permanent bar of the Respondent the Hearing Panel provided as follows:

> **8** It is clear that the misappropriation of clients' funds is conduct unbecoming of a registered representative and detrimental to the public interest.
>
> **SANCTIONS**
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> **9** IIROC has requested that the Respondent be permanently barred from being a member of Investment Dealers Association of Canada, a fine in the amount of $1.7 million representing disgorgement of $1.5 million plus an additional $200,000 and costs of $7,500.
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> **10** We agree that the Respondent should be permanently barred from being a registered representative of the IDA. Since we find that the total funds that were misappropriated were over $970,000 we think this a more appropriate figure on which to base the fine. We impose a fine of $1 million. We agree with IIROC's submission that an order for costs in the amount of $7,500 be made against the Respondent.

¶ 39 In the case of *Re Schoer*, [2011] IIROC No. 33, it was found that the registrant fraudulently induced clients and others to provide funds so that he could pay off other clients and individuals that he owed money to

and misrepresented such payments as being for genuine investments. He was found to have defrauded his clients of at least $190,000.

¶ 40 In upholding a permanent bar for life from registration by IIROC, the Hearing Panel stated as follows:

> **45** Mr. Schoer's violations were intentional and pre-meditated. His schemes included unrecorded transactions, promissory notes and fraudulent promises with numerous cheques directed to individuals as well as himself. In a Ponzi-like fashion, cheques were induced from new clients to pay off pending obligations to other existing clients - others written by Mr. Schoer himself were usually NSF.
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> **46** Mr. Schoer is a contemptible individual who preyed on gullible and vulnerable people who trusted him. He deserves the harshest punishment which this Hearing Panel can assess. The members of the Hearing Panel trust that by imposing the appropriate penalty in this case, public confidence in the securities industry will be maintained. Moreover, they hope that the penalty will deter others in the securities industry from engaging in such discreditable conduct.

¶ 41 Permanent bans were similarly imposed in the following cases involving the misappropriation of funds from clients by a registered representative and an Approved Person: *Re Ahn*, 2011 LNIIROC 31; *Re Dennis*, 2011 LNIIROC 35; *Re Dass*, 2009 IIROC 22.

¶ 42 Similarly, while they are not binding upon this Hearing Panel, we have taken note that the Dealer Member Disciplinary Sanction Guidelines note that misappropriation is one of the most serious regulatory offences and the penalty which will usually be imposed (with few exceptions) is a permanent ban from approval with IIROC.

¶ 43 Section 4.3 of the Guidelines however also serves as a reminder that a permanent ban is a most serious matter and should generally be reserved for cases where one or more of the following circumstances exist:

- the public itself has been abused;
- where it is clear that a respondent's conduct is indicative of a resistance to governance;
- the misconduct has an element of criminal or quasi-criminal activity, or
- there is reason to believe that the respondent could not be trusted to act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole.

¶ 44 It is the finding of this Hearing Panel that based upon the evidence and proven facts placed before us, all of these criteria have been satisfied in this case.

¶ 45 In addition to the offence of misappropriation of funds, in considering the appropriate sanctions for the contraventions found to have been committed by the Respondent, the Hearing Panel has also taken into account the serious nature of the other offences which we have found occurred and the fact that they reflect a propensity on the part of the Respondent to ignore or flout IIROC's rules even though she knew they existed and she was required to comply with them.

¶ 46 Enforcement Counsel asks this Hearing Panel to impose a permanent bar on registration of the Respondent with IIROC. She also seeks a monetary fine of $100,000 and disgorgement in the amount of $100,000 which would include amounts misappropriated and borrowed from the clients as well as payment of the investigation and prosecution costs of IIROC in the amount of $36,000.

¶ 47 Bearing in mind the seriousness of these offences, including in particular the misappropriation of funds from vulnerable and dependant clients, and in the absence of any significant mitigating factors which might persuade us to ameliorate the normal penalty which would flow from these offences, we have no hesitation in imposing a permanent bar on the Respondent from approval with IIROC. Quite apart from the impact that this might have on this personal Respondent, we certainly hope that it will serve as a deterrent to others who may be tempted or inclined to engage in similar misconduct which brings the reputation and integrity of the capital markets into disrepute.

¶ 48 The monetary sanctions recommended by IIROC are within the range of the Disciplinary Sanction Guidelines and are supported by the precedents submitted to us, many of which are referred to earlier in this decision.

¶ 49 We are also of the view that an aggravating factor in this matter was that the transactions in question occurred on a premeditated and repetitive basis and involved vulnerable and unsophisticated clients who placed great trust in and reliance upon the Respondent. In addition, the method of delivering the money to the Respondent was contrived to be deceptive as it was set up in such a manner that the Respondent would not on the face of the record be easily found to be the beneficiary of the misappropriation of funds or the loans obtained from the clients.

¶ 50 We have also reviewed the material before us to consider whether there were any mitigating factors which might persuade us to ameliorate the penalties to be imposed as a result of the contraventions. We have noted that the Respondent had no previous record of disciplinary offences (albeit with a relatively short period of service as a RR) and, as she has advised, she had a number of personal and financial difficulties in her life at the time of these contraventions. She also did acknowledge that she had borrowed money from the clients which she knew was wrong. She did not however admit she had misappropriated funds from the clients or failed to cooperate in IIROC's investigation of her conduct which contraventions have been found to be proven at this hearing.

¶ 51 We are accordingly of the view that there are no mitigating factors which would persuade us to ameliorate the penalty which should otherwise flow from these contraventions.

¶ 52 In accordance with the provisions of Rule 20.33(2) we accordingly impose the following penalties upon the Respondent:

(1) A permanent ban from approval with IIROC; and

(2) a fine in the amount of $200,000 which includes all disgorgement amounts sought by IIROC as disgorgement is a sanction, not restitution.

¶ 53 In accordance with the provisions of Rule 20.49(1) we order that the Respondent pay IIROC's investigation and prosecution costs in the amount of $36,000 which was supported by a sworn affidavit filed in this proceeding annexing a detailed Bill of Costs.

DATED at Toronto this 16th day of July 2013.

Edward T. McDermott, Chair

David W. Kerr, Industry Representative

Hugh McNabney, Industry Representative