

Fearn (Re)

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

ERICA FEARN

2010 IIROC 10

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

Heard: March 10, 2010 at Vancouver, BC

Decision: March 10, 2010

(9 paras.)

Hearing Panel:

Stephen D. Gill, Chair

Brian Field

Chris Lay

Appearance:

Elsa Remzella, for IIROC

R.H. Anderson for the Respondent

REASONS FOR DECISION

¶ 1 The Investment Industry Regulatory Organization of Canada (“IIROC”) issued a Notice of Hearing to the Respondent, Erica Fearn (“Fearn” or the “Respondent”), dated January 7, 2010 setting a hearing date of March 10, 2010. However, pursuant to IIROC Dealer Member Rules 20.35 to 20.40, inclusive, and Rule 15 of the Dealer Member Rules of Practice and Procedure, a Settlement Agreement negotiated by IIROC staff and the Respondent was placed before the Panel at the hearing on March 10, 2010.

¶ 2 The Panel heard submissions by counsel for the parties in support of the Settlement Agreement. For the reasons that follow, the Hearing Panel accepted the Settlement Agreement.

¶ 3 The Settlement Agreement entered into between the parties sets out the background and facts of this case, the contraventions admitted by the Respondent, and the agreed terms of settlement. It is appropriate to quote the Settlement Agreement in its entirety:

“I. INTRODUCTION

1. The Enforcement Department Staff (“Staff”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) has conducted an investigation (“the Investigation”) into the conduct of Erica Fearn (“the Respondent”).
2. The Investigation was commenced by Enforcement Department Staff (“IDA Staff”) of the Investment Dealers Association of Canada (“IDA”) prior to May 30, 2008. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No. 1., Schedule C.1, Part C (“the Hearing Panel”).

II. JOINT SETTLEMENT RECOMMENDATION

4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement (“the Settlement Agreement”) in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
6. The Settlement Agreement is subject to acceptance by the Hearing Panel.
7. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
8. The Settlement Agreement will be presented to the Hearing Panel at a hearing (“the Settlement Hearing”) for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
9. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
10. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
11. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
12. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
13. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. STATEMENT OF FACTS

- (i) Acknowledgment
14. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.
- (ii) Factual Background
15. The Respondent’s registration history with IIROC (or its predecessor, IDA) is as follows:

| Date | Member Firm | Location | Registration Category |
|-----------------|----------------------------------|--------------|-----------------------|
| 1995/09-1997/08 | Pacific International Securities | Vancouver BC | Sales Assistant/RR |
| 1997/08-1999/06 | Global Securities Corporation | Vancouver BC | RR |
| 1999/06-1999/08 | Pacific International | Vancouver BC | RR |
| 1999/08-2001/12 | Wolverton Securities | Vancouver BC | RR |
| 2001/12-2008/08 | Research Capital Corp. (RCC) | Vancouver BC | RR |

16. The Respondent resigned from RCC on August 14, 2008 and is currently not registered with IIROC.
17. The Respondent remains subject to IIROC's jurisdiction pursuant to Dealer Member Rule 20.7.
18. On June 1, 2008, the Respondent became a regulated person of IIROC.

Fail to Cooperate

19. In a letter dated June 20, 2008, Staff notified the Respondent that IIROC had commenced an investigation into her conduct while employed as an RR with the Vancouver Office of RCC. The investigation focused on her conduct with respect to trading activity in certain over-the-counter bulletin board issuers and related brokerage activities.
20. On June 23, 2009, the Respondent and her counsel ("Counsel") attended at the office of the British Columbia Securities Commission for a full day interview with Staff. At the conclusion of the interview, Staff advised the Respondent that a continuance of the interview would be required.
21. Initially, the Respondent agreed to attend for a follow-up interview on October 9, 2009. However, shortly before the interview was to take place, the Respondent's counsel informed Staff that she would not attend.
22. On October 14, 2009, Staff emailed the Respondent and asked that she clarify her intentions with respect to attending for an interview. A deadline of October 21, 2009 was imposed to respond to this request and to provide available dates to attend for an interview. Staff also informed her that should she choose not to cooperate in this investigation by not attending a further interview, IIROC would be prepared to initiate a charge of "failure to cooperate", a serious contravention of IIROC Dealer Member Rules 29.1 and / or 19.5, which may result in, among other things, a permanent ban on registration in any capacity.
23. In reply, the Respondent advised Staff that she will not attend for an interview.
24. In a letter dated October 26, 2009, Staff compelled the Respondent to attend for an interview on November 30, 2009. The letter again reminded the Respondent that should she fail to attend the interview, Staff was prepared to initiate a charge of failure to cooperate that could result in a permanent ban on registration.
25. On November 20, 2009, the Respondent informed Staff by email that she did not intend to appear at the interview scheduled for November 30, 2009.
26. On November 30, 2009 the Respondent did not attend her interview as compelled by Staff.
27. The Respondent's failure to attend for an interview has compromised Staff's ability to complete the investigation.

IV. CONTRAVENTIONS

28. On or about November 30, 2009, the Respondent failed to attend and give information in respect of an investigation being conducted by Staff, contrary to Dealer Member Rule 19.5

VI. TERMS OF SETTLEMENT

29. The Respondent agrees to the following terms of settlement:

- (i) A fine in the amount of \$50,000;
- (ii) A permanent ban on registration in any capacity with IIROC;
- (iii) The Respondent shall pay a portion of Staff's costs of this proceeding in the amount of \$2,000.00.

30. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

31. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commenced on the effective date of the Settlement Agreement.”

¶ 4 The Panel acknowledged its role under Rule 20.36 in considering the Settlement Agreement, namely recognizing the importance of the settlement process and the importance of a negotiated settlement. As was said in *Re Milewski* (1999) I DACD No. 17:

A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly following outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

¶ 5 In this case, the Respondent's failure to attend the second interview, as requested by IIROC, and provide information as required, compromised IIROC's Staff's ability to complete their investigation. This was a deliberate, conscious decision by the Respondent, having been warned of the consequences by IIROC Staff.

¶ 6 Counsel pointed out that the sanctions that had been agreed to reflect the penalties that have been imposed in a number of cases dealing with circumstances analogous to this case. We refer to the recent decision of the Panel in *Re Smith* (2009) IIROC No. 48, November 6, 2009, and the authorities cited therein.

¶ 7 Having considered fully the facts and circumstances set forth in the Settlement Agreement, the relevant authorities, and the submissions of counsel, we find that the Settlement Agreement is within the reasonable range, and is appropriate.

¶ 8 The failure of an Approved Person to comply with Rule 19.5 is a serious contravention. It is appropriate to repeat the comments of the Panel in *Re Morrison* (2009) IIROC No. 4, at paragraph 51:

51. The securities industry is a business of trust and confidence. 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. Approved Persons have agreed to abide by and comply with the Association's By-laws, **and that includes the duty to cooperate in any investigation.** As was said in *Re Stewart (supra)*, there is a general principle that the requirement to cooperate in any investigation is fundamental to maintaining an efficient, competitive market environment, and also to maintain the integrity of the securities system and protect the public interest. (emphasis added).

¶ 9 Accordingly, for these reasons, we have accepted the Settlement Agreement. We thank counsel for their able assistance.

¶ 10 These reasons may be signed in counterpart.

Dated this 10th day of March, 2010.

Stephen D. Gill, Chair

Brian Field, Member

Chris Lay, Member

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SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Enforcement Department Staff (“Staff”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) has conducted an investigation (“the Investigation”) into the conduct of Erica Fearn (“the Respondent”).
2. The Investigation was commenced by Enforcement Department Staff (“IDA Staff”) of the Investment Dealers Association of Canada (“IDA”) prior to May 30, 2008. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (“the Hearing Panel”).

II. Joint Settlement Recommendation

4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement (“the Settlement Agreement”) in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
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31. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Vancouver in the Province of BC, this 3rd day of March, 2010.

"Witness signature"
Witness

"Respondent signature"
Respondent

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 5th day of March, 2010.

"Witness signature"
Witness

"Elsa Renzella"
Elsa Renzella
Senior Enforcement Counsel on behalf of Staff of
the Investment Industry Regulatory Organization of
Canada

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 10th day of March, 2010, by the following Hearing Panel:

Per: **"Stephen Gill"**
Panel Chair

Per: **"Brian Field"**
Panel Member

Per: **"Chris Lay"**
Panel Member

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