

# Re Ricci

IN THE MATTER OF:

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

**and**

**Julian Robert Ricci**

2014 IIROC 24

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

Heard May 27 & 28, 2014 in Toronto, Ontario  
Decision: June 9, 2014

**Hearing Panel:**

Terrance Sweeney, Chair, Selwyn Kossuth, and Mary Savona

**Appearances:**

Natalija Popovic, Senior Enforcement Counsel, IIROC

Scott C. Hutchison, Counsel for Julian Robert Ricci

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## DECISION OF THE HEARING PANEL

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¶ 1 Counsel for the parties have settled an Agreed Statement of Facts and Contraventions dated May 22, 2014<sup>1</sup> and a Supplementary Agreed Statement of Facts dated May 28, 2014.<sup>2</sup> They have been unable to agree on the penalty to be imposed on Mr. Ricci. They have, therefore, asked this Hearing Panel to determine the appropriate penalty.

¶ 2 Mr. Ricci has admitted to two contraventions of IIROC Rule 29.1:

Count 1 From or about August 2011 to April 2013 the Respondent engaged in conduct unbecoming a registrant or detrimental to the public interest, in that he made misrepresentations to his firm's compliance staff by inflating certain clients' net worth.

Count 2 During the same period the Respondent falsely endorsed the signatures of several clients on certain client account documentation and other forms.

¶ 3 Mr. Ricci is 30 years of age. He has been a Registered Representative with an IIROC Dealer Member since 2004. He worked at Macquarie Private Wealth Inc. ("MPW") and its predecessors from 2006 until April 2013 when he was terminated for cause as a result of the matters addressed in the Agreed Statement of Facts and Contraventions.

¶ 4 From May 2013 to March 2014 Mr. Ricci worked as a "Referrer"<sup>3</sup> in an unregistered capacity at

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<sup>1</sup> Exhibit 2, Tab 2

<sup>2</sup> Exhibit 4

<sup>3</sup> Exhibit 1, Tab 6

Chippingham Financial Group (“Chippingham”). Mr. Ricci is not currently working in the investment industry.

¶ 5 During the relevant time at MPW, Mr. Ricci worked in a joint code with his senior partner, Douglas Eley. They used a leveraged investment strategy with several of their clients whereby the clients were able to borrow up to three times the amount of their respective net worth to buy securities.

¶ 6 In order for an MPW client to qualify to engage in the leveraged investment strategy, MPW required Mr. Ricci to complete a leveraged investment strategy spreadsheet<sup>4</sup> for each client. The information in the spreadsheet included the client’s net worth, assets and liabilities. The leveraged investment strategy increased the risk to the client. Thus, the information was used by MPW to ascertain whether it considered that the strategy was suitable for the client. If the client was approved internally by MPW, Mr. Ricci would then submit the necessary documentation for the client to obtain the loan from one or two institutional lenders.

### **Misrepresentations**

¶ 7 Mr. Ricci inflated the net worth of about 30% of his clients by about 30% on the spreadsheets in order to avoid the firm’s suitability requirements. He felt that they were too stringent. He, therefore, deliberately circumvented MPW’s internal compliance protocols which were in place to assess the clients’ suitability to participate in the leveraged investment strategy. In doing so, Mr. Ricci reaped a direct economic benefit in additional trailer fees earned on the mutual funds purchased as part of the leveraged investment strategy.

### **False Endorsements**

¶ 8 Mr. Ricci falsely endorsed the signatures of several clients on account documentation and other forms while at MPW. In many cases his clients were aware that he had signed their names to some of the falsely endorsed documents.

¶ 9 Mr. Ricci concealed his conduct and there is no evidence that MPW became aware of his conduct until April 2013.

## **THE EVIDENCE OF IIROC**

### **Sharon Lloyd-Gyurkovics**

¶ 10 Ms. Lloyd-Gyurkovics is a senior investigator with IIROC. She was responsible for the investigation in this case and interviewed Mr. Ricci. She identified a Compendium of Documents submitted by IIROC.<sup>5</sup> The Compendium contains, among other things, a sample of a spreadsheet for a client of Mr. Ricci,<sup>6</sup> a loan application form for the “TD Investment Loan Programs”,<sup>7</sup> and an “Advised Portfolio Account Agreement” of MPW.<sup>8</sup> She discussed these forms and how Mr. Ricci used them in his business. She conceded that Mr. Ricci cooperated with IIROC in its investigation.

### **Daniel Bowering**

¶ 11 Mr. Bowering was the Chief Compliance Officer at MPW during the relevant period. He discussed the leveraged investment strategy at MPW and referred to the various documents in the Compendium in doing so.<sup>9</sup> After MPW terminated Mr. Ricci it retained a law firm and an accounting firm to assist them in a detailed internal audit of Mr. Ricci and two others and incurred fees of over one million dollars. He testified that Mr. Ricci cooperated fully with MPW in its investigation.

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<sup>4</sup> Exhibit 1, Tab 1

<sup>5</sup> Exhibit 1

<sup>6</sup> Exhibit 1, Tab 1

<sup>7</sup> Exhibit 1, Tab 2

<sup>8</sup> Exhibit 1, Tab 3

<sup>9</sup> Exhibit 1

## **THE EVIDENCE FOR THE RESPONDENT**

### **Client CC (“CC”)**

¶ 12 CC became a client of Mr. Ricci in March 2011. Mr. Ricci explained the leveraged investment strategy to her and she was very satisfied with his service. He was the first investment advisor who developed a plan for her. She read the Agreed Statement of Facts and Contraventions and it has not affected her relationship with him.

### **Client MN (“MN”)**

¶ 13 MN has been a client of Mr. Ricci since 2008. She enjoyed their relationship. She said that Mr. Ricci took the time to explain everything that he was doing. The leveraged investment strategy worked very well for her and her husband. They were able to pay off their mortgage and buy a second home in 2013. She followed Mr. Ricci to Chippingham when he went there. She would be willing to work with Mr. Ricci if he were to get his licence back.

### **Client NG (“NG”)**

¶ 14 NG is a teacher and a widow. She became a client of Mr. Ricci in June 2012. She never had an advisor like Mr. Ricci before. He was very open with her and she trusted him. She used the leveraged investment strategy in order to provide more for her children. She knows about Mr. Ricci’s problems with IIROC but it does not change her view of him. She does not believe that Mr. Ricci will get in trouble with IIROC again and he is very remorseful for his actions.

## **ANALYSIS AND DECISION**

¶ 15 IIROC Rule 29.1 under Business Conduct reads, in part, as follows:

... each ... Registered Representative ... shall observe high standards of ethics and conduct in the transaction of their business, ... shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest ... .

¶ 16 Mr. Ricci’s conduct was deplorable and he deserves to be severely punished.

¶ 17 Ms. Popovic, for IIROC, seeks, among other things, that Mr. Ricci be banned for life from the securities industry. In her submissions she stressed that his conduct was deliberate and extended over a period of time. Mr. Ricci thought that he knew better than MPW what was the appropriate leverage for his clients and deliberately circumvented the policies of MPW. In that sense he is ungovernable. He routinely forged the signatures of clients on numerous documents. Moreover, he did not self report his transgressions. Rather, he designed his actions to go undetected. Finally, Ms. Popovic pointed out that Mr. Ricci had caused economic harm to MPW through the costs it had to incur in respect of the audit of him and two others.

¶ 18 Mr. Hutchison, for Mr. Ricci, said that a permanent ban would be draconian for such a young man who had cooperated fully with MPW and IIROC in their investigations. In light of this he cannot be said to be ungovernable.

¶ 19 A hearing panel’s main concerns in determining an appropriate penalty are:

1. Protection of the investing public;
2. Protection of IIROC’s Membership;
3. Protection of the integrity of the IIROC’s process;
4. Protection of the integrity of the securities markets; and
5. Prevention of a repetition of conduct of the type under consideration.<sup>10</sup>

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<sup>10</sup> *Re Derivative Services Inc.*, [2000] 1 I.D.A.C.D. No. 26 at page 3

¶ 20 This Hearing Panel considered the following factors in reaching its decision.

### **Mitigating Factors**

- Mr. Ricci has no previous disciplinary history with IIROC.
- He was working with Mr. Eley, his senior, who was aware of some of Mr. Ricci's conduct. However, there is no evidence that Mr. Eley took steps to discourage it.
- Mr. Ricci has expressed remorse for his conduct.
- Mr. Ricci cooperated with MPW and IIROC in their investigations and saved time and expense by admitting his conduct and the contraventions.
- There is no evidence of financial harm to Mr. Ricci's clients.

### **Aggravating Factors**

- Mr. Ricci's conduct was intentional and designed to go undetected by MPW.
- Mr. Ricci deliberately circumvented MPW's suitability assessment policies. This led to a direct financial benefit to him.
- Mr. Ricci's conduct continued for 16 months and ceased only when he was confronted by MPW.

¶ 21 The Hearing Panel is conscious of its duty to fashion a proportionate penalty given all of the evidence. It must strike a balance between protection of the public by imposing a penalty significant enough to deter others while punishing Mr. Ricci.

¶ 22 The Hearing Panel has considered the admissions by Mr. Ricci, the evidence of the witnesses brought forward by the parties, the submissions of Counsel, the Penalty Guidelines,<sup>11</sup> and the relevant case law.

¶ 23 The Hearing Panel unanimously concludes that a permanent ban is not appropriate in this case. That penalty should be reserved for more egregious behaviour such as theft from clients. Mr. Ricci is a relatively young man. He must be punished but not crushed. If he learns from his mistakes in this case he should be able to rehabilitate himself and perhaps reenter the securities industry at a future date.

### **ORDER**

¶ 24 Mr. Ricci shall be prohibited from reapplying for registration with IIROC for a period of 24 months from the date hereof and thereafter until the fines, costs and interest thereon as set out in this Order are paid in full.

¶ 25 Should Mr. Ricci obtain registration, he shall be subject to strict supervision for a period of one year.

¶ 26 Mr. Ricci shall pay a fine of \$200,000.00 and costs of \$15,000.00.<sup>12</sup>

Dated at Toronto, Ontario this 9<sup>th</sup> day of June 2014.

Terrance A. Sweeney, Chair

Selwyn Kossuth, Panel Member

Mary Savona, Panel Member

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<sup>11</sup> Penalty Guidelines, Exhibit 2, Tab 4

<sup>12</sup> Exhibit 5, IIROC's Bill of Costs