Re Jones

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Alvin Rupert Jones

2020 IIROC 29

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

Heard: June 29 & July 23 in Toronto, Ontario via videoconference
Decision: August 28, 2020

Hearing Panel:
Honourable Robert P. Armstrong, Q.C., Chair, Selwyn Kossuth and Timothy Pryor
Appearance:
Natalija Popovic, Senior Enforcement Counsel for IIROC
Jerome H. Stanleigh, Counsel for Alvin Rupert Jones
Alvin Rupert Jones (present)

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 The Respondent, Alvin Rupert Jones, was a Registered Representative with Manulife Securities Inc. ("Manulife") between April 2004 and May 2018. He was terminated from his employment after he introduced one of his clients to a business venture, which had not been disclosed to Manulife.

¶ 2 When this was brought to the attention of the Investment Industry Regulatory Organization of Canada ("IIROC"), an investigation was carried out. In the result, IIROC has alleged:

> Between June 2015 and April 2017, the Respondent engaged in, and facilitated investments for two clients in an outside business activity without informing, and without the approval of, his Dealer Member contrary to Dealer Member Rule 18.14 and Consolidated Rule 1400 (prior to September 1, 2016, Dealer Member Rule 29.1).

¶ 3 On June 29, 2020, this panel commenced the hearing of this matter by way of videoconference.

II. THE EVIDENCE

¶ 4 The evidence at the hearing consisted of a Book of Documents, a transcript of an investigative interview with one of the persons who had been introduced to the business venture by Mr. Jones, and a transcript of an investigative interview of Mr. Jones. The Panel also heard oral testimony from Ms. Monika Gupta, senior investigator of IIROC, who had conducted an investigation of this matter. The evidence of Ms. Gupta consisted mainly of identifying the relevant documents in the Book of Documents.

¶ 5 The evidence before us establishes that Mr. Jones over an 18-month period was involved in an outside business activity involving the manufacture and sale of a garden hose. The name of the business was Aqua Clear-Flo (also referred to as Aqua Flo), which marketed its product to retail outlets such as hardware stores and garden centres in Canada and the USA.

¶ 6 Mr. Jones incorporated 9407243 Canada Inc., which was the corporation through which Aqua Flo carried on its business. He also acted as Chief Financial Officer ("CFO") of the corporation and was shown on the corporate records as a Director.

¶ 7 Mr. Jones was introduced to the business by a client, AR, who owned the business. Although Mr. Jones did not invest in the business himself, an unsigned shareholders' agreement dated December 2015 shows an allocation of a 25-percent interest in the company to Mr. Jones. On August 19, 2015, Mr. Jones obtained a Master Business Licence in Ontario for the company. The document noted that Mr. Jones was a person authorized to make the filing for the license as a director of the company.

¶ 8 As indicated above, Mr. Jones represented himself as the CFO of Aqua Flo. Several emails sent by Mr. Jones in May and June 2016 to third parties concerning the business of Aqua Flo showed him as the CFO of the company. The emails show that he had a significant involvement in the business, which included such matters as dealing with packaging and price lists, cash flow projections, warehousing in the USA and related business matters.

¶ 9 Mr. Jones introduced two of his Manulife clients to the business, which resulted in each of them making significant investments in Aqua Flo. The first of the two clients, CM, had been his client since May 2014 when she opened an investment account with Manulife. She was approximately 50 years of age and was investing with Manulife to generate retirement income. In about June 2015, she had sold a piece of real estate and invested the proceeds from the sale of approximately $350,000 with Manulife through the office of Mr. Jones.

¶ 10 In November 2015, CM invested $100,000 in Aqua Flo, which was intended to represent a ten-percent interest in the business. Mr. Jones sold blue-chip securities, diversified mutual funds and dividend-paying equities in CM's account to fund the $100,000 investment. CM arranged for a Royal Bank of Canada draft for $100,000 on November 24, 2015 payable to Aqua Flo.

¶ 11 In May 2016, Mr. Jones sold various blue-chip securities, diversified mutual funds and dividend-paying equities in CM's account to fund a further $50,000 investment in Aqua Flo earmarked for "operating and start-up costs of the garden-hose business." On May 24, 2016, CM arranged for a Royal Bank of Canada bank draft for $50,000 payable to 9407243 Canada Inc.

¶ 12 Mr. Jones earned commissions of $500 in respect of the liquidations in November 2015 and May 2016.

¶ 13 CM made two further investments in Aqua Flo in 2016 of $45,000 in July 2016 and $10,000 in August of 2016. To fund these investments, she used her line of credit, which was secured against her Manulife policies. In addition, she employed an unrelated bank line of credit.

¶ 14 Mr. Jones, in a sworn statement provided to the IIROC investigator, indicated that he left Manulife in November 2016. CM advised Manulife that she received an additional 10-percent interest in Aqua Flo from the Respondent when he resigned from Aqua Flo in April 2017.

¶ 15 CM lost the entire amount of her investment in Aqua Flo. After making a complaint to Manulife, she settled for a payment of $100,000 from Manulife.

¶ 16 A second client of Mr. Jones and Manulife, SR, made an investment of $50,000 in Aqua Flo in October 2015. In order to make this investment, Mr. Jones assisted SR to withdraw funds from SR's insurance policies with Manulife. In October 2017, SR made a complaint to Manulife. Manulife offered SR $50,000 by way of settlement, which was declined by SR.

¶ 17 Mr. Jones did not advise Manulife of his involvement in the Aqua Flo business. Manulife only became aware of his involvement as a result of the complaint made by CM.

¶ 18 Mr. Jones took the position during the investigation of this matter that his involvement was such that it did not bring him within the obligation to disclose such involvement to Manulife.

III. THE POSITION OF IIROC

¶ 19 Counsel for IIROC Enforcement ("Staff") submits that Mr. Jones, by failing to inform Manulife of this outside business activity and obtain its approval, breached the provisions of IIROC Dealer Member Rules 18.14 and 1400 which provide:

> Rule 18.14
>
> (1) A Registered Representative Investment Representative may have, and continue in, any business activity outside of the Dealer Member, including another gainful occupation if:
>
> […]
>
> (b) The Dealer Member establishes and maintains procedures acceptable to the Corporation to ensure continuous service to clients and to address potential conflicts of interest;
>
> (c) The Registered Representative or Investment Representative informs the Dealer Member of the outside business activity and obtains the Dealer Member's approval to engage in such outside business activity prior to engaging in such outside business activity; […]
>
> Rule 1402. Standards of Conduct
>
> (1) A Regulated Person
>
> (i) in the transaction of business, must observe high standards of ethics and conduct and must act openly and fairly and in accordance with just and equitable principles of trade, and
>
> (ii) must not engage in any business conduct that is unbecoming or detrimental to the public interest.
>
> (2) Without limiting the generality of the foregoing, any business conduct that:
>
> (i) is negligent;
>
> (ii) fails to comply with a legal, regulatory, contractual, or other obligation, including the rules, requirements, and policies of a Regulated Person;
>
> (iii) displays an unreasonable departure from standards that are expected to be observed by a Regulated Person; or
>
> (iv) is likely to diminish investor confidence in the integrity of securities, commodities or derivatives markets may be conduct that contravenes one or more of the standards set forth in subsection 1402(1).

¶ 20 In addition to the above, counsel for Staff submits that Mr. Jones was subject to the Manulife Policy and Procedure that required him to disclose and receive written approval from his Branch Supervisor prior to engaging in this outside business activity.

¶ 21 Counsel for Staff cites a number of authorities in support of its position. In *Trueman (Re)*, 2016 LNIIROC 29, the following statement is found at paras 37 – 39:

> Disclosure of outside business activities is one of the fundamental principles of the securities regulatory framework. It allows a firm on a Tier 1 basis [Tier 1 is at the business supervisor level at the firm] to look at all the activities that a salesperson is undertaking and to make sure that they are in the client's best interests and that issues such as conflicts of interest and potential for client confusion are identified and addressed. It also allows that activity to be monitored at the Tier 2 level [an independent compliance review].
>
> When a person undertakes activity outside the auspices of the firm, that fundamental protection provided for in securities regulation is unable to occur.
>
> […]
>
> One should never forget the fundamental principle of outside business activity and disclosure. For the respondent and anybody else who might read these reasons in the future, it should be very clear that these are fundamental protections in the securities regulatory framework and we cannot tolerate people who do not adhere to them.

¶ 22 In *Trueman*, the hearing panel accepted a settlement agreement where Mr. Trueman had engaged in an outside business without disclosure to his Dealer Member Firm and without the firm's approval.

¶ 23 In *Hoshizaki (Re)*, 2017 LNIIROC 40, the hearing panel emphasized that outside business activities by a Registered Representative create issues of conflict of interest. In that case, the panel, citing from *Re Bortolin* 2012IIROC13, made the following statement at para 11:

> […] Outside business activities without the knowledge and approval of the Member are not permitted by IIROC or by the Member. There is no evidence that [the Member] knew about these extensive outside business activities engaged in by the Respondent over many years.
>
> Disclosure and approval are necessary in such circumstances in order to allow the Member to supervise and control a Registered Representative's activities. Not to do so can create conflicts of interest for the Registered Representative and lead to the type of improper activity found in this case. The policy also helps protect the integrity of the securities market as well as the reputation of the Member.
>
> The policy against such outside business activities without knowledge and approval of the Member firm can be found in the *Conduct and Practices Handbook*, a handbook used widely within the industry that provides guidance on various ethical and conduct issues … a number of IIROC hearing panels have held that such engagement in outside business activities without the Member's knowledge and approval is a breach of Rule 29.1 […].

IV. THE POSITION OF MR. JONES

¶ 24 Mr. Stanleigh, counsel for Mr. Jones, does not challenge that Mr. Jones had an obligation to report his business activity with Aqua Flo. In fact, he agreed that he was required to report it to Manulife.

¶ 25 That said, Mr. Stanleigh raises a number of issues, which appear to be advanced in order to reduce the apparent seriousness of the alleged breach.

¶ 26 Mr. Stanleigh distinguishes the *Trueman* case on the basis that its facts are quite different than the case before us.

¶ 27 It is argued by Mr. Stanleigh that the evidence consists of a Compendium of Documents, which was not agreed to as being admissible by the Respondent and constitutes hearsay evidence "to a degree, which is unacceptable and creates a miscarriage of justice accepted by the Tribunal Panel."

¶ 28 Mr. Stanleigh also relied on both the Canadian Bill of Rights and the Canadian Charter of Rights and

Freedoms. In respect of the Bill of Rights, he cites Section 2(d) concerning the protection against self-incrimination and Section 2(e), the right to a fair hearing in accordance with the principles of fundamental justice. In respect of the Charter, he relies on Section 7 – the right to liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

¶ 29 Mr. Stanleigh argued that IIROC counsel should have called the complainants, CM and AR, as witnesses in this case so they could be subject to cross-examination. The failure to call these people as witnesses is particularly unfair, according to Mr. Stanleigh as counsel for IIROC relies on hearsay evidence from these persons.

¶ 30 Mr. Stanleigh argued that there is no evidence that Mr. Jones benefitted from the investment made by CM and AR.

¶ 31 Mr. Stanleigh also argued that both CM and AR were two sophisticated investors whom Mr. Jones recommended to look at the Aqua Flo business. They reviewed the accounting records and spoke to the officers of the company as well as Aqua Flo's accountant. Having done so, they made their own decision to invest in the business.

¶ 32 Mr. Stanleigh emphasized that Mr. Jones was not "[a]n important cog in this wheel." There is no evidence that he invested in the business himself or that he received any benefit from it. The unexecuted shareholders' agreement was never utilized.

V. ANALYSIS

¶ 33 Mr. Jones is charged with breaches of IIROC Dealer Member Rules 18.14 and 1400. The *gravamen* of the offence charged is that Mr. Jones, a Registered Representative with Manulife, engaged in an outside business activity without informing Manulife and without the approval of Manulife, contrary to Rules 18.14(c) and 1400.

¶ 34 In our view, the evidence in this case clearly establishes that Mr. Jones engaged in the business activities of Aqua Flo, which was a business outside the business of his employer, Manulife, and without having advised and obtained the approval of Manulife.

¶ 35 We accept that for approximately 18 months, Mr. Jones was involved in the business affairs of this company as outlined in the above summary of the evidence. It is also clear that he did not advise Manulife of these activities and he did not seek their approval to be so involved. These facts are not seriously challenged by Mr. Jones. While he may have cast a different light on the degree of his involvement in Aqua Flo, he did not deny that he was engaged in an outside business activity and that he failed to advise Manulife and seek their approval.

¶ 36 While Mr. Stanleigh did agree that his client engaged in an outside business activity without advising Manulife and without receiving its approval, he defended the charges on other grounds, which include:

(1) the lack of fairness of the proceeding brought against his client

(2) the degree of his involvement in the business

(3) the business sophistication of CM and AR.

¶ 37 In respect of fairness of the proceeding, Mr. Stanleigh argued that CM and AR should have been called as witnesses and made available for cross-examination. Counsel for IIROC, Ms. Popovic, chose not to do so. In our view, she was not obligated to do so. Neither CM nor AR could have spoken to the real issue in this case, which is Mr. Jones's obligation to advise and seek approval of Manulife for his outside business activity with Aqua Flo.

¶ 38 Mr. Stanleigh raised a number of procedural and evidentiary complaints going to the fairness of the

proceeding. First, he took issue with the hearsay evidence that was led by counsel for IIROC. Counsel is entitled to lead hearsay evidence in accordance with Rule 8203(3) of the IIROC Consolidated Enforcement, Examination and Approval Rules, which provides:

> A hearing panel may admit as evidence in a hearing any oral testimony and any document or other thing that is relevant, whether or not given or proven under oath or affirmation or admissible as evidence in a court.

¶ 39 There are a number of cases, which have confirmed that hearsay evidence is admissible in an IIROC proceeding. See *Re Fridgant* 2014IIROC47 at para 14 and *Re Phillips & Wilson* 2013IIROC52 at para 19.

¶ 40 Mr. Stanleigh relied on the Canadian Bill of Rights and Freedoms and the Canadian Charter of Rights and Freedoms as discussed above. IIROC is a nongovernmental body and in our view, does not attract review under either the Bill of Rights or the Charter. See Robert Sharpe and Kent Roach, *Charter of Rights and Freedoms*, 6th edition, 2017 at pp 103 and 108. See also *Derivative Services Inc. and Malcolm Robert Bruce Kyle v. Investment Dealers Association of Canada*, 2005 CanLII 18303 (ON SCDC) at paras 58-61 and 88.

¶ 41 Mr. Stanleigh also argued that it was significant that Mr. Jones did not benefit from his outside business activity. The evidence is not particularly clear on this point but assuming it to be so, it does not excuse Mr. Jones from his obligation to advise and seek the approval of Manulife for his involvement with Aqua Flo.

¶ 42 Finally, Mr. Stanleigh submitted that CM and AR were sophisticated investors and presumably decided to make their investments in Aqua Flo on the basis of their own assessment of potential risk. Again, the evidence on this issue is not all that clear, but again, if it is the case, it would not relieve Mr. Jones of his obligation under Rule 18.14 and Rule 1400.

VI. CONCLUSION

¶ 43 In our view, the evidence clearly establishes that Mr. Jones was in breach of his obligation to advise Manulife that he was engaged in an outside business activity and to seek the approval of Manulife.

¶ 44 We will hear submissions from counsel as to the appropriate penalty at a time to be fixed by the National Hearing Coordinator after consultation with the panel and counsel.

Dated at Toronto, this 28 day of August, 2020.

Robert P. Armstrong

Selwyn Kossuth

Timothy Pryor