Re Collias

IN THE MATTER OF:

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

JOHN ANASTASIOUS COLLIAS

2008 IIROC 9

Investment Industry Regulatory Organization of Canada
On behalf of Investment Dealers Association of Canada
Hearing Panel (Pacific District)

Heard: July 28, 2008 in Vancouver, BC
Decision: July 31, 2008
(20 paras.)

Hearing Panel:
Wade Nesmith, Chair
Don Teatro
Robert Travers

DECISION

Background

1. On December 10, 2007, the Investment Dealers Association of Canada (the "IDA") issued a Notice of Hearing (the "Notice") in respect of certain allegations regarding John Anastasious Collias (the "Respondent"). At the time of the issuance of the Notice, the Respondent was an Approved Person and, it is agreed, was under the jurisdiction of the IDA.

2. A hearing in the matter was originally set for April 14 – 17, 2008. Prior to the commencement of the hearing on those dates, the Respondent, still an Approved Person, sought and obtained an adjournment of the hearing as a result of illness. The hearing was re-scheduled for July 28 – 31, 2008. After the re-scheduling of the hearing and before its commencement on July 28, 2008, the Respondent resigned his position. He is no longer employed by an IDA member, and he is, accordingly, no longer an Approved Person.

Application

3. On July 28, 2008, the Respondent applicant in this matter brought a motion before the Panel asking for the following relief:

    1. A declaration that the IDA does not have jurisdiction over him and an order that the Notice be set aside; or, in the alternative,

    2. An order that the proceeding be stayed.

4. Over the course of the day, we heard argument from counsel for the Respondent applicant and for the Investment Industry Regulatory Organization of Canada ("IIROC"). It appears to be common ground that the Panel has jurisdiction to deal with this matter under Rule 20.2 and we agree with that view.

5. The essence of the Respondent's position in respect of the first relief sought is that as a result of the recent decision of the Ontario Superior Court of Justice (Divisional Court) in *Taub v. Investment Dealers Association of Canada and Ontario Securities Commission* (July 15, 2008) (hereinafter referred to as *Taub*), the IDA has no jurisdiction over former members (a "member" being understood to include an "Approved Person").

6. Counsel for IIROC responds that this panel is bound by the decision of the British Columbia Securities Commission (the "BCSC") in *Charles K. Dass v. Investment Dealers Association of Canada* (May 11, 2007) (hereinafter referred to as *Dass*), where the BCSC held that the jurisdiction of the IDA did extend to former members.

7. This outline does not do justice to the arguments presented but, given our decision, is sufficient for these purposes.

8. It is common ground between counsel that the issue of the jurisdiction of the IDA (and now IIROC) in respect of former members is the subject of several decisions based on legislation in different provinces of Canada that is not identical and that the judicial and administrative bodies articulating decisions on this point have come to diametrically opposite conclusions. Certainly, there appears no way to align *Taub* with *Dass*. Counsel advised the panel that the *Dass* decision has been appealed to the British Columbia Court of Appeal. The appeal was argued on May 14, 2008 and a decision of that court is pending.

Decision

9. For the reasons below, we have determined that a temporary stay of proceedings is the appropriate disposition of this application and, accordingly, we will not deal with the first relief sought by the Respondent in this matter. We do not believe that our thoughts on that matter will illuminate the current debate.

10. The test with respect to when a stay is appropriate was articulated in *Moore v. British Columbia (Securities Commission)* [1996] B.C.J. No. 651, a decision of the British Columbia Court of Appeal relying on earlier Supreme Court of Canada decisions in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987 1 S.C.R. 110 and *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. The Court held that the test involved 3 parts:

    1. Whether there was a serious question to be tried;
    2. Whether the applicant would suffer irreparable harm if the application was refused; and
    3. Which party would suffer the greater harm from the granting or refusal of the stay.

11. The Court went on to note that it is often the case that the decision boils down to the third part, and in our view, that is the case here.

12. The issue of the jurisdiction of the IIROC is of seminal importance to IIROC, its members and the investing public. Having extant decisions reaching opposite conclusions is a matter requiring rectification, and that process is underway. There is a serious issue to be tried.

13. The issue of harm to the Respondent applicant is only slightly more difficult to measure. It was a given that if this hearing proceeds, the Respondent will suffer financial harm in the form of the expenses associated with defending himself. In our view, that is not determinative of the issue. He will also suffer potential reputation harm, given the nature of the allegations. Again, we do not believe that in and of itself to be determinative, but it is a factor in our consideration.

14. In our view, the decision boils down to the final criteria; which party will suffer greater harm.

15. Ms. Lohmann, on behalf of IIROC argues, essentially, that she is ready to proceed and if she does not, she and IIROC will be inconvenienced. She concedes that her case will not be harmed. This is a matter where, we are advised, only two witnesses are likely to be called, one by IIROC and one by the Respondent. It is not a situation where evidence will disappear, age or become weaker. In short, we find there is no real and measurable potential prejudice to IIROC.

16. We have already identified the potential harm that could befall the Respondent in the event we were to proceed and, subsequently, the Court of Appeal rule that we did not have jurisdiction.

17. Weighing the interests of the parties leads us to the inescapable conclusion that on balance, the Respondent will suffer potentially great harm.

18. We hasten to add that this decision should not be viewed as a precedent. Each case of an application for a stay must be decided on the merits. In this situation, we have been advised that a decision on this most fundamental point of law has already been argued and will be decided by the most senior court in this jurisdiction. It is anticipated that such decision is likely to be released in the usual timely fashion of our Court of Appeal. This is not a situation where an appeal is simply contemplated or, for that matter, filed but not argued. All necessary steps to the issuing of a decision on the appeal have been taken save and except for the final determination by the Court of Appeal.

19. In addition, the case to be presented in this matter by IIROC is a simple one, from an evidentiary perspective, that will not suffer from a short delay. We would go so far as to suggest that facts supporting this application for a stay are unique and not likely to be easily replicated.

Conclusion

20. In the circumstances, and pursuant to Rule 20.2, we hereby order that a temporary stay be issued in this matter until the release of the decision of the British Columbia Court of Appeal in the *Dass* matter. Following the release of that decision we require that the parties appear in front of a hearing panel of the Pacific Region to determine next steps in this process.

Dated at Vancouver, British Columbia this 31st day of July, 2008.

Wade Nesmith, Chair
Don Teatro
Robert Travers