Re Hackett

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

ALAN FERGUSON HACKETT

2010 IIROC 5

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

Heard: January 12, 2010
Decision: February 4, 2010
(73 paras.)

Hearing Panel:
John Rogers, Chair, Bob Sutherland, Don Teatro

Appearance:
Barbara Lohmann, Enforcement Counsel, for the Investment Industry Regulatory Organization of Canada
The Respondent was not represented by Counsel

DECISION

¶ 1 A hearing panel of the Pacific District Council of the Investment Industry Regulatory Organization of Canada ("IIROC") was convened on January 12, 2010 pursuant to Part 10 of By-law 20 of the by-laws of the Investment Dealers Association of Canada (the "Association") and pursuant to Section 1.9 of Schedule C.1 to Transition Rule No. 1 made pursuant to By-Law 13.1 of the by-laws of IIROC to determine whether Alan Ferguson Hackett (the "Respondent") contravened the by-laws of the Association as alleged by the Enforcement Division of IIROC. The hearing was designated as being on the Standard Track pursuant to Rule 6.2 of IIROC's Rules of Practice and Procedure ("Rules").

Respondent Not Present

¶ 2 At the commencement of the Hearing, the Respondent was not present. IIROC Enforcement Counsel advised the Panel that the Respondent had informed her that he would not be attending the Disciplinary Hearing.

¶ 3 To ensure that the Respondent had not intended to attend and was not able to be present at the time

scheduled for the commencement of the Hearing, the Hearing was adjourned for fifteen minutes.

¶ 4 Following the adjournment, the Respondent was still not in attendance and the Hearing Panel used its authority provided by Rule 13.5 of the Rules to proceed in his absence.

History of Proceedings

¶ 5 The Notice of Hearing in this matter is dated July 15, 2008 and the resulting Disciplinary Hearing was first convened on September 17, 2008 ("First Hearing"). At the First Hearing, the Respondent attended and, on the grounds that the Respondent as a former registrant was not subject to disciplinary action by the Hearing Panel, applied to have this matter stayed pending the decision of the British Columbia Court of Appeal in *Charles K. Dass v. Investment Dealers Association of Canada*. In its Order dated September 29, 2008, the Hearing Panel granted the Respondent's application and stayed this matter pending the decision of the British Columbia Court of Appeal.

¶ 6 On October 23, 2008, the British Columbia Court of Appeal released its decision finding that IIROC did indeed have jurisdiction over former registrants. As this Hearing Panel's jurisdiction over the Respondent was confirmed, this matter was rescheduled for January 13, 2009.

¶ 7 On January 8, 2009, the Respondent wrote Enforcement Counsel requesting a further adjournment due to his ill health. Enforcement Counsel agreed to this further adjournment provided that the Respondent in turn agree that he was not entitled to apply for registration in any capacity until this matter was resolved. The Respondent agreed to this restriction and, with the consent of the parties, the Hearing Panel ordered this Disciplinary Hearing further adjourned to July 21, 2009. The Hearing Panel further ordered that the Respondent was not entitled to apply for registration in any capacity until this matter is resolved.

¶ 8 Prior to the resumption of the Hearing on July 21, 2009, Ms. Karen Henderson, a member of the Hearing Panel advised the IIROC National Hearing Coordinator of a potential conflict of interest and asked to be replaced as a member of the Panel. Mr. Don Teatro took Ms. Henderson's place.

¶ 9 On June 18, 2009, the Respondent contacted IIROC Enforcement Counsel, advised that he was going in for surgery the following day and that he would require at least four to six weeks to recuperate from this surgery. He therefore asked that this Hearing be again adjourned until January 2010. Having receiving the consent of the parties to an adjournment, the Hearing Panel ordered this matter again adjourned until January 12, 2010.

¶ 10 On December 3, 2009, the Respondent again contacted IIROC Enforcement Counsel, advised that he was continuing to undergo various forms of medical treatment, and that he was under doctor's care. Based upon this situation, he again requested an adjournment of this matter. Enforcement Counsel took no position and forwarded the Respondent's correspondence to the Hearing Panel. The Hearing Panel treated the Respondent's communication with Enforcement Counsel as an application by the Respondent for a further adjournment of this matter. The Respondent's application was denied, but he was given leave to make a further application for an adjournment and to introduce new evidence supporting such an adjournment at the commencement of this Hearing. In denying his application, the Hearing Panel issued a strong recommendation to the parties that they use their best efforts to agree to settle this matter so that the Disciplinary Hearing scheduled for January 12, 2010 would become a Settlement Agreement Hearing. Unfortunately, such was not to be the case.

Summary of Facts

¶ 11 The Respondent was born in 1930. His first registration in the investment industry was in 1964 and since then he has worked continuously in the industry until he resigned for cause in March of 2007. He has not been employed in the investment industry since his resignation.

¶ 12 During his 43 years in the investment industry, the Respondent has had no previous disciplinary history.

¶ 13 His resignation for cause was precipitated by an article in a local newspaper that the Respondent was being sued by a former client and longtime friend, BM, who was seeking return of funds BM had loaned to the

Respondent. Until this newspaper article, the Respondent's employer was unaware of the Respondent's dealings with BM.

¶ 14 The Respondent from the late 1990's to March 2007 borrowed a total of $1,586,500 from eleven parties, mainly relatives and long time close personal friends, and during that time issued personal promissory notes totaling $9,739,170 to secure these borrowings. The difference between the amount borrowed and the principal amount of the personal promissory notes issued by the Respondent was to reflect interest and bonuses earned by the lenders on the funds advanced. Of the eleven lenders, three were clients of the Respondent at the time the monies were lent.

¶ 15 Typical of these transactions were the Respondent's dealings with his corporate client LH, of which BM was the President and VM, BM's wife, was the Secretary. The Respondent has known BM since childhood and was best man at the wedding of BM and VM.

¶ 16 The Respondent first borrowed the sum of $75,000 from LH in January of 2003. Over the next four years the Respondent borrowed additional funds from LH so that by March of 2007, his total borrowings from LH amounted to $575,000. In addition, during this time period the Respondent borrowed the sum of $30,000 from VM. To secure the amounts borrowed, the Respondent gave personal promissory notes to both LH and VM. These promissory notes for LH by March of 2007 totaled $685,248 and for VM totaled $60,000. The differences between the amount borrowed and the promissory notes issued by the Respondent were a combination of interest and bonuses to the lenders.

¶ 17 By March of 2007, the Respondent had also issued personal promissory notes to BM. . These personal promissory notes amounted to a total of $1,648, 154. In response to questioning by IIROC Enforcement Staff, the Respondent advised that these personal promissory notes did not reflect monies advanced by BM to the Respondent, but rather were issued to BM as a "bonus".

¶ 18 Therefore, by March 2007, the Respondent had issued personal promissory notes to LH, VM and BM totaling $2,393,402, having received from LH and VM a total of $605,000 in funds.

¶ 19 The transaction which did not conform to this pattern was a personal promissory note issued by the Respondent to MH in June of 2006. This promissory note was in the principal amount of $5,000,000 and although on its face claimed to be for valuable consideration, the Respondent advised IIROC Enforcement Staff that no funds were advanced by MH to the Respondent.

¶ 20 When questioned about this transaction by Enforcement Staff, the Respondent was unclear about the purpose of this note other than to suggest that it was security for MH's interest in an offshore account valued by the Respondent at approximately $10,000,000 ("Offshore Account"). The Respondent originally opened the Offshore Account with a bank in Bermuda in the 1980's and in the 1990's it became a joint account with MH. The Respondent has no statements from this account and has no access to it.

¶ 21 MH has been a friend of the Respondent for over 30 years. According to the Respondent, MH is someone whom the Respondent considers like a son and a person whom the Respondent has fostered and sponsored over the years.

¶ 22 From 2000 to 2006, the Respondent's sole source of income was commission income earned through his employment as a Registered Representative. This income was definitely not sufficient to repay the Respondent's personal loans. When questioned by IIROC Enforcement Staff in 2007 as to how he intended to repay the $1,586,500 in borrowings, let alone the $9,739,170 in personal promissory notes he had issued, the Respondent advised that he was expecting imminently to receive significant funds from an accumulation of funds he was entitled to from a confidential offshore source. He had nothing in writing to confirm that he would be receiving funds, with his expectation for receiving this money based only upon a confidential verbal agreement with various associates mainly in the United States, including Mr. Tom Ridge, the former head of U.S. Homeland Security. The Respondent's only contact with these associates is over the telephone and he is reliant on them to contact him as he does not know how to contact them. But the Respondent remains confident that he will be receiving these funds because of the high caliber of the people with whom he is

dealing.

¶ 23 The Respondent's right to receive these funds is not as a result of an investment, nor did the Respondent provide any money or services which entitle him to receive them. The Respondent claims to be bound by an oral confidentiality agreement as to the nature and source of these funds, but has assured IIROC Enforcement Staff that upon receipt of these funds, he will be in a position to reveal fully the details about their source.

¶ 24 Despite what he has characterized as "delays", the Respondent is confidently expecting receipt of these funds in the form of bank drafts in an amount which would be sufficient to honour all these personal promissory notes with monies left over for himself. At the date of the Hearing three years after making the above statements to IIROC Enforcement Staff, there was no evidence that the Respondent had received these funds.

¶ 25 In response to questioning by Enforcement Staff, the Respondent was adamant that he borrowed the monies from the eleven parties strictly for personal expenses. When pressed for details as to what he did with the money he received, the response was that of the funds advanced, a total of $981,500 was paid to MH partially in lieu of MH receiving monies from the Offshore Account, $278,670 was paid to CF, and $232,225 was spent on himself and his brother. At the time of the advance of funds to his brother, his brother was financially dependent upon the Respondent.

¶ 26 CF is a resident of Seattle, Washington whom the Respondent met in 2002 and in whose welfare the Respondent took an interest. When questioned about his motive for wishing to assist CF financially, the Respondent characterized CF as a person with some ability and good ideas who has had a difficult upbringing.

¶ 27 There was no evidence that the Respondent advanced funds pursuant to a legal obligation to support these people as he did.

Contraventions

¶ 28 The Notice of Hearing contains allegations of the following contraventions:

Count 1

Between March 2001 and March 2007, the Respondent, at all material times a Registered Representative with Canaccord Capital Corporation ("Canaccord"), a Member firm, arranged to borrow monies, totaling more than $1,500,000 from eleven parties, including three Canaccord clients and two Canaccord registrants. He then disbursed the majority of these monies to one or more third parties on the understanding that he would receive the disbursed money plus additional monies from another party or parties at a later date. Having acted in this manner, without any reasonable understanding or explanation for the disbursement of monies or for the expectation of receiving monies from another party(s), the Respondent acted contrary to Association By-law 29.1.

Count 2

Between November 2002 and March 2007, the Respondent, at all material times a Registered Representative at Canaccord, a member Firm, acted contrary to Association By-law 29.1 in that he engaged in personal financial dealings with three Canaccord clients by borrowing monies from these clients without the knowledge or prior consent of Canaccord.

Decision on Liability

¶ 29 The Panel finds that the Respondent did not act contrary to Association By-law 29.1 (Now IIROC Dealer Member Rule 29.1) as alleged by IIROC Enforcement Staff in Count #1 and finds the Respondent not liable on this count.

¶ 30 The Panel finds that the Respondent did act contrary to Association By-law 29.1 (Now IIROC Dealer Member Rule 29.1) as alleged by IIROC Enforcement Staff in Count #2 and finds the Respondent liable on this count.

Reasons for Decision on Liability

¶ 31 To deal firstly with Count #2.

Count 2

¶ 32 Count 2 alleges that the Respondent engaged in personal financial dealings with three of his clients without the knowledge or prior consent of his employer.

¶ 33 In a statement to his employer, the Respondent candidly acknowledged that in borrowing the monies from these clients as he did that he had "mistakenly overlooked the requirement to advise Canaccord of this activity before proceeding with it". By way of explanation for this oversight in borrowing money from LH and VM, the Respondent stated, writing of himself in the impersonal:

> The long standing friendship with [BM] tended to put this activity outside the normal broker/client relationship for which specific rules exist and which Hackett did not follow. Hackett regrets he did not appreciate the importance of his responsibility to make proper disclosure to Canaccord but acknowledges that it was incumbent upon him to do so.

¶ 34 The Respondent not only overlooked the requirement to advise his employer prior to entering into personal financial dealings with his clients, he overlooked the collateral requirement that he obtain his employer's consent prior to engaging in these dealings.

¶ 35 The matter at hand is an excellent example of why this double requirement is in place. As the Respondent has admitted, his longstanding friendship with BM caused him to ignore the client/broker relationship with his corporate client LH and the professional responsibility the Respondent had to this client. If the Respondent had followed the rules and sought the consent of his employer, the transactions between LH and the Respondent might not have occurred and the Respondent might not then have been involved in this Disciplinary Hearing.

¶ 36 However, the transactions with LH and two other clients of the Respondent did occur. And the Hearing Panel, therefore, has no difficulty in finding that in borrowing monies from his clients as he did that the Respondent acted contrary to IIROC Dealer Member Rule 29.1.

Count 1

¶ 37 Count # 1 causes the Hearing Panel a great deal more difficulty.

¶ 38 Dealer Member Rule 29.1 prohibits an Approved Person from engaging "in a business conduct or practice which is unbecoming or detrimental to the public interest".

¶ 39 The Disciplinary Sanction Guidelines published by the Investment Dealers Association of Canada and dated January 2006 (the "Guidelines"), commences the introduction on page 4 with the following statement "The securities industry is a business of trust and confidence". This introduction goes on to state on the same page that "Approved persons … must above all conduct themselves with trustworthiness and integrity, and act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole."

¶ 40 The Guidelines are not Dealer Member Rules. The Guidelines were prepared for the expressed purpose of assisting Hearing Panels in determining the appropriate sanction to be imposed as part of a Settlement Agreement or following a finding of liability in a Disciplinary Hearing. The Guidelines while not intended to be exhaustive, are thorough in canvassing the range of offences that a Hearing Panel might encounter.

¶ 41 Guideline 2.4 entitled "Undisclosed Personal Business – By-law 29.1" commences with the following:

> Registrants must conduct themselves in a professional manner. This includes ensuring that any personal business activities engaged in by the registrant are such that they do not tend to harm the standing of the profession in the eyes of the community, and that they do not bring the reputation of the profession into disrepute.

¶ 42 In her submissions on Count #1, Enforcement Counsel directed our attention to the provisions of

Guideline 2.4 and submitted that in borrowing money from the eleven parties in the manner that he did the Respondent ran afoul of the provisions of Dealer Member Rule 29.1 in the context of Guideline 2.4 as above set out.

¶ 43 Enforcement Counsel confirmed that the evidence discloses that the Respondent honestly believed that he was to receive a large sum of money from a non-Canadian source, the identity of which or the details of the terms under which he was to receive these funds he was prohibited from revealing by virtue of an oral confidentiality agreement he had entered into. Upon the receipt of these funds, there is no question that the Respondent believed that he would be in a position to repay all the loans made to him by his lenders, usually rewarding them with a very large bonus. Indeed, the Respondent shared with some of these personal lenders his belief in the imminent arrival of these funds.

¶ 44 In the Notice of Hearing there is no allegation of fraud or dishonesty. There is no allegation that the conduct of the Respondent in the course of these borrowings lacked trustworthiness or integrity or that he acted other than in an honest and fair manner in his dealings with his personal lenders. There is no allegation in Count #1 that he conducted personal business dealings with his clients undisclosed to his employer, this allegation is contained in Count # 2.

¶ 45 It appears that the essence of IIROC Enforcement Staff's complaint against the Respondent as contained in Count #1 is not the act of engaging in the series of personal borrowings from friends and relatives detailed in the Notice of Hearing, but rather that in effecting these loans, the Respondent relied completely on this mysterious source of funds to repay the loans. He certainly could not have repaid these loans from his commission earnings. It is this reliance on an undocumented, undefined, and un-quantified source of funds to repay personal loans that IIROC Enforcement Staff maintains is business conduct or practice which is unbecoming or detrimental to the public interest. It is this belief in an uncertain source of funds, IIROC Enforcement Counsel submits, that becoming known to eleven parties, most of them being close personal friends of the Respondent, puts the investment industry in disrepute and gives us sufficient grounds for sanctioning the Respondent and putting his livelihood in jeopardy.

¶ 46 The phrase "business conduct or practice which is unbecoming or detrimental to the public interest" as set out in Dealer Member Rule 29.1 and which constitutes the basis of Count #1 covers an extremely broad set of possible scenarios, some of which might or might not be relevant to disciplinary proceedings under the Dealer Member Rules.

¶ 47 It is clear from this phrase that there are at least two elements which must be present to find a particular behaviour subject to disciplinary sanction. There must be some form of business conduct or practice; and this business conduct or practice must adversely affect the public interest.

¶ 48 Guideline 2.4 assists in defining what constitutes the public interest relevant to the matter at hand in referring to activities that "harm the standing of the profession in the eyes of the community" and which "bring the reputation of the profession into disrepute".

¶ 49 Based upon the above analysis, to find the Respondent liable on Count #1 the Hearing Panel must find that the Respondent engaged in a business conduct or practice that either harmed the standing of the profession in the eyes of the community or brought the reputation of the profession into disrepute.

¶ 50 To consider firstly whether or not the Respondent engaged in a business practice or conduct.

¶ 51 The lenders were relatives, old friends or long time acquaintances of the Respondent. Some of the funds he borrowed he used for his own purposes, but the evidence discloses that the majority of the funds he borrowed he used to assist people whom he claimed needed his help. Count #1 does not deal with the Respondent's dealings with his lenders as clients. That relationship is covered by Count# 2. Therefore, for the purposes of Count #1, these loans were made on a friendship basis, from one friend to another. Nor, in most cases, was there just a single loan made. In many instances there were a series of loans made, even though the Respondent failed to repay a previous loan when it was due having to admit that the anticipated funds were not forthcoming as expected.

¶ 52 The Hearing Panel has difficulty in accepting that these personal borrowings of the Respondent constituted the concept of business practice or conduct contemplated by the relevant provision of Dealer Member Rule 29.1.

¶ 53 Even if these transactions constituted business practices or conduct carried out by the Respondent, was there a public element to them which adversely affected the standing of the profession in the community or which brought the reputation of the profession into disrepute?

¶ 54 There is no evidence that the eleven lenders advanced funds to the Respondent on the basis of his profession or because he was employed in the investment industry. Rather the evidence clearly points the other way. These parties lent the money based upon friendship. Friendship which in the case of BM turned sour and led to a lawsuit.

¶ 55 Nor was there evidence that the borrowing activities of the Respondent were known to anyone other than the people lending him money. Indeed, apart from BM and VM, the husband and wife principals of LM, there was no evidence that one lender knew that the Respondent was borrowing monies from other friends and relatives. Even the Respondent's employer had no knowledge of these activities until publication of the details of the lawsuit between BM and the Respondent.

¶ 56 More importantly, apart from the newspaper article advising of BM's lawsuit against the Respondent and giving only BM's version of the relationship, there was no evidence before us that suggested that the Respondent's personal borrowings had either adversely affected the standing of the profession in the community or brought the reputation of the profession into disrepute.

¶ 57 If on the evidence before us, it appeared that the Respondent dealt fraudulently or dishonestly, that his actions lacked trustworthiness or integrity, or that he acted other than in an honest and fair manner, the Hearing Panel might well have viewed the Respondent's actions more critically. There was none of this. The Respondent cooperated fully with Enforcement Staff and readily made available his detailed notes and meticulous accounting records. There was no attempt to hide or prevent any of his dealings from coming forward to Enforcement Staff.

¶ 58 In finding that the Respondent did not contravene Dealer Member Rule 29.1, the Hearing Panel should not in any manner be taken as condoning the actions of the Respondent in his personal loan activities. However, there must be a division between an Approved Person's personal activities and his or her professional activities. That line will be very difficult to define and depend upon the circumstances of the case. In the matter at hand, the Hearing Panel finds that the personal loan activities of the Respondent fell on the personal rather the professional side of this line. Therefore, such activities should not be subject to disciplinary sanctions under the provision of the Dealer Member Rules.

¶ 59 In summary, to find liability, the Hearing Panel must find that by believing implicitly in an ill defined source of funds, and by communicating this belief to his eleven lenders, the Respondent engaged in a business conduct or practice which is unbecoming or detrimental to the public interest. The Hearing Panel determines that IIROC Enforcement Staff has not demonstrated this allegation and therefore finds that the Respondent did not contravene Dealer Member Rule 29.1 as alleged in Count #1.

Decision on Penalty and Costs

¶ 60 In her submissions on an appropriate penalty, Enforcement Counsel recommended that the Respondent be suspended for a ten year period. She did not recommend a fine as there is still a large amount of money owing by the Respondent to his personal lenders and IIROC Enforcement Staff believes that the Respondent's resources are better deployed in the repayment of these loans rather than in the payment of a fine.

¶ 61 In *Pandelidis* [2005] I.D.A.C.D. No 16, Bulletin No. 3416, May 5, 2005, the Hearing Panel in finding the respondent liable for breaching Dealer Member 29.1 in personal business dealings with one client without his employer's knowledge or consent over a period of less than a year determined in the circumstances that a suspension of five years was an appropriate penalty.

¶ 62 In *Holoday* [1999] I.D.A.C.D. No. 37, Bulletin No. 2670, December 3, 1999, the respondent entered into a settlement agreement agreeing to a permanent prohibition from registration in any capacity where the respondent had entered into personal financial dealings with nine clients without his employer's knowledge or consent over a two year period involving transactions totaling $1.6 million.

¶ 63 Similarly, a permanent ban was determined to be an appropriate penalty in *Druhan* [2005] I.D.A.C.D. No. 11, Bulletin No. 3406, March 28, 2005 where the respondent was found liable to have engaged in personal financial dealings with three clients over a period of three years without his employer's knowledge or consent in receiving financial compensation from these clients in the amount of $373, 500.

¶ 64 In determining an appropriate penalty, the Hearing Panel takes into account the following:

1. With each of the three clients involved, the Respondent had a personal relationship extending back well over thirty years. Unfortunately, the Respondent forgot that these people were clients as well as old friends;
2. For two of these three clients, there was a series of transactions extending over a period of more than four years, totaling eight transactions in one instance and three in the other, and involving loans amounting to a total of $1,078,500;
3. The Respondent had been in the investment industry for many years and should have been aware of the Dealer Member Rules and that he was in breach of them in acting as he did;
4. From the beginning of the investigation, the Respondent has cooperated fully with IIROC Enforcement Staff.

¶ 65 Notwithstanding the age and poor health of the Respondent, due to the gravity with which the Hearing Panel views the actions of the Respondent in his dealings with his clients, the Hearing Panel believes that a ten year suspension is an appropriate penalty for the Respondent in this matter. In addition, should the Respondent chose to return to the investment industry, to ensure that he clearly understands the obligation he has to his clients, even if such clients are also old friends, he shall first write and pass the Conduct and Practices Handbook Course and shall be subject to three years of close supervision.

¶ 66 On the issue of costs, IIROC Enforcement Counsel filed a Bill of Costs amounting to $18,774.75 and advised that she had forwarded a copy of this document to the Respondent.

¶ 67 Enforcement Counsel also directed the attention of the Hearing Panel to the Hearing Panel's observations on costs in its Order of September 29, 2008 when it observed that the Respondent had come to the September 17, 2008 hearing unprepared, making the application to stay the matter only after IIROC had incurred substantial effort and costs to initiate the hearing. In granting the Order at that time, the Hearing Panel stated that it would address the issue of costs for the September 17, 2008 hearing upon the final disposition of this matter.

¶ 68 Dealer Member Rule 20.49(1) entitled "Assessment of Costs" states as follows:

> (1) 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.

¶ 69 Dealer Member Rule 20.49(1) suggests a two step process in the awarding of costs by the Hearing Panel; namely the assessment of these costs and the order for their payment.

¶ 70 The Hearing Panel finds that an assessment of costs against the Respondent in the amount of $18,774.75 is appropriate and reasonable in the circumstances.

¶ 71 However to follow the reasoning used by IIROC Enforcement Counsel in her recommendation on an appropriate penalty, the Hearing Panel will not make an order against the Respondent for payment of these costs, sharing the belief that the Respondent's resources are better deployed in the repayment of his personal loans rather than the payment of these costs.

Order on Penalty and Costs

¶ 72 In accordance with the provisions of Rule 20.33(2) the following penalties are imposed upon the Respondent:

1. a ten year suspension from approval with IIROC in any capacity;
2. prior to re-admission to the industry, the Respondent shall rewrite and pass the examination based upon the Conduct and Practices Handbook for Securities Industry Professionals; and
3. upon his re-admission to the industry, the Respondent shall be subject to a three year period of close supervision

¶ 73 In accordance with the provisions of Rule 20.49(1) IIROC costs are assessed against the Respondent in the amount of $18,774.75. However, no order is made against the Respondent for payment of these costs.

Dated at Vancouver, British Columbia, this 4th day of February 2010.

John Rogers, Chair

Bob Sutherland

Don Teatro