Re Collias

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

JOHN ANASTASIOUS COLLIAS

2009 IIROC 43

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

Heard: July 29, 2009
Decision: August 31, 2009
(34 paras.)

Hearing Panel:
Wade Nesmith (Chair), Robert Travers
Appearances:
Barbara Lohmann for the IIROC
Douglas Eyford and Sara Zintz for John Collias

DECISION ON PENALTY

Introduction

¶ 1 Together with Mr. Don Teatro, we were constituted as a Hearing Panel under By-Law 20 of the Investment Dealers Association of Canada (the "IDA" or the "Association"). A hearing into certain conduct of John Collias ("Collias" or the "Respondent") was re-commenced following a period of adjournment, on May 12 and 13, 2009 and our panel issued its decision on liability on May 26, 2009. Mr. Teatro was unable to continue on the panel and accordingly, we proceeded in his absence on July 29, 2009 and received submissions on penalty.

¶ 2 The essence of our May 26, 2009 decision was that the Respondent had failed in his duties as a gatekeeper to the capital markets by breaching Regulation 1300.1. We did not find that the conduct amounted to a breach of By-law 29.1, commonly known as the rule against "conduct unbecoming", in that the conduct lacked the qualities of gross negligence or moral turpitude that in our view are requisite for a finding under that By-law.

¶ 3 The Respondent's breaches of Regulation 1300.1 resulted from his failure to fully "know his client" and from his failure to identify "red-flags" with respect to 5 trades that he executed on behalf of clients that were

"…peculiar, suspicious or appeared to be consistent with market manipulation, deception or other improper market related activity." That said, there was no finding or, for that matter, any allegation of market manipulation, deception or other improper market activity and similarly, no allegation of any losses by any persons with respect to this matter.

Mr. Collias

¶ 4 At all material times, the Respondent was employed as a registered representative with Golden Capital Securities Ltd. He first entered the industry in 1996 and remained there until his retirement from Gateway Securities Inc.("Gateway") in 2008. When the Association advised Gateway of its investigation into these matters, Gateway placed the Respondent on a period of close supervision which continued until his retirement.

¶ 5 Mr. Collias has no disciplinary history.

The Positions of the Parties

¶ 6 In this case, counsel for Staff has submitted that the following would be an appropriate penalty:

a. a 3 month suspension;

b. a fine of $30,000;

c. a requirement that Mr. Collias successfully re-write the CPH as a condition of readmission;

d. disgorgement of commission in the amount of $222 – an approximation of the commission actually received by Mr. Collias with respect to the trades in question; and

e. costs in the amount of $10,000.

¶ 7 Counsel for Mr. Collias submits that the following is an appropriate penalty:

a. a formal reprimand or, in the alternative, a fine not to exceed $5,000; and

b. if costs are to be awarded, something in the "nominal" range.

Sanctions Generally

¶ 8 It is almost trite to say, but does bear repeating, that sanctions must be individual both in respect of the facts of any particular case and with respect to the individual whose conduct is under review. There are, however, some general principles that need to be kept in mind and for some years, many of those general principles have been codified in the Disciplinary Sanction Guidelines.

¶ 9 The Guidelines are divided into two general sections, the first outlining general principles and the second identifying sanctions to be considered when the conduct under review relates to certain specific breaches of the Rules and By-laws – the "key considerations".

¶ 10 Quoting from *Re Derivative Services Inc.*, [2000] I.D.A.C.D No. 26, the Guidelines identify the following as the main concerns of a hearing panel determining penalty:

a. Protection of the investing public;

b. Protection of the Investment Dealers Association's membership;

c. Protection of the integrity of the Investment Dealers Association's process;

d. Protection of the integrity of the securities markets, and

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

¶ 11 The Guidelines go on to discussion general and specific deterrence and quote from *Re Mills*, [2001] I.D.A.C.D. No 7, April 17, 2001 at page 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 for 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."

Key Considerations

¶ 12 The list of "key considerations" in the Guidelines is not exhaustive but we have reviewed each in the context of the matter before us and have taken them into account in determining an appropriate penalty.

Specific Deterrence

¶ 13 We have reviewed the conduct in this matter and have listened to the evidence and submissions and have come to the conclusion that our penalty does not need to concern itself with specific deterrence. As we have pointed out, this is a breach of the Rules involving the opening of two accounts and the conduct of 5 trades. The investigation in this matter commenced shortly after the trades occurred and at that time, Mr. Collias was placed on close supervision. He engaged counsel. He was interviewed on at least one occasion. In short, his failings were quickly and clearly brought to his attention. He is no longer employed in the industry. Any requirement for specific deterrence has already been dealt with through the natural course of the investigative process.

General Deterrence

¶ 14 The Guidelines declare that sanctions should "deter others from engaging in similar misconduct and improve overall business standards in the securities industry". In the instant matter, that requires us to craft a penalty that will reinforce the importance of the "gatekeeper" role – the need for industry members to be vigilant with respect to suspicious trading.

Precedents

¶ 15 A number of cases were placed before us to assist in providing guidance with respect to an appropriate penalty. As one would expect, none of the cases was directly on point, however, several provided guidance with respect to an appropriate range of penalties.

Suspension

¶ 16 Given the Association's position that a suspension is appropriate, it is important to deal with that issue first. Section 4.3.1 of the Guidelines reads as follows:

"A suspension may be appropriate where:

- There have been numerous serious transgressions;
- There has been a pattern of misconduct;
- The respondent has a disciplinary history;
- The misconduct has an element of criminal or quasi-criminal activity; or
- The misconduct in question has caused some measure of harm to the integrity of the securities industry as a whole."

¶ 17 We have reviewed these criteria carefully and find no support for the Association's submission that a suspension is appropriate. It is apparent that none of the above factors was at play in the matter at hand.

¶ 18 In addition, we have reviewed the precedents placed before us to test this conclusion. In particular, Association counsel provided us with the following decisions:

Re: Ron Aloni, Penalty Decision, IDA, July 22, 2008

In the Matter of Jeffrey Kasman and Clinton Anderson, Ontario Securities Commission; July 14,

2009

Re: James Corey Wilton, [2009] IIROC No. 20, April 2, 2009

Re: Ng, [2007] I.D.A.C.D. No. 47 December 20, 2007

¶ 19 We do not believe that a recitation of the facts of each of these cases is necessary. However, there are some salient matters that we wish to highlight that in our view distinguish those cases from the one with which we are dealing.

¶ 20 Our review of those cases demonstrates that each involved a finding that the respondent's conduct breached By-law 29.1. We have made a specific finding in the instant matter that there was no breach of that By-law. As we have earlier pointed out, in our view, such a finding necessarily involves a finding by the hearing panel that the conduct in question had a quality of moral turpitude or represented something in the nature of gross negligence, something we found lacking in Mr. Collias' case. While some of those cases may not have addressed the point directly, we feel that our finding in this regard is a significant distinguishing feature.

¶ 21 In each of those cases there was a finding that a manipulation or other form of improper trading or conduct was occurring, and that the conduct of the respondent in the particular case assisted that in some way, as a result of that respondent's failure to respond appropriately to the "red flags" that were present. In the instant matter there was not even an allegation of a manipulation or other improper trading. What was alleged and what we found was that the trading was unusual and should have raised "red flags". In our view, this is a significant difference.

¶ 22 In two of the four cases, significant losses occurred to third parties. That is not the case here.

¶ 23 In conclusion, we find that a period of suspension would be inappropriate in this matter. We are, we believe, supported in this conclusion by the quote from Re Mills referenced above:

> "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." (emphasis added)

¶ 24 In our view, a suspension would be an excessive penalty and would bring this process into disrepute.

Fine

¶ 25 Association counsel urged that in addition to a suspension, a fine was necessary to bring home to others the necessity of the role of the gatekeeper. Counsel for Mr. Collias submitted that a reprimand would be sufficient, but in the alternative, a fine not to exceed $5,000 would be appropriate.

¶ 26 We agree with Association counsel that a fine is necessary. The gatekeeper role is fundamental to safe and efficient markets. Brokers occupy a unique position and are, by virtue of that privileged point of view, particularly able to monitor and identify improper trading – trading that can harm individuals or otherwise damage the reputation of the capital markets. The importance of this role must be highlighted to others in the industry.

¶ 27 We found that the breaches by Mr. Collias were relatively minor. However, given the importance of the gatekeeper role, those breaches cannot go unpunished.

¶ 28 It is clear that Mr. Collias has suffered a "punishment" of sorts already. We assume that he has incurred significant legal costs. It is clear that his reputation will have suffered as a result of these proceedings. However, in our view, the gatekeeper role is of such fundamental importance that there must be further sanction.

¶ 29 Counsel for the Association argued for a fine of $30,000. We find that excessive in these circumstances and inconsistence with precedents.

¶ 30 We impose a fine of $5,000. All members must understand the importance of the gatekeeper role, and while we are of the view that a suspension is not required, we are equally of the view that a reprimand is both insufficient and also not consistent with precedents provided to us.

Miscellaneous Penalties

¶ 31 Association counsel also urged us to consider disgorgement and a re-writing of the CPH examination. In our view, disgorgement in this case (approximately $220 from Mr. Collias' perspective) is de minimus. With respect to the examination, Mr. Collias has no disciplinary history and no suggestion was made that he has made other serious errors in the conduct of his life as a broker. We think it is obvious that Mr. Collias understands the nature of his improper conduct in this matter and do not believe that a retaking of the examination is required. Accordingly we make no order with respect to disgorgement or the rewriting of the exam.

Costs

¶ 32 Counsel for the Association presented a bill of costs of approximately $44,000 that was largely unchallenged by Mr. Collias. Association counsel submitted that a contribution of $10,000 to those costs would be appropriate. Counsel for Mr. Collias argued that costs should be nominal.

¶ 33 We recognize that we should aggregate costs and the fine when considering the total financial penalty for the Respondent. We have taken into account the Respondent's cooperation in these proceedings, as evidenced by a number of admissions, and believe that the appropriate apportionment of costs should include a contribution by the Respondent of $5,000.

Conclusion

¶ 34 In summary we order that Mr. Collias:

a. pay a fine of $5,000 within 6 months of this order; and

b. pay a further $5,000 on account of the Association's costs in connection with this matter.

Dated at Vancouver, BC this 31st day of August, 2009.

Wade Nesmith, Chair

Robert Travers