

Re Credifinance Securities Limited

IN THE MATTER OF:

AN REVIEW HEARING PURSUANT TO DEALER MEMBER RULES 20.47 AND 20.28 OF
THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

CREDIFINANCE SECURITIES LIMITED

2009 IIROC 21

Investment Industry Regulatory Organization of Canada
Review Panel

Heard: April 23, 2009
Decision: April 27, 2009
(10 paras.)

Hearing Panel:

Honourable Patrick T. Galligan, Q.C. (Chair)
D.W. (Sandy) Grant
Robert J. Guilday

Appearances:

Alistair Crawley, Credifinance Securities Limited
Milton Chan & Kathryn Andrews, for Staff of IIROC

DECISION OF THE REVIEW PANEL

1. This was a review hearing pursuant to *Dealer Member Rule 20.47*. We reviewed the decision made by a hearing panel on March 6, 2009. That panel conducted an Expedited Hearing, with notice to Credifinance, and found that circumstances as defined in *Rule 20.42(1)(b), (c) and (d)* had been established. Accordingly, it made the decision which is under review.
2. The facts and the provisions of the order made by the hearing panel are fully set out in its decision and need not be repeated. We heard full argument and reserved our decision.
3. Our interpretation of the judgment of the Supreme Court of Canada in *Dunsmuir and New Brunswick*, [2008] S.C.J. No. 9 has led us to the opinion that we may only interfere with the decision under review if we were able to conclude that it is an unreasonable one. We think it germane to quote a short extract from the judgment of the Supreme Court at para. 47:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result.

Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions.

4. Applying the standard enunciated by the Supreme Court, and especially keeping in mind its statement that there is a range of acceptable and rational solutions, we are quite unable to say that this decision was not a reasonable one. The request for review must, therefore, be dismissed.
5. While we dismiss the request for review, we cannot leave this case without commenting upon one basis upon which the hearing panel made its order. In order to put our comments in context, it is necessary to make a brief reference to the background against which the hearing, on March 6, 2009, took place. On November 11, 2008, IIROC launched disciplinary proceedings against Credifinance and three of its employees. That proceeding is scheduled to be heard in June 2009. On December 23, 2008, Credifinance tendered to IIROC its resignation as a dealer member. That resignation has not yet been accepted.
6. The penultimate paragraph of the hearing panel's decision reads as follows:

The "elephant in the room" is the impending decision of the Ontario Court of Appeal in *Taub*. When released, it may well impact on this Panel and the parties. It is understandable, therefore, why IIROC is loath to do anything that might attenuate its jurisdiction over Credifinance and jeopardize the June hearing. In the opinion of the Panel, and in the context of the function of IIROC to protect the public, this in itself is a reason to issue the Order.
7. A hearing panel has only the jurisdiction which is specifically conferred upon it. A hearing panel conducting an Expedited Hearing is empowered by, and confined to, those matters set out in *Rule 20.42*. It has no power to expand its mandate to found a decision on a circumstance not listed in that rule. The matters referred to in the above-quoted paragraph of the hearing panel's reasons do not fall within any of the circumstances set out in *Rule 20.42(1)*. Thus, it had no jurisdiction to hold that "this in itself is a reason to issue the Order". Moreover, the matters to which the hearing panel was referring were totally irrelevant to the issues which it had to decide.
8. The only issues which the hearing panel was entitled to consider were suspension, under subparagraphs (b) and (c), and financial matters under subparagraph (d). It erred in law when it based its decision upon extraneous and irrelevant matters.
9. This error in law does not permit us to quash the decision because the decision is supportable by the finding that circumstances existed which do fall within *Rule 20.42(1)*. We think that the legal error justified Credifinance making an application for a review. We have decided, therefore, that we will not award any costs of this review hearing.
10. In the result, the request for review is dismissed. No costs.

DATED at Toronto, this 27th day of April 2009.

Patrick T. Galligan (Chair)
D. W. (Sandy) Grant (Member)
Robert J. Guilday (Member)

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