

# Re Van Benthem & Petriccione

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

**PAUL VAN BENTHEM AND ANTHONY PETRICCIONE**

2010 IIROC 18

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

Heard: April 13, 2010  
Decision: April 13, 2010  
(10 paras.)

## **Hearing Panel:**

Messrs. Frederick Webber, Selwyn Kossuth and Guenther Kleberg

## **Counsel:**

Ms Natalija Popovic, Mr. Milton Chan, Enforcement Counsel  
Daniel Bernstein, Respondents' Counsel (not present)  
Michael Magonet, Respondents' Counsel (not present)

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## **HEARING PANEL DECISION**

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¶ 1 This is a disciplinary hearing pursuant to Notices of Hearing dated February 22, 2010 to determine whether the Respondents committed the following contravention, as alleged by IIROC:

In or about November 2009, the Respondents, former registrants of IIROC, failed to cooperate with IIROC in that they each refused to attend and give evidence in relation to a discipline hearing, in contravention of IIROC Rule 20.31.

¶ 2 At the outset of the hearing, counsel for IIROC advised the panel that Notices of Hearing had been served on each of the Respondents, that Responses thereto had not been received by IIROC and that she had been personally advised by Respondents' counsel that neither they nor the Respondents would attend this hearing.

¶ 3 Pursuant to IIROC Rules of Practice and Procedure 7.2 and 13.5 the hearing proceeded in the absence of the Respondents and their counsel, and since the relevant facts in relation to both Respondents were identical, both matters were dealt with together.

¶ 4 The charge in these proceedings, involves a separate but related proceeding brought by IIROC against the Respondents' former supervisor (the Related Proceeding). In the course of the Related Proceeding, by letters dated November 11, 2009, IIROC, among other things, compelled the Respondents to attend and be cross examined by counsel for the supervisor in the Related Proceeding.

¶ 5 On or about November 17, 2009, each Respondent, through his counsel, advised that he would not attend to be cross examined as compelled by IIROC. In or about December 2009, IIROC staff advised each Respondent, through his counsel, that it would consider the refusal to attend to give evidence as compelled by IIROC, to be a regulatory violation and that it would commence disciplinary proceedings for failure to cooperate in this regard and seek the appropriate sanctions. Each Respondent subsequently advised, through counsel that he would not defend the failure to cooperate proceeding.

¶ 6 Pursuant to IIROC Rule 20.31, each Respondent has an obligation to attend and give evidence respecting any matter relevant to IIROC enforcement hearings and failure to do so constitutes a contravention of the Rules and may result in disciplinary action under Rule 20.33.

¶ 7 The facts outlined above are set forth in the Notices of Hearing respecting each of the Respondents. Pursuant to Rules 7.2 and 13.5 this panel may accept as proven the facts and contraventions alleged by IIROC in the Notices of Hearing, and the panel does so.

¶ 8 Counsel for IIROC has asked this panel to impose the following penalties:

- A fine in the amount of \$50,000;
- A permanent bar from approval with IIROC; and
- Costs of \$2000.

¶ 9 Counsel for IIROC referred the panel to the Dealer Member Disciplinary Sanction Guidelines and several failure to cooperate cases under Rule 19.5, which is analogous to Rule 20.31. She also advised the panel that both respondents were no longer in the industry and that she had been told by their counsel that they had no intention of returning to the industry. The cases referred to, Re: John William Stewart [2005] I.A.D.C.D. No. 23, Re: Michael Joseph Puccini [2007] I.A.D.C.D. No.11 and Re: Davor Dave Milardovic [2007] I.A.D.C.D. No. 31, support the penalties requested by counsel for IIROC.

¶ 10 Consequently it is the decision of this panel that each of the Respondents

- Pay a fine in the amount of \$50,000.00
- Is permanently barred from registration approval with IIROC; and
- Pay costs of \$2000.00.

Dated as of the 13<sup>th</sup> day of April 2010.

Fred Webber-Chair

Selwyn Kossuth-Member

Guenther Kleberg- Member

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