Re Puri

IN THE MATTER OF:

The Dealer Member Rules of the
Investment Industry Regulatory Organization of Canada

and

Rajiv Puri

2014 IIROC 06

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

Heard: December 10, 2013
Decision: January 20, 2014

Hearing Panel:
Thomas J. Lockwood, Q.C., Chair, F. Michael Walsh and Donald (Sandy) Grant
Appearances:
Kathryn Andrews - Enforcement Counsel
Rajiv Puri - In Person

DECISION AND REASONS

A. HISTORY OF PROCEEDINGS

¶ 1 By Notice of Hearing, dated April 10, 2013, the Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") alleged that the Respondent, Rajiv Puri, had committed the following contraventions:

(a) From September 2008 to January 2012, while an IIROC Registrant, Rajiv Puri was registered in the United States with three Financial Industry Regulatory Authority member firms, without disclosing those registrations to his IIROC Member firm, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.

(b) On or about February to July 2011 Rajiv Puri opened accounts for six clients in connection with the purchase of MobileBits Holdings Corp, an Over the Counter Bulletin Board stock, without conducting adequate due diligence into the opening of the accounts, contrary to IIROC Dealer Member Rules 29.1 and/or 1300.1(a).

¶ 2 The Notice of Hearing contained 30 paragraphs of Particulars.

¶ 3 The Notice of Hearing provided that there would be an appearance before the Hearing Panel on May 15, 2013, at which time a date for the Hearing would be fixed.

¶ 4 On May 15, 2013, the Hearing Panel, on the consent of the parties, fixed September 10 and 11, 2013, as the dates for the hearing of this matter on the merits.

¶ 5 On May 15, 2013, the Hearing Panel also established dates, pursuant to the IIROC Rules of Practice and Procedure, for the disclosure of documents by Staff, the serving and filing of a Response by the Respondent, as well as the serving and filing of Compendium of Documents and Witness Statements by both Staff and the Respondent.

¶ 6 On June 21, 2013, the Respondent filed his Response to the Notice of Hearing.

¶ 7 On September 3, 2013, the Respondent contacted Counsel for IIROC and advised that he was sick and unable to attend the Hearing, which was scheduled to commence on September 10, 2013.

¶ 8 The Respondent requested an adjournment. IIROC Staff consented.

¶ 9 On September 10, 2013, the Hearing Panel heard submissions from both the Respondent and IIROC Staff and made an Order that the Hearing be adjourned, on a peremptory basis, to December 10 and 11, 2013.

B. THE HEARING

(i) Liability

¶ 10 On December 10, 2013, the parties appeared before the Hearing Panel. The Respondent admitted that he had committed the contraventions as alleged against him (see paragraph 1 hereof).

¶ 11 IIROC Staff and the Respondent conferred with respect to the Particulars. They agreed on two minor amendments. The Respondent then advised the Hearing Panel that he agreed with each and every one of the Particulars, as amended.

¶ 12 The Particulars, as agreed to by the Respondent, are as follows:

PARTICULARS

Overview:

¶ 13 Puri was a Registered Representative with PWM Capital. From September 2008 to early 2012 he was also registered in the United States with three Financial Industry Regulatory Authority ("FINRA") member firms. He did not disclose the American registrations to PWM Capital.

¶ 14 Secondly, in 2011 Puri opened accounts for 6 clients involved in a distribution of shares in MobileBits Holdings Corp, which U.S. company traded on the Over the Counter Bulletin Board, without inquiring as to whether or not it was approved for distribution in Canada, whether any prospectus exemption had been obtained, whether the clients were accredited investors and without adequately advising his clients of any transfer or re-sale restrictions.

Background:

¶ 15 Puri became a Registered Representative with PWM Capital or its predecessor in 2005. At all material times Puri was registered with IIROC as a Registered Representative ("RR") at PWM Capital ("PWM").

¶ 16 Puri was terminated by PWM in February 2012 and has not been an Approved Person with IIROC since that date.

Count 1:

Non disclosure of FINRA Registrations:

¶ 17 From 2008 to early 2012, Puri was also a registrant with FINRA in the United States. During this time he was registered with three different FINRA member firms, as set out below.

¶ 18 From September 2008 to December 2010, Puri was registered with FINRA member firm NWT Financial Group LLC, based in Issaquah, Washington, USA. He did not disclose this registration to PWM.

¶ 19 From December 2010 to November 2011 Puri was registered with FINRA member firm Transcend Capital, based in Austin, Texas, USA. His remuneration from Transcend Capital was based on commission. Transcend Capital advised Staff that the total commission paid to Puri from December 2010 to November 2011 was $90,323.51. Puri did not disclose this registration or any of this commission income to PWM.

¶ 20 From November 2011 to February 2012, Puri was registered with FINRA member firm Aegis Capital Corp, based in New York City, USA. His registration category was listed as Foreign Associate. Aegis Capital Corp. advised Staff that Puri was paid net commission of some $16,431.00 from December 2011 to February 2012. Puri did not disclose this registration or any of this commission income to PWM.

¶ 21 While at PWM Puri had previously opened accounts for French clients, however, Puri told Staff that he had been told by IIROC registrations staff in 2009 that he should no longer have French clients as he was not registered in France. Puri told Staff that if he had American registration then he would be able to maintain any European clients.

¶ 22 When PWM discovered the FINRA registration they terminated Puri in February 2012.

Count 2:

Lack of due diligence re: MobileBits:

¶ 23 MobileBits Holdings Corporation was formerly known as Bellmore Corporation and was originally incorporated in Nevada in 2008. In early 2010 it acquired MobileBits Corporation and became a public company known as MobileBits Holdings Corp ("MBIT"). It described itself as a developer of search engine products for the web and smart phones. WK was the President and Chief Executive Officer of MBIT.

¶ 24 MBIT traded on the Over the Counter Bulletin Board ("OTCBB"). Puri heard about MBIT from an individual AP who had previously been his client at PWM.

Skyline:

¶ 25 In late 2010 or early 2011, on AP's suggestion, Puri met with one RD who was the Vice President of a company known as Skyline Investment Corp. ("Skyline").

¶ 26 Skyline is described as a public relations company based in Burlington, Ontario. Neither WK nor RD were registered with the OSC or IIROC.

¶ 27 In his meeting with RD, Puri was told that RD and Skyline were trying to raise money for MBIT. He was told that MBIT needed to raise capital to fund its smart phone search engine technology. Puri told Staff that MBIT was trying to raise 50 million dollars and that it was looking to sell shares for 50 cents each.

Puri's actions:

¶ 28 Puri agreed to act as the Registered Representative who would open accounts for the MBIT investors. Puri contacted people and/or was contacted by people who had purchased or who intended to purchase MBIT. Puri met with potential investors at various locations so they could complete the account opening documentation with him. Puri also forwarded various MBIT documentation to potential investors. Puri opened client accounts at PWM for some of these people, as set out below.

February 2011 emails:

¶ 29 Puri and his brother in law SK received an email from RD on February 16, 2011. In this email, RD discussed their meeting the previous night, confirmed an upcoming conference call, provided some information regarding MBIT and attached various documents regarding MBIT, including the subscription agreement, wiring instructions and the pooling agreement.

¶ 30 Puri received an email from one AA on February 22, 2011. AA asked Puri to call him as soon as possible as he had a few questions before he submitted the purchase agreement. Puri emailed him back the same day advising him that Rule 144 is the rule that he could not sell before one year.

¶ 31 Later that day, AA emailed Puri advising him that he had sent the money to MBIT, with the paperwork to follow, and also that his wife's money would be transferred the next day. AA thanked Puri for his help and understanding.

¶ 32 On February 24, 2011, Puri emailed Owen Menzel, PWM's CCO at the time, and told him "When you receive the 9 accounts by mail, pls don't open Mr MN's a/c as he is no longer interested to buy the ipo."

PWM clients:

¶ 33 Commencing on or about March 2011, Puri opened accounts for the following six clients at PWM, in connection with the purchase of MBIT by these clients:

- IK (Ontario): Her new account application form ("naaf") signed February 17, 2011 indicates that she had an annual income of $70,000, liquid assets of $35,000 and fixed assets of $400,000. 20,000 MBIT shares were deposited on August 3, 2011 together with a share certificate dated April 23, 2010. There were no other investments or activity in her account as of October 4, 2011.
- MD (Ontario): Her naaf signed February 18, 2011 indicates that she had an annual income of $100,000, net liquid assets of $10,000 and net fixed assets of $1 million. She received in 10,000 MBIT shares on July 25, 2011, along with a share certificate dated May 9, 2011.
- JD (Quebec): His naaf signed June 7, 2011 indicates annual income of between $25,000 and $49,000, along with liquid assets of $72,000 and fixed assets of $350,000. His share certificate for 40,000 shares was deposited June 14, 2011, together with share certificate dated October 28, 2010. There were no other investments or activity in his account.
- MM (Ontario): His naaf signed May 25, 2011 indicates income of $100,000 plus liquid assets of $50,000 and fixed assets of $250,000. 30,000 shares in MBIT were deposited June 20, 2011, together with share certificate dated March 11, 2011. There were no other investments or activity in his account.
- JM (Quebec): His naaf signed May 19, 2011 indicates income of between $50,000 and $99,000 along with liquid assets of $35,000 and fixed assets of $150,000. A certificate of 115,000 shares was deposited on June 13, 2011. There were no other investments or activity in his account.
- DR (Quebec): His naaf signed May 4, 2011 indicates income of $100,000+ along with liquid assets of $400,000 and fixed assets of $425,000. A certificate of 70,000 shares was deposited July 13, 2011. There were no other investments or activity in his account.

MBIT filed a Form D with the SEC:

¶ 34 On or about September 16, 2011, MBIT filed a Form D Notice of Exempt Offering of Securities with the United States Securities and Exchange Commission (the "SEC").

MBIT did not file an Exempt Distribution Form in Ontario or Quebec:

¶ 35 MBIT did not file a similar Exempt Distribution Form (Form 45-501F1 or Form 45-106F1 as required under section 6.1 of National Instrument 45-106) with the Ontario Securities Commission (the "OSC"). MBIT did not file any other documentation with the OSC to indicate that a prospectus had been filed, or that an exemption from the prospectus requirement was being sought, or that the MBIT investors were accredited investors.

¶ 36 MBIT did not file a similar Exempt Distribution Form with respect to the Quebec clients noted above.

Lack of due diligence:

¶ 37 Puri opened accounts for the six clients noted above yet he did not conduct adequate due diligence at the time as he:

- failed to inquire as to whether or not the MBIT shares were actually approved for sale to residents of Ontario or Quebec;
- did not inquire as to whether or not any prospectus exemption forms had been filed by MBIT;
- failed to fully review any of the documents provided to him by Skyline or MBIT, despite forwarding this documentation on to clients;
- did not adequately inquire as to whether or not any resale requirements or transfer conditions existed for his clients holding MBIT shares;
- relied on information from RD without making his own inquiries; and,
- did not fully inquire as to whether or not any of the clients actually qualified as accredited investors.

MBIT shares were restricted:

¶ 38 The MBIT shares were restricted and thus could not be re-sold unless certain conditions were met, further to SEC Rule 144 regarding the selling of restricted and control securities.

¶ 39 Yet despite this restriction, in August 2011, when Puri's client MM asked him about the sale of MBIT shares held by four other investors, there is no indication that Puri advised him what conditions had to be met in order to do so.

¶ 40 In addition, in a November 2011 email exchange with his client DR, in which DR was asking for his MBIT share certificates to be provided to him so that he could "take advantage of an opportunity", Puri did not advise DR of any restrictions that might exist on the transfer or sale of these shares.

Other clients:

¶ 41 Puri also opened accounts at PWM for over 20 other clients in connection with their purchase or intended purchase of MBIT. Puri told Staff that he was introduced to these people by Skyline. Some contacted him and others he contacted after he was given their phone numbers and/or emails by RD or Skyline. Puri completed the naafs for some or all of these additional clients. These naafs are all dated between February 13, 2011 and July 14, 2011, with the exception of 5 naafs which could not be located in order to determine the date of account opening.

¶ 42 Puri told Staff that he left the country in July 2011 and did not return until after December 2011.

(ii) Penalty

¶ 43 After liability had been established on the basis of the admissions of the Respondent, the parties requested a brief adjournment to ascertain if a joint submission could be made to the Hearing Panel with respect to Penalty.

¶ 44 After the adjournment, the parties advised that a joint submission was not possible. Both IIROC Staff and the Respondent requested that the Penalty Hearing proceed immediately. The Hearing Panel then heard extensive submissions from both IIROC Staff and the Respondent.

¶ 45 At the completion of the submissions, the Hearing Panel reserved its Decision on Penalty, and advised the parties that our Decision and Reasons would be released in due course.

¶ 46 Subsequent to the Hearing, the Hearing Panel gave detailed consideration to the submissions of the parties and the precedent Decisions proffered for our consideration. The following is our Decision on Penalty and the Reasons therefor.

C. POSITION OF THE PARTIES

¶ 47 IIROC Staff submitted that, in light of the admitted contraventions and the Particulars, an appropriate penalty would be as follows:

(i) A fine of $30,000.00 with respect to Count 1;

(ii) A disgorgement of commissions in the amount of $106,754.51, as set out in paragraphs 7 and 8 of the Particulars;

(iii) A fine of $45,000.00 with respect to Count 2;

(iv) 12 months suspension effective the date of the Decision;

(v) Re-write of the Conduct and Practices Handbook Examination if the Respondent seeks to re-register;

(vi) 12 months of strict supervision should the Respondent be re-registered; and

(vii) Costs in the amount of $10,000.00.

¶ 48 With respect to Count 1, Staff provided a number of useful precedents. These included:

(a) Dennis (Re) 2011 IIROC 39;

(b) Stefiuk (Re) 2011 IIROC 24; and

(c) McKimm (Re) 2010 IIROC 41.

¶ 49 With respect to Count 2, Staff advised that it could find no case on point. Staff did provide us with a Settlement Agreement case, namely Kasten-Brown (Re) 2011 IIROC 73.

¶ 50 On the issue of costs, Staff referred the Hearing Panel to Rule 20.49(1) which provides that:

> "In addition to imposing any of the penalties set out in Rule 20.33, Rule 20.34 or Rule 20.45, the Hearing Panel may assess and order any Corporation Staff investigation and prosecution costs determined to be appropriate and reasonable in the circumstances."

¶ 51 Staff filed an Affidavit of Ellen Sequeira, which showed that the total time spent by Staff on the file up to December 5, 2013, was $53,854.00. Staff Counsel indicated that no costs were being sought for the actual Hearing. Staff sought recovery of only a portion of its costs in the amount of $10,000.00.

¶ 52 The position of the Respondent was that he made two mistakes, but that neither of these mistakes caused financial harm to any clients.

¶ 53 The Respondent stated that he did not consider his registration in the United States with three FINRA member firms as an "outside business activity".

¶ 54 He submitted that his actions were inadvertent and not fraudulent. There were no client complaints.

¶ 55 The Respondent submitted that he no longer has registration either in the United States or Canada and that he has a negative net worth.

¶ 56 He submitted that in light of what he has already endured as a result of his actions, the appropriate penalty should consist of a strong reprimand.

D. DECISION

¶ 57 The main concerns of a Hearing Panel, when determining an appropriate penalty, are set out in Re Derivative Services Inc. [2000] I.D.A.C.D. No. 26 at page 3 as follows:

(a) Protection of the investing public;

(b) Protection of the Investment Industry Regulatory Organization`s membership;

(c) Protection of the integrity of the Investment Industry Regulatory Organization`s process;

(d) Protection of the integrity of the securities market; and

(e) Prevention of a repetition of conduct of the type under consideration.

¶ 58 We agreed with the comments of the Hearing Panel in Re: Mills [2001] I.D.A.C.D. No. 7 that our Decision should seek to achieve both general and specific deterrence.

¶ 59 It was common ground between the parties that the Respondent became a Registered Representative in 2005 and has no previous disciplinary history with IIROC.

¶ 60 Both in his initial interview with Staff and in his Response, the Respondent admitted to being registered with FINRA from 2008 to 2012.

¶ 61 The commissions earned by the Respondent, as a result of his FINRA registration, relate to activities of his European clients and were not connected in any way to the lack of due diligence which was the subject matter of Count 2. In addition, there were no client complaints with respect to the FINRA matters.

¶ 62 Staff conceded that there was no fraudulent intent with respect to Count 2 and that the description of the "lack of due diligence", set out in paragraph 25 of the admitted Particulars, did contain elements of "mistake".

¶ 63 On the other hand, the Respondent conceded that he had been told by IIROC Staff in 2009 that he should no longer have French clients as he was not registered in France (see paragraph 9 of the Particulars). His response was that if he had American registration, he would be able to maintain his European clients. It would not appear that he advised Staff that he, in fact, had FINRA registration at the time. Consequently, his submission to the Hearing Panel that he did not consider his FINRA registration as an outside business activity is troubling.

¶ 64 This, in part, leads us to conclude that any penalty which we impose should contain both an educational and supervisory component.

¶ 65 With respect to the Respondent's ability to pay any fines or order for costs, Staff presented us with 3 cases for our consideration:

(a) Hogan v. British Columbia Securities Commission [2005] B.C.J. No. 131;

(b) Aloni (Re) 2008 IIROC 10; and

(c) Re: Jeffrey Bradford Kasman and Clinton Anderson (2009), 32 OSCB, No. 29, a Decision of the Ontario Securities Commission where, at paragraph 72, the Commission stated:

> "We accept that a respondent's personal and financial circumstances are relevant factors to be considered, along with other appropriate sanctioning factors, in determining the amount of a fine."

¶ 66 We agree with the Hearing Panel in Aloni that the ability to pay is a relevant factor in determining whether the Respondent should be given time to pay any fine which may be imposed.

¶ 67 After carefully considering Counts 1 and 2, the Particulars admitted to by the Respondent, as well as the submissions of the parties and the precedents provided, we have unanimously concluded that the appropriate penalty, in the circumstances of this particular case, is as follows:

(a) A six month suspension from the date of the Hearing, namely December 10, 2013;

(b) A fine in the amount of $18,000.00 with respect to Count 1;

(c) A fine in the amount of $18,000.00 with respect to Count 2;

(d) The fines totalling $36,000.00 shall be payable in equal monthly instalments over a period of 12 months, commencing at the end of the period of suspension, namely June 11, 2014;

(e) Re-write and pass the IIROC Conduct and Practices Handbook Examination as a condition of being re-registered by IIROC;

(f) The Respondent shall be subject to strict supervision by his employer for a period of 12 months from the date of being re-engaged as a Registered Representative/Approved Person in any business subject to the regulatory authority of IIROC;

(g) The Respondent shall pay $10,000.00 in costs to IIROC before being re-registered; and

(h) In the particular circumstances of this case, we have decided to make no Order for disgorgement.

DATED at Toronto this 20th day of January, 2014.

Thomas J. Lockwood, Q.C., Chair

F. Michael Walsh

Donald (Sandy) Grant