

Re Vitug

IN THE MATTER OF:

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

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

AND

JULIUS CAESAR PHILIP VITUG

2009 IIROC 31

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

Heard: June 24, 2009
Decision: July 7, 2009
(30 paras.)

Hearing Panel:

Paul M. Moore, Q.C, Chair
F. Michael Walsh
Guenther Kleberg

Appearances:

Natalija Popovic & Tamara Brooks, for the Association
Alistair Crawley, for the Respondent

DECISION AND REASONS AS TO PENALTY

Decision as to Penalty

- ¶ 1 We order the following penalties against the respondent:
- a. a permanent ban from approval of the respondent in any category under IIROC's rules, and
 - b. a fine of \$350,000 payable to IIROC.
- ¶ 2 We order that the respondent pay \$80,000 to IIROC towards its costs.

Argument of Counsel

- ¶ 3 Staff tabled a bill of costs showing total costs incurred by IIROC at \$160,000. Nevertheless, staff claimed that costs in the amount of \$80,000 would be appropriate in the circumstances.
- ¶ 4 Staff requested a permanent ban in view of the serious findings against the respondent. This was necessary to protect the public.
- ¶ 5 Staff also requested a disgorgement order requiring the respondent to pay to IIROC the sum of

\$500,000. This, staff maintained, was the amount of cash that passed through EB's accounts.

¶ 6 Finally, staff submitted that a serious fine would be required. She suggested \$250,000 (being \$125,000 for activities relating to the accounts of each of EB and DT).

¶ 7 Respondent's counsel submitted that a permanent ban was not appropriate for the respondent who was currently a registrant and had no prior history of violations. He suggested that a ban of up to one year should be the maximum that this panel impose.

¶ 8 Respondent's counsel maintained that a disgorgement order should not be made because there was no evidence of profits or commission and fees that the respondent gained because of the transactions.

¶ 9 Respondent's counsel suggested that an appropriate fine would not be more than \$100,000 and that this would suffice as a general deterrent. He suggested that \$30,000 would be an appropriate amount for costs.

¶ 10 Respondent's counsel based his argument on our decision and reasons on the merits without regard for any determination that the Ontario Securities Commission may make on a hearing and review of the decision.

Reasons

¶ 11 There was no evidence that the cash that passed through EB's accounts represented profits or commissions or fees. We have no basis on which to make a disgorgement order.

¶ 12 As we stated in our reasons on the merits, the respondent is someone who does not appear to be concerned about the truth. He acted deceitfully and with intention to avoid discovery by his employers.

¶ 13 He has shown no remorse for his actions.

¶ 14 Although the respondent has no disciplinary history, and although there were no complaints against him by his aunt or his father-in-law or anyone else, as far as we know, his actions were deliberate, deceptive and contrary to the interests of his employers, his clients, and the public-at-large.

¶ 15 However, EB and DT are relatives of the respondent. They may have been complicit in his activities. They may have been, for family reasons, reluctant to make any complaints against the respondent. Accordingly, we do not put much weight on the fact that there were no complaints from them about the respondent's conduct.

¶ 16 In the last analysis, we determine that the respondent is not the type of person that anyone should want in the securities industry. Persons in the industry should contribute to, and not detract from, public confidence in the industry. As we said in the decision on the merits, the respondent's contraventions are serious in that they go to the fundamental foundation of trust between the registered representative and his employer and the registered representative and his clients. The respondent's misconduct is serious and demonstrated a clear disregard for industry standards and his employer's policies and procedures.

¶ 17 We determine that it is necessary to protect the public against the respondent in the future by keeping him out of the industry.

¶ 18 None of the cases presented to us was directly relevant as a guide to an appropriate fine for the respondent.

¶ 19 Any fine should be significant to the respondent and his circumstances.

¶ 20 He is a high income earner. The dollar volumes involved in his activities were not insignificant. The infractions were deceitful and serious. There was planning and organization by the respondent over a significant period of time to carry on his deception.

¶ 21 A fine of \$350,000 will be significant to the respondent and should act in part as a general deterrent to others and as a specific deterrent to him.

¶ 22 We determine that the bill of costs is reasonable and reflects the costs of IIROC in this matter, and accept staff's suggestion that an amount of 50% of the costs would be appropriate.

Stay of Penalty Hearing

¶ 23 At the beginning of the hearing, counsel for the respondent advised us that the Ontario Securities Commission would be holding a hearing and review on July 20, 2009, of our decision and reasons on the merits in this matter rendered on March 31, 2009.

¶ 24 Accordingly, he suggested, the panel might consider staying this penalty hearing until after the decision of the Commission. In the alternative, he requested that any decision as to penalty by this panel be stayed, with respect to implementation, until after the decision of the Commission.

¶ 25 Staff suggested that it would be appropriate to grant the stay with respect to implementation. However, in view of the time and effort put in by everybody to prepare for this hearing, and taking into account scheduling difficulties if this hearing were stayed, she suggested that the hearing itself not be stayed.

¶ 26 We denied the request to stay the hearing.

¶ 27 A stay is an extraordinary remedy and should only be granted in extraordinary circumstances.

¶ 28 Staying the hearing as to penalty until after the hearing and review by the Commission could result in unnecessary delay.

¶ 29 However, we determined that the implementation of the penalties ordered by us today should be stayed until the termination of the hearing before the Commission.

¶ 30 In our view, the respondent will be in no way prejudiced if we make our penalty orders today, but stay the implementation of the orders.

DATED at Toronto this 7th day of July, 2009.

Paul M. Moore, Q.C
F. Michael Walsh
Guenther Kleberg

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