

Re Stoneburg

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

Ronald Stoneburg

2010 IIROC 56

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

Hearing: November 25, 2010 in Toronto Ontario
Decision: December 15, 2010
(13 paras.)

Hearing Panel:

The Hon. John B. Webber, Q.C. (Chair), Stuart Livingston, Ron Smith

Appearances:

Ms. Natalija Popovic, Senior Enforcement Counsel

The Respondent did not appear nor was he represented by counsel

DECISION

¶ 1 As set out in the Notice of Hearing, dated May 10, 2010, it is alleged by IIROC that the Respondent committed the following contraventions:

1. In or about September 2006 the Respondent, while a Registered Representative with Canaccord Capital Corp., engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he misappropriated approximately \$150,000 from two clients, contrary to IIROC Rule 29.1.
2. From or about August 2007 to May 2009 the Respondent, while an employee and later a registered Representative with yourCfO Advisory Group Inc., engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he misappropriated in excess of \$200,000 from approximately 11 clients, contrary to IIROC Rule 29.1.
3. In or about April 2009 the Respondent, while a Registered Representative with yourCFO Advisory Group Inc., engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he forged the name of a client thereby endorsing the client's cheque to himself, contrary to IIROC Rule 29.1.

¶ 2 The Respondent was, in our opinion, given more than adequate notice of the hearing date. The set date hearing was scheduled for May 27, 2010. Service of the notice of hearing could not be effected. As a new address for service was located, counsel applied for a new hearing date. The Panel granted that request by an order which set the hearing for July 20, 2010.

¶ 3 As is clear from the affidavit of Shermina Karim, sworn the 19th day of July 2010, efforts were made during the months of May, June and July to locate the Respondent for the purpose of serving the notice of hearing upon him.

¶ 4 By order dated July 20, 2010, the Panel granted a further adjournment of the set date hearing to October 5, 2010. On October 5, the Panel received the affidavit of Michael Arthur, sworn the 4th day of October 2010. Based upon that affidavit and the submissions of counsel, it appeared that the Respondent was clearly aware of the Notice of Hearing and the alleged contraventions. The Panel, therefore, made a further order that the matter proceed on November 25, 2010.

¶ 5 On November 25, 2010, the Respondent did not appear. His email of November 19, 2010 (Exhibit 2) was filed. It reads as follows:

Hello, sorry for the delays in getting back to you. I have been extremely unhealthy since my treatment and have been consumed with my health. I will not be able to attend on the 25th. I have no representation and am at a point of despair as what to do. I am sorry for my unattentive. Please inform me of my options as I am prepared to give a written statement of misdoings.

¶ 6 Enforcement counsel requested that the matter proceed on November 25, 2010. The Panel granted this request and conducted the hearing, notwithstanding the powers granted to it pursuant to the Rules, as set out in the Notice of Hearing, in these words:

FAILURE TO RESPOND OR ATTEND HEARING

TAKE FURTHER NOTICE that if the Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5:

- (a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions alleged by the Association in the Notice of Hearing; and
- (c) order penalties and costs against the Respondent pursuant to By-law 20.33, 20.34 and 20.49.

¶ 7 Enforcement counsel filed a compendium of documents (Exhibit 1). A copy of this compendium was sent to the Respondent by Michael John Arthur, the witness called by counsel. Mr. Arthur carefully outlined all of the allegations found in the Notice of Hearing and, in particular, those in paragraphs 8, 12 and 16. There is clear evidence of the allegations of forgery, found in paragraph 22 including the Respondent's own admission.

¶ 8 After hearing the evidence, reviewing the documents filed and receiving the submissions of counsel, the Panel adjourned to consider the issue of the contraventions. We made the decision that the contraventions had all been proven, in accordance with the onus upon counsel of proof on a balance of probabilities. This decision was communicated to counsel upon our return to the hearing room. The Panel then invited counsel to make submissions as to the appropriate sanctions including costs. Enforcement counsel requested the following sanctions:

- (a) a permanent prohibition upon the Respondent from conducting securities related business in any capacity while in the employ of or associated with any IDA (IIROC) member;
- (b) a fine in the amount of \$425,000;

(c) costs of \$30,000.

¶ 9 In support of this submission, counsel filed a penalty brief which contained Rule 20.3.3 which deals with penalties; sanction guidelines and general principles; certain reported decisions as to penalties imposed by other panels. In addition, counsel provided a bill of costs in the amount of \$32,548.50 supported by the affidavit of Keith Trotman, sworn the 16th day of November 2010. The Panel does not have difficulty with the bill of costs as the quoted hourly rate for counsel and the investigator, in our view, is very low considering present rates as claimed by others in other matters.

In considering the other penalties requested, we have considered the protection of the investing public, the integrity of the securities market, general deterrence, the protection of the IDA/IROC membership and the protection of the integrity of the IDA/IROC enforcement process. In addition, the Panel took into consideration IROC's "Dealer Member Disciplinary Guidelines" and referenced five related decisions provided by counsel in IROC's Penalty Brief (Exhibit 3).

¶ 10 The Panel recognizes that these are serious allegations. We are unaware as to whether the Respondent truly appreciates the significance of his improper activities. We are also concerned about damage that may be caused to the integrity of the capital markets. The penalty that is imposed must deter other persons who would act in a similar manner.

¶ 11 Eleven clients over a two-year period were harmed by the Respondent's misappropriation of a large sum of their money. This is very blameworthy conduct. The Member firms repaid all the capital amounts lost by the clients in contrast to the Respondent who made absolutely no financial contribution to the monies refunded. These amounts represent a significant economic loss to the Member firms involved and an inappropriate financial gain by the Respondent. The Panel believes the fine as suggested by IROC reflects the seriousness of the Respondent's misconduct.

¶ 12 In addition there is the issue of forgery. The Respondent admitted to forgery, which was further evidenced by the target client's formal "declaration of a forged endorsement". The question of forgery was dealt with in the decision of *Lamontaigne (Re)*, [2009] IROC No. 6, Alberta District Council Panel decision dated January 27, 2009. The hearing panel distinguished between serious versus less egregious instances of forgery in these words:

Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. The trust and confidence between the registrant and the client is very often destroyed by the deceptive conduct on the part of the registrant. Forgery harms the Member firm as well. As a result, forgery often attracts severe sanctions. *While there is no such thing as a 'minor case' of forgery, hearing panels may distinguish between more and less egregious examples of forgery.* [emphasis in text]

¶ 13 In the view of the Panel, the acts of the Respondent can be considered to be a very serious issue of forgery. Based on all of these considerations, the submission of counsel as to penalty is appropriate and correct. In the result, the Council imposes the following penalties:

- (a) a permanent prohibition upon the Respondent from conducting securities related business in any capacity while in the employ of or associated with any IDA (IROC) member;
- (b) a fine in the amount of \$425,000;
- (c) costs of \$30,000.

Dated at Toronto, this 15th day of December 2010.

The Honourable John B. Webber, Q.C., Chair

Mr. Stuart Livingston, Member

Mr. Ron Smith, Member

