

Re Ryan

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

Darlene Catherine Ryan

2012 IIROC 29

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

Heard: March 30, 2012

Decision: May 10, 2012

Hearing Panel:

Richard Bird, Q.C.(Chair), Robert Crandall and Nancy Ross

Appearance:

Rob Delfrate, Enforcement Counsel, Investment Industry Regulatory Organization of Canada

Reasons for Decision

SERVICE OF THE NOTICE OF HEARING

¶ 1 The Investment Industry Regulatory Organization of Canada (IIROC) served the Respondent of the Notice of Hearing of this matter by registered mail pursuant to section 5.2 of IIROC's Rules of Practice and Procedure. That rule states:

5.2 Manner of Service – Notice of Hearing

A Notice of Hearing shall be served by one of the following methods:

- (a) by personal service on the Respondent
- (b) by delivering a copy of the Notice of Hearing by registered mail to the Respondent's last known address as recorded in the Organization's Registration file; or
- (c) where a Respondent is represented by counsel, by delivering a copy of the Notice of Hearing to the Respondent's counsel with the consent of counsel.

¶ 2 The affidavit of Ricki Ann Newmarch dated March 12, 2012 and filed on behalf of IIROC (Exhibit I) states that Notice of Hearing was served on the Respondent on January 27, 2012 by registered mail and sent to 122 Blair Street, Riverview, N.B. E3B 1J2 and was returned as undeliverable by Canada Post on March 6, 2012.

¶ 3 The affidavit also states that 122 Blair Street is the Respondent's last known address recorded on the National Registration Database and that the Respondent's current whereabouts is unknown. Oral evidence was

also introduced by Sharon Lloyd-Gyurkovics, an Investigator for IIROC that she had been unable to locate the Respondent. She testified that she had located one Darlene Ford on Facebook and further testified that “Ford” was the Respondent’s maiden name. When Lloyd-Gyurkovics identified herself as being with IIROC to the person on the Facebook account, the account was deleted. While one might suspect that the Respondent has actual knowledge of this proceeding, there is not enough evidence to be certain.

¶ 4 As a preliminary matter, counsel for IIROC was asked to submit a further brief on the validity of the service of the Notice of Hearing. Counsel submitted a further brief dated April 12, 2012. Counsel for IIROC submits that section 5.2 (b) has been complied with and that actual knowledge of the hearing is not necessary. Two divorce cases (Joe v. Joe [1984] O.J. No. 3256 and Rangi v. Rangi, 2007 BBCA 352) were cited in support of this position. These cases could be distinguished on the grounds that the party bringing the proceeding would never be able to get a divorce as long as the other party could not be located. In comparison, the only interest that IIROC has in proceeding against the Respondent in absentia is to maintain the reputation of the industry. Hill v. Halifax Regional Municipality 2007 NSSC 348 was also cited in support of IIROC’s position. However, the legislation under consideration in that case specifically contemplated the situation where the other party could not be found.

¶ 5 We have concluded that Rule 5.2(b) was drafted to cover the situation where the Respondent cannot be located and the service of the Notice of Hearing has been completed in accordance with that Rule. We note that the panel in Re Puccini [2007] I.D.A.C.D. No. 11 came to a similar conclusion.

THE ALLEGATIONS

¶ 6 IIROC alleges that the Respondent failed to meet the standard of Business Conduct required by IDA By-Law No. 29.1 (now Dealer Member Rule 29.1) Specifically, the Respondent misappropriated funds. The evidence in the affidavit of Sharon Lloyd-Gyurkovics sets out the transfer of funds in six accounts that were under the supervision of the Respondent. In all, there were unauthorized transactions totaling over \$1.5 million. Some transactions involved the movement of the same funds from one of the six accounts to another. At the end of the day, over \$970,000 had gone missing. The ultimate beneficiary of the misappropriations appears to have been the Respondent or friends and relatives of the Respondent.

¶ 7 Where a Respondent fails to attend a Disciplinary Hearing section 13.5 of the Rules of Practice and Procedure of IIROC permits the Hearing Panel to accept as proven the facts and violations as alleged by IIROC in the Notice of Hearing. We find the facts to be proven as set out in the affidavit of Sharon Lloyd Gyurkovics.

¶ 8 It is clear that the misappropriation of clients’ funds is conduct unbecoming of a registered representative and detrimental to the public interest.

SANCTIONS

¶ 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.

¶ 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.

Richard Bird, Q.C. Chair

Robert Crandall, Member

Nancy Ross, Member