

# Re Georgakopoulos

IN THE MATTER OF:

THE BY-LAWS OF THE  
INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

KONSTANTINOS GEORGAKOPOULOS

2009 IIROC 41

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

Heard: August 6, 2009 at Vancouver, BC  
Decision: September 7, 2009  
(42 paras.)

## Hearing Panel:

Stephen D. Gill, Chair, Robert Travers, Christopher Lay

## Appearances:

Barbara G. Lohmann, for IIROC

Douglas R. Eyford, for the Respondent

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## DECISION ON PENALTY

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¶ 1 After an eight day hearing, this hearing panel, by written decision dated May 12, 2009, found Konstantinos Georgakopoulos (“Georgakopoulos” or the “Respondent”) had contravened Association By-laws and Regulations as alleged in Count 1 and 2 in the Notice of Hearing. This hearing was held for the purpose of determining penalty.

¶ 2 Submissions were made by Ms. Lohmann, on behalf of the Association, and by Mr. Eyford on account of Georgakopoulos. We are indebted to counsel for their able written submissions and authorities.

¶ 3 The hearing panel, in its earlier decision, found that the IDA had proven all of the elements of Count 1 and Count 2 of the Notice of Hearing, and that the Respondent committed the contraventions alleged therein. The allegations set forth in the counts and the Rules, are as follows:

### COUNT 1

Between January and December 2004, the Respondent, at all material times a Registered Representative (“RR”) at Golden Capital Securities Ltd. (“Golden”), a Member Firm, failed to properly perform his role as gatekeeper to the capital markets and acted contrary to Association Regulation 1300.1 (a) by facilitating certain transactional activity in certain client accounts without making diligent inquiries to ensure the legitimacy of the transactions in circumstances

which should have called the transactional activity into question because it was peculiar, suspicious or appeared to be consistent with market manipulation, deception or other improper market related activity.

#### RULE 1300

#### SUPERVISION OF ACCOUNTS

##### 1300.1 Identity and Creditworthiness

(a) Each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

#### COUNT 2

Between January and December 2004, the Respondent, at all material times an RR at Golden, a Member Firm, failed to properly perform his role as gatekeeper to the capital markets and acted contrary to Association By-Law 29.1 by failing to observe the high standards of ethics and conduct in the transaction of his business by facilitating certain transactional activity in certain client accounts without making diligent inquiries to ensure the legitimacy of the transactions in circumstances which should have called the transactional activity into question because it was peculiar, suspicious or appeared to be consistent with market manipulation, deception or other improper market related activity.

#### RULE 29

#### BUSINESS CONDUCT

29.1 Dealer Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) ...

¶ 4 Counsel for Georgakopoulos submitted that the assessment of penalty was complicated by the panel's findings that Georgakopoulos had committed the contraventions alleged in Count 1 and Count 2. He submitted that there was, in substance, one infraction in that the Counts are not stated in the alternative, but in relation to the same factual events. Counsel submitted that it is improper for a person to be convicted twice for the same offence, and the law prevents an accused from being punished more than once for the same matter, and cited *Kienapple v. The Queen*, [1975] 1 S.C.R. 729. Counsel submitted that in assessing penalty, the panel would be wrong to sanction Georgakopoulos for breach of both Regulation 1300.1 and By-law 29.1.

¶ 5 The mere presence of a factual nexus does not necessarily trigger the *Kienapple* principle. The Supreme Court of Canada in *R v. Prince* [1986] 2 S.C.R. 480 ("*Prince*"), a decision of Chief Justice Dickson, stated:

In my opinion the application of *Kienapple* is not so easily triggered. Once it has been established that there is a sufficient factual nexus between the charges, it remains to determine whether there is an adequate relationship between the offences themselves. (*Prince*, para. 22)

¶ 6 The triggering of the *Kienapple* principle also requires an adequate legal nexus between the charges. This is because "if an accused is guilty of several wrongs, there is no injustice in his or her record conforming to that reality". (*Prince*, para. 24). Dickson C.J. endorses Lambert J.A. in *R v. Harrison* (1978) 7 C.R. (3d) 32 (BCCA):

There must be a relationship of sufficient proximity, firstly as between the facts, and secondly as between the offences, which form the basis of two or more

charges for which it is sought to invoke the rule against multiple convictions. (*Prince*, para. 24).

¶ 7 In *Prince*, the court directed that instead of a focus on the common elements of an offence, the court directs its focus on the distinctive elements between the two offences. In other words, the presence of common elements among the charges does not trigger the *Kienapple* principle, rather the absence of additional, distinguishing features does. Therefore, an accused may be convicted of more than one offence in the same criminal transaction, if both offences have sufficient distinguishing elements. Dickson C.J. states:

The requirement of sufficient proximity between offences will only be satisfied if there is no additional or distinguishing element that goes to guilt contained in the offence for which a conviction is sought to be precluded by the *Kienapple* principle. (*Prince*, para. 32).

¶ 8 In this case, Georgakopoulos was convicted of failing to properly perform his role as gatekeeper to the capital markets pursuant to IDA Rule 1300.1(a): each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

¶ 9 The Respondent was also found to have breached IDA By-law 29.1, which required that the Respondent, as registered representative:

- i. Shall observe high standards of ethics and conduct in the transaction of their business,
- ii. Shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

¶ 10 We agree that By-law 29.1 is broader than Rule 1300.1. The constituent elements that it requires are:

- i. A failure to observe high standards of ethics in the transaction of business;
- ii. A failure to observe high standards of conduct in the transaction of business;
- iii. Business conduct or practice that is unbecoming; or
- iv. Business conduct or practice that is detrimental to the public interest.

¶ 11 Because of By-law 29.1's breadth, a breach of Rule 1300.1 would likely invariably be a breach of By-law 29.1.

¶ 12 In our view, this panel in its decision did make findings of fact to support a conviction under By-law 29.1 separately from a conviction under Rule 1300.1. They are that the Respondent:

- i. Failed to advise his employer, Golden, of Mayer Amsel's history (para. 93); and
- ii. Failed to advise his employer, Golden, of suspicious trading (para. 95).

¶ 13 Notwithstanding this, it is our view that the *Kienapple* principle may be triggered here because the offence under By-law 29.1 is proven by the facts that prove the offence under Rule 1300.1 and, as such, the two offences may in reality be the same offence. We will therefore follow the course taken by the panel in the IDA case of *Re Ng* [2007] IDACD No. 47, December 20, 2007, at para. 52. We will impose only one set of sanctions which will apply to both convictions.

¶ 14 It is helpful at this juncture to set out the position taken by each party in relation to penalty. Counsel for the Association submitted that appropriate sanctions in the circumstances of the case would be :

- a. a 10 year suspension;

- b. a fine of \$100,000
- c. a requirement that Georgakopoulos successfully re-write the CPH as a condition of readmission; and
- d. disgorgement of commissions in the amount of \$24,576 (total commissions on trading activity was \$49,152 and it is IIROC's understanding that Georgakopoulos' commission split with Goldenwas 50/50);
- e. costs in the amount of \$50,000.

¶ 15 Counsel for the Respondent submitted the appropriate sanction in the circumstances of this case would be:

- a. a 12 month suspension;
- b. a fine in the range of \$25,000 to \$40,000;
- c. as a condition for reapproval, that the Respondent write and pass the Conduct and Practices Handbook Examination;
- d. upon resumption of employment as a registered representative that he be subject to close supervision for a period of 6 months;
- e. disgorgement of net commissions in the amount of \$4,621.85 for the "match" trades in the Amsel account; and
- f. a contribution towards the regulator's costs.

¶ 16 The range of penalties that can be imposed by a hearing panel in respect of an Approved Person is set out in Rule 20.33 and include any one or more of:

- a. a reprimand;
- b. a fine not exceeding the greater of \$1,000,000 per contravention;
- c. an amount equal to 3 times profit made or loss avoided by such approved person by reason of the contravention;
- d. suspension of approval for any period of time and upon any conditions or terms;
- e. terms and conditions of continued approval;
- f. prohibition of approval in any capacity for any period of time;
- g. termination of the rights and privileges of approval;
- h. revocation of approval;
- i. a permanent bar from approval with IIROC; or
- j. any other fit remedy or penalty.

¶ 17 We have obtained assistance from the Dealer Member Disciplinary Sanction Guidelines, and in particular the General Principles Section. Therein is set out under the title **Main Concerns When Determining Appropriate Penalty** a list derived from the *Re Derivative Services Inc.* decision, namely a hearing panel's main concerns in determining an appropriate penalty are:

- i. Protection of the investing public;
- ii. Protection of IIROC's Membership;
- iii. Protection of the integrity of IIROC's process;
- iv. Protection of the integrity of the Securities markets; and

v. Prevention of a repetition of conduct of the type under consideration.

¶ 18 Under the heading **Disciplinary Sanctions as Deterrents** the General Principles state:

Registrants and Dealer Member firms have significant responsibilities that they must meet if investors are to be protected and market integrity maintained. Registrants who choose to act in ways that threaten the integrity of the capital markets must have the expectation that they will be held accountable through enforcement action by regulators. Sanctions should be based on the circumstances of the particular misconduct by a respondent with an aim at general deterrence.

General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations. As was observed by the Hearing Panel in *Re Mills*, [2001] I.D.A.C.D. No. 7, April 17, 2001, at p. 3:

Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the district Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment.

However, an important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on "repeat offenders". For this reason, when appropriate, a Hearing Panel should consider a respondent's relevant disciplinary history in determining sanctions. Relevant disciplinary history may include (a) past misconduct similar to that at issue; or (b) past misconduct that, while unrelated to the misconduct at issue, evidences prior disregard for regulatory requirements, investor protection, or commercial integrity. Even if a respondent has no history of relevant misconduct, however, the misconduct at issue may be so serious as to justify a higher penalty.

¶ 19 Further the hearing panel in *Ng* cited the decision of *IDA v. Octagon Capital Corp.*, [2007] I.D.A.C.D. no. 16, with respect to the imposition of sanctions, which we adopt:

It is our responsibility to take into account the aggravating and mitigating factors listed above in determining the appropriate penalty which should be imposed. Precedents from other cases which have been cited to us, although instructive, are not always helpful. Many of these decisions are based on settlements which may very well have been based on different considerations of the Enforcement Council and the counsel for the member.

¶ 20 The **Guidelines** set out key considerations when determining sanctions and we have reviewed these in relation to the facts here. Those considerations, which are illustrative, not exhaustive, are:

- 3.1 Harm to Clients, Employer and/or the Securities Market
- 3.2 Blameworthiness.
- 3.3 Degree of Participation
- 3.4 Extent to which the Respondent was Enriched by the Misconduct
- 3.5 Prior Disciplinary Record
- 3.6 Acceptance of Responsibilities, Acknowledgement of Misconduct and Remorse
- 3.7 Credit for Cooperation
- 3.8 Voluntary Rehabilitative Efforts
- 3.9 Reliance on the Expertise of Others
- 3.10 Planning and Organization
- 3.11 Multiple Incidents of Misconduct Over an Extended Period of Time
- 3.12 Vulnerability of Victim
- 3.13 Failure to Cooperate with the Investigation
- 3.14 Significant Economic Loss to the Client and/or Dealer Member Firm

¶ 21 There are specific guidelines for **Failure to Know Your Client**; that guideline states:

The Know Your Client ruler is of paramount importance for the securities industry. All registrants must make diligent and business-like efforts to learn and record the essential financial and personal circumstances, and the investment objectives of each client. Knowing your client is a fundamental ongoing obligation that a registrant is required to meet in order to be able to act in the best interests of his/her clients.

¶ 22 The sanctions for the failure to know your client rule are a minimum fine of \$10,000; re-write CPH; period of close and/or strict supervision; period of suspension (in most egregious cases).

¶ 23 We are cognizant of the fact that the IDA's role as a disciplinary tribunal is primarily preventative and protective of the markets. Discipline proceedings are not focused on punitive or retributive sanctions.

As was stated in *Mills (supra)*, the primary purpose of a penalty is prevention. The means by which prevention is sought, and hopefully achieved, is deterrence. Deterrence is directed to the individual who has been convicted and to others who may be in a position to offend. The latter deterrence is called general deterrence.

Re Ng, para. 64

¶ 24 In this gatekeeper case, it is significant that this Panel, at paragraph 97 of its decision, found that Georgakopoulos was a willing participant in that he either knew, or ought to have known, of what clearly appeared to be an ongoing market manipulation during the review period. We found that if the Respondent was not a willing participant in that market manipulation, he was wilfully blind to the trading activity, which was in our view very peculiar, suspicious, and appeared to be consistent with market manipulation, deception, or other improper market related activity.

¶ 25 This Panel further found at paragraph 103:

It is critical to note that the obligation on the Respondent, as gatekeeper, was to identify possible improper or illegal market activity at an early stage. He was

required to make a reasoned judgment on the basis of the information that was available to him. In our view, the information that was available to the Respondent, at an early stage, should have caused him to seek the advice of the Compliance Department, and the Branch Manager, at Golden. The Respondent should have been cognizant of the possible role the trading activity of the Amsel brothers could be playing in a broader, illegal scheme, particularly given the regulatory history of Mayer Amsel.

¶ 26 We agree with the submission of counsel for IIROC that this case must be distinguished from cases where there was no finding of moral turpitude, dishonesty or deceit, or no wilful participation in the wrongdoing of others. Further, we did not find Georgakopoulos to be a credible witness.

¶ 27 Georgakopoulos does not have a previous disciplinary history. However, at the commencement of the relevant period, Georgakopoulos was experienced as he had been a registrant in the securities industry for eight years.

¶ 28 We have carefully reviewed the authorities referred to by counsel, including *Re Hauchecorne*; *Re Boulieris*; *Re Freedman*; *Re Faiello*; *Re Ng*; *Re Dow*; *Re Trevor Koenig*; *Re Kasman and Anderson*; *Re Mirza*; *Re Saint-Pierre*; and *Re Toban*. Depending on the facts of each case, there was a range of penalties imposed. For example, in *Re Hauchecorne* the penalties were a \$200,000 fine; disgorgement of commissions of \$95,000; a permanent withdrawal of exchange approval; and costs of the hearing.

¶ 29 In *Toban*, the penalty was a permanent ban; a fine of \$100,000; disgorgement in the amount of \$20,900; and costs in the amount of \$25,000.

¶ 30 In *Freedman*, the panel determined that the appropriate penalty was a fine of \$35,000; a 3 year suspension; re-write the CPH; and costs of \$15,000.

¶ 31 In *Faiello*, the sanction was a \$20,000 fine; 2 year suspension; successful re-write of the CPH; and costs of \$5,000.

¶ 32 In *Dow*, the penalty was a permanent prohibition of approval; a \$300,000 fine; disgorgement of \$362,000; and costs of \$110,000.

¶ 33 Counsel for IIROC submitted that the facts and findings in this case are closer to those in *Toban*, *Dow* and *Hauchecorne*.

¶ 34 We agree with Association counsel's submission that the important considerations, in this case, include the following:

- a. Georgakopoulos was found to be a willing participant or to be wilfully blind (unlike in *Kasman and Anderson*);
- b. Information was available to him at an early stage and he could therefore have taken preventative measures at that time (*Hauchecorne*);
- c. He was dealing with someone (Mayer Amsel) who he knew had a scandalous regulatory history in the United States (as in *Dow*);
- d. He did not advise his firm (Golden) about Mayer Amsel's regulatory history (as in *Dow*);
- e. He admitted he was aware of his Gatekeeper obligations as outlined in the CPH and in Golden's Compliance Manual (as in *Toban*);
- f. The conduct took place over one year;
- g. During that year, there were numerous instances of irregular and suspicious trading;
- h. He was not a newcomer to the securities industry (as in *Toban* and *Hauchecorne* and unlike in *Boulieris*);

- i. He was found not to be a credible witness (as in Toban);
- j. He had not exhibited any remorse for his actions (as in Hauchecorne);
- k. The market maker, John Hull at Public Securities, was permanently barred from the securities industry by the NASD in the United States for his role in the same ongoing market manipulation by the Amsel brothers during the review period;
- l. His actions exposed his employer to inappropriate risk and damaged the reputation of and public confidence in the securities industry;
- m. The only mitigating factors are that Mr. Georgakopoulos cooperated with IIROC's investigation into this matter and he has no previous disciplinary history.

¶ 35 Counsel for the Respondent submitted the following factors are relevant:

- a. Mr. Georgakopoulos has worked in the securities industry since 1996 and does not have a prior disciplinary record. The hearing panel is therefore entitled to infer that he is both honourable and responsible;
- b. There is no "victim" in the sense that the trading caused financial losses to clients, third parties, or Mr. Georgakopoulos' firm. Nor is this a case where a respondent's conduct resulted in a client suffering emotional distress or anxiety;
- c. Mr. Georgakopoulos did not personally trade EDLT;
- d. He cooperated in the Regulator's investigation;
- e. The period in which Mr. Georgakopoulos was found to have contravened industry requirements was relatively short, and involved trades that occurred on 14 trading days;
- f. Mr. Georgakopoulos conduct following the Regulator's investigation has been exemplary. He worked under close supervision at both Gateway Securities Inc. and Global Securities Corporation without incident; and
- g. Mr. Georgakopoulos has incurred legal costs to defend this proceeding which when considered with a fine and a costs award will have a meaningful yet appropriate financial impact on him.

¶ 36 We also have the benefit of additional evidence relevant to penalty being a letter dated August 5, 2009 from Robin Alvarez de Araya (Exhibit 23), a letter from the President of Global Securities Corporation (Exhibit 25), and the Notice of IDA Terms and Conditions for the Respondent issued to Gateway Securities Inc. (Exhibit 24).

¶ 37 In our view, it is unnecessary for us to review the conduct of the Respondent in this case in any detail. Those particulars are fully set forth in the Decision on the merits. We have taken into account the evidence, the submissions and the various factors listed by both counsel, and the authorities they have cited.

¶ 38 In our view the conduct of Georgakopoulos was egregious. His conduct exposed his member firm to high risk, and his conduct damaged the reputation of, and public confidence in, the securities industry. In our view he was a willing participant, during the review period, in questionable activity entered into for the purpose of earning commissions. It must be remembered that the Respondent was handling all of the Amsel brothers' trades, and executing their orders, when he was in possession of facts which should have caused him to seriously question the legitimacy of the transactions. There were many "red flags" he ignored. The Respondent knew that Mayer Amsel had a very reprehensible regulatory history involving serious market manipulation and securities fraud.

¶ 39 We also heard submissions from counsel for the parties in respect of costs. In this case, the "Bill of Costs" prepared by the Association (Exhibit 22) was only given to counsel for the Respondent on the day of the penalty hearing. Counsel had no opportunity to review and consider material in the Bill of Costs to determine whether they were, in the words of By-law 20.49, appropriate and reasonable in the circumstances. In our view,

it is incumbent upon the Association to give counsel for the Respondent full particulars of any claim for costs, including a Bill of Costs, if one is to be presented, well in advance of the hearing date. We suggest it would also be helpful if any claim for costs was supported by affidavit evidence indicating the time and effort spent, so that some determination could be made as to the appropriateness and reasonableness of the claim.

¶ 40 The Bill of Costs sets out investigation and prosecution costs totalling over \$210,000. Counsel for the Association sought an order for costs of approximately 25% of what was alleged to be the actual investigation and prosecution costs. The problem is we do not have sufficient information before us to make a proper determination of this issue. However, we will have to make do with the evidence that has been submitted.

#### ORDER

¶ 41 For the reasons set out above, this Hearing Panel orders that:

- a. Mr. Georgakopoulos be suspended from approval for a period of 3 years, commencing Monday, September 14, 2009;
- b. Mr. Georgakopoulos shall pay a fine of \$50,000;
- c. For disgorgement of commissions, Mr. Georgakopoulos shall pay \$24,576;
- d. Mr. Georgakopoulos shall pay costs of \$40,000;
- e. As a condition of re-approval, Mr. Georgakopoulos shall successfully re-write the Conduct and Practices Handbook Examination.

¶ 42 These reasons may be signed in counterpart.

Dated at Vancouver B.C. this 7<sup>th</sup> day of September, 2009.

Stephen D. Gill, Chair  
Christopher Lay, Member  
Robert Travers, Member

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