

Re Sukhraj

IN THE MATTER OF:

**THE DEALER MEMBER RULES OF THE
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

DAX SUKHRAJ

2008 IIROC 27

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

Heard: December 8, 2008 in Toronto, Ontario

Decision: December 31, 2008

(12 paras.)

Hearing Panel:

The Honourable Fred Kaufman, C.M., Q.C., Chair
Duncan D. Webb, Member

Appearances:

Tamara Brooks, Enforcement counsel
Robert J. Brush for Mr. Sukhraj

DECISION ON PENALTY

Introduction

¶ 1 On October 29, 2008, a hearing panel of the Investment Industry Regulatory Organization of Canada (“IIROC”) found that Mr. Sukhraj (“the Respondent”), “at all materials times owner and sole member of the board of Argosy, and, from August 12, 2004 to 2007, an Approved Person and Senior Executive of Argosy, engaged in business conduct or practice that is unbecoming and detrimental to the public interest by failing to ensure that Argosy fulfilled representations to the [Investment Dealers] Association (“IDA”) that it would develop and implement policies and procedures to ensure compliance with regulatory requirements contrary [Investment Dealers] Association By-laws 29.1 and 38.”

¶ 2 The facts of the case are fully set out in panel’s Decision, and there is no need to repeat them. Suffice it to say that, as the panel noted, “over a long period of time Argosy had serious deficiencies,” and while “attempts were made by Mr. Sukhraj and his officers to deal with them, ... many times their efforts were insufficient, and year after year they were told by IDA compliance personnel what must be done to make the firm compliant. Yet, even the most serious complaints were often dealt with by well-meaning but inadequately

trained persons, and full compliance was never achieved in the years covered by the allegations set out in the Amended Notice of Hearing.”

¶ 3 It is relevant to add that the Amended Notice of Hearing contained three charges, one against Argosy, the other two against the Respondent. The charge against Argosy was dismissed, and so was the second charge against the Respondent, the first because it was “duplicitous,” the second because it was “subsumed” in the charge set out above.

¶ 4 We must now deal with the appropriate penalty for the Respondent.

Argument

¶ 5 Enforcement counsel, not surprisingly, stressed the gravity of the Respondent’s conduct, and she suggested that a heavy fine, together with certain other sanctions, would be in order: an undertaking not to seek approval for any position which would involve the supervision of compliance rules, the retention of an external compliance consultant, a suspension for six months, the successful completion of the Partners, Directors and Officers Course and of the Conduct Practices Handbook, the engagement of an independent director for Argosy, and costs.

¶ 6 In support of these suggestions, Ms. Brooks cited a number of cases, all of them Settlement Hearings, where heavy fines, as well as other sanctions, were frequently imposed: *In re Wellington West Capital Inc.*, [2000] I.D.A.C.D. No. 54; *In re Cole*, [2002] I.D.A.C.D. No. 24; *In re Monardo*, [2002] I.D.A.C.D. No. 51; *In re Traconakos*, [2002] I.D.A.C.D. No. 33; *In re Research Capital Corp.*, [2005] I.D.A.C.D. No. 36; and *In re Union Securities Ltd.*, [2006] I.D.A.C.D. No. 13.

¶ 7 But, as Mr. Brush pointed out, these cases must be considered with some caution since they were the result of negotiations between the parties. The monetary penalties imposed ranged from a high of \$1,000,000 in *Union*, to a low of \$10,000 (for one of the officers) in *Wellington West*. The offences varied too, from a “caper” to circumvent IDA rules (in *Union*) to failure to correct repeat deficiencies.

Disposition

¶ 8 In our view, this case, while serious, falls in the lower category of conduct “unbecoming and detrimental to the public interest.” As alluded to above, the Respondent’s repeated failure to rectify the deficiencies found in IDA audits was not the result of a wilful disregard of IDA By-laws, Rules and Regulations, but rather in the nature of inadequate actions, often carried out by persons not up to the tasks assigned to them. Nevertheless, the Respondent, as the sole owner and director of the company, must bear the ultimate responsibility, and his failure to put into place adequate measures to meet the deficiencies went beyond inadvertence or negligence. This calls for a penalty sufficient to alert both him, as well as others, that conduct of this nature cannot be tolerated.

¶ 9 We recognize the fact that this is the Respondent’s first offence, and that he has made efforts to rectify the situation. Compliance consultants have been engaged, and the situation has improved. We also recognize that by admitting many of the facts alleged, the Respondent helped to shorten the hearing on the merits, avoiding the attendance of some witnesses and reducing the costs.

¶ 10 In the result, it is our view that a global fine of \$150,000, which will include the costs, is appropriate. This must be paid within 90 days from the date this Decision is communicated to the Respondent.

¶ 11 It is also appropriate that the Respondent be ordered to successfully complete the Chief Compliance Officers Qualifying Examination, and that this be done not later than April 1, 2009.

¶ 12 Furthermore, a compliance consultant shall be put in place, and remain at Argosy for a period of one year. The person chosen must be approved by IIROC, and this approval must be sought within 30 days from the date this Decision is communicated to the Respondent. The compliance consultant shall conduct regular evaluations of Argosy’s compliance systems, including, but not limited to, determining:

- (i) if sufficient resources and qualified personnel are dedicated to compliance;
- (ii) if there are technical or other problems impeding Argosy’s internal compliance controls from

operating properly, and

(iii) if personnel are being responsive to inquiries from compliance staff.

Given in Toronto, Ontario, on December 31st, 2008.

Hon. Fred Kaufman, Chair

Duncan D. Webb, Member

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