Re Esson

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

NANCY ESSON

2010 IIROC 27

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

Hearing: June 8, 2010 in Toronto Ontario
Decision: June 17, 2010
(8 paras.)

Hearing Panel:
The Hon. Fred Kaufman, C.M., Q.C.
Sandy Grant
Robert Guilday

Appearances:
Natalija Popovic, Enforcement Counsel
Michael Magonet for the Respondent

REASONS FOR THE DECISION RENDERED AFTER THE HEARING

¶ 1 By Notice of Hearing dated November 18, 2009, the Respondent, Nancy Esson, was notified that a hearing would be held to determine whether she committed the following contraventions:

1. In or about December 2004 to April 2005 Esson, as a Registered Representative of a Member of IIROC, engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that she placed herself in a conflict of interest when she became a registered shareholder of securities, of an issuer, transferred to her by her client for no apparent consideration and then sold securities of the same issuer held by the same client to several of her other clients, contrary to IIROC Rule 29.1.
2. In or about December 2004 to April 2005, Esson, as a Registered Representative of a Member of IIROC, engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that she executed approximately nine unauthorized trades in the accounts of four clients

contrary to IIROC Rule 29.1.

¶ 2 It is important to note that while the allegations refer to IIROC's Rule 29.1, the events which form the basis of these allegations occurred before IIROC came into existence. However, on June 1, 2008, pursuant to the *Administrative and Regulatory Services Agreement* between the Investment Dealers Association of Canada ("IDA") and IIROC, the IDA retained IIROC to provide services for the IDA to carry out its regulatory functions, and hence the reference to IIROC's Rules.

¶ 3 An initial hearing was held on December 14, 2009. This was continued to June 8, 2010, when it appeared that certain witnesses required by Enforcement Counsel would not be available before that date. At the initial hearing, the Respondent was not represented by counsel, but she subsequently retained Mr. Magonet, who entered into discussions with Enforcement Counsel. As a result, a Settlement Agreement was reached, and this is what we were called upon to consider at the hearing on June 8th.

¶ 4 Most importantly, Enforcement Counsel notified the panel that she had no evidence to offer on the second (and more serious) of the two violations alleged in the Notice of Hearing. New information was inconsistent with information on hand when the Notice of Hearing was prepared. Also, certain witnesses who had previously agreed to testify were no longer prepared to appear. As a result, this charge was dismissed, and nothing further should therefore be said about it.

¶ 5 The particulars which relate to the remaining charge, as set out in the Notice of Hearing, are as follows:

A. Registration History

1. At all material times, the Respondent was employed as Registered Representatives (RR) in the Toronto office of Secutor Capital Management Corp. (Secutor), a Member of IIROC.
2. The following is the Registration history of the Respondents:

Dates	Employer	Designation
October 2003 - June 2005	Secutor Capital Corp	RR
June 2005- December 2007	Wellington West Capital Inc.	RR

B. Background

3. At all material times Esson operated a partnership together with MC, another RR, at Secutor. VJ was employed by Esson and MC, and performed administrative duties for them. As well, VJ had her own book of clients.
4. During the material time, Esson and MC maintained accounts for the following clients;

i) 1516412 Ontario Inc. (151 Ontario), a company whose president, PM, was a stock promoter who acted for a company called Gray Wolf Capital Corporation (Gray Wolf), and which actively traded in Gray Wolf securities;

ii) Trinity Capital Corporation (Trinity), a Turks and Caicos company that allegedly provides investment advice and which, prior to December 2004, held all of the outstanding debentures and preferred shares of Gray Wolf, Trinity opened an account with Esson and MC on or about December 17, 2004;

and

iii) IPIN Ltd. (IPIN), an Ontario company that allegedly provides consulting services, and which as of January 2005 held Gray Wolf debentures with a market value of

approximately $550,000 received from Trinity for no apparent consideration.

5. At all material times Gray Wolf was a company with limited resources, no operating track record and few assets of value; the president of Gray Wolf was PD. It was a high risk investment listed on the Canadian Trading and Quotations Systems Inc. stock exchange (CNQ).

6. In or about December, 2004 Trinity deposited Gray Wolf Class B preferred shares, with a market value of approximately $4.8 Million, together with Gray Wolf debentures with a market value of approximately $6.1 Million into its account with Esson and MC at Secutor.

C. Esson Becomes Shareholder of Gray Wolf

7. Prior to December 14, 2004, Esson, MC, and VJ provided their own names, and the names of certain of their family members, to and at the request of PM and/or PD.

8. The names were allegedly provided for the purposes of fulfilling a regulatory requirement for 200 shareholder names in order to obtain a public listing for Gray Wolf. On or about December 17 and 21, 2004, Gray Wolf preferred shares and debentures, respectively, were listed and commenced trading on the CNQ.

9. On or about December 14, 2004, PD instructed the transfer agent for Gray Wolf to re-register certain of the preferred shares of Gray Wolf held by Trinity with the subsequent result, *inter alia*, that:

    a) Esson held approximately 20,000 preferred shares in her own name, received for no apparent consideration.

    b) Esson's spouse held approximately 20,000 preferred shares in his own name, received for no apparent consideration. Furthermore, Esson's four children held a combined total of approximately 170,000 preferred shares of Gray Wolf in their own names, received for no apparent consideration.

    c) MC and VJ held approximately 20,000 and 50,000 preferred shares, respectively, of Gray Wolf in their own names, received for no apparent consideration.

    d) MC's spouse held approximately 20,000 preferred shares in her own name, received for no apparent consideration. Furthermore, two of MC's children held a combined total of approximately 100,000 preferred shares of Gray Wolf in their own names, received for no apparent consideration.

    e) VJ's partner, who subsequently became her spouse, received approximately 500 preferred shares of Gray Wolf in his own name, received for no apparent consideration, from Trinity.

D. Esson Solicits Other Secutor Clients to Purchase Gray Wolf Debentures

10. From or about January to April 2005 Esson and MC solicited approximately 30 of their other clients at Secutor (Other Secutor Clients) to purchase Gray Wolf debentures with a market value of approximately $1.245 Million.

11. The trade activity was such that the Other Secutor Clients of Esson and MC were exclusively on the buy side of Gray Wolf transactions; and Trinity and IPIN were exclusively on the sell side of the same transactions.

¶ 6 As was said in *Graydon Elliot Capital Corp.*, [2007] I.D.A.C.D. No. 43, in reviewing a Settlement Agreement, the panel "must be cognizant of the importance of the settlement process, and it should not interfere lightly in a negotiated settlement. … [T]he settlement process is one of negotiation and compromise and the penalty imposed may be somewhat different than one imposed following a hearing where similar findings are made and Panel determines the penalty." We agree with this proposition, and we accept the penalties proposed

by the parties:

A fine in the amount of $25,000;

A suspension for 12 months;

A successful rewrite of the CPH examination;

Costs in the amount of $2,000.

¶ 7 It is important to note a number of mitigating factors. First, the Respondent has been inactive for the past three years. Second, she has no prior disciplinary record. Third, her net profit in the improper transaction came to less than $9,000. Also, the penalties are line with the penalties imposed on two other persons implicated in this matter (whose degree of participation, however, differed from the Respondent's). Furthermore, the penalties imposed are well within the Guidelines.

¶ 8 It is for these reasons that, at the conclusion of the hearing, and after deliberation, we accepted the Settlement Agreement as proposed by the parties.

Given in Toronto, this 17th day of June, 2010.

Hon. Fred Kaufman, Chair

Sandy Grant

Robert Guilday