

# Re Dettelbach

IN THE MATTER OF:

**The By-Laws of the  
Investment Dealers Association of Canada**

**and**

**The Dealer Member Rules of the Investment Industry Regulatory  
Organization of Canada**

**and**

**Krista Dettelbach**

2011 IIROC 6

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

Heard: July 26, 2010  
Decision: January 21, 2011  
(72 paras.)

**Hearing Panel:**

Thomas J. Lockwood, Q.C., Chair  
David W. Kerr  
Selwyn Kossuth

**Appearances:**

Natalija Popovic, Counsel for IIROC  
No one appearing for the Respondent

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## DECISION AND REASONS

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### INTRODUCTION

¶ 1 By Notice of Hearing, dated the 3rd day of February, 2010, the following Allegations were made against Krista Dettelbach (“the Respondent”):

- A. From or about February to July 2008, Dettelbach, as an Investment Representative of a Member of IIROC, engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that she misappropriated funds by improperly transacting approximately 50 cancel and correct orders, without instructions, resulting in a benefit to two clients, and a detriment to approximately 15 other clients, at her member firm employer, contrary to IIROC Rule 29.1.
- B. In or about November 2009, Dettelbach, as an Investment Representative of a Member of IIROC, failed to co-operate with IIROC in that she failed to attend at a properly

constituted IIROC interview, contrary to IIROC Rule 19.5.

¶ 2 The Notice of Hearing provided that a “set date” hearing would be held before a Hearing Panel on April 8, 2010, at 10:00 a.m., at the Investment Industry Regulatory Organization of Canada (“IIROC”), Boardroom 1, 121 King Street West, Suite 1600, Toronto, Ontario, M5H 3T9.

¶ 3 The Respondent did not appear on April 8, 2010. No one appeared on her behalf.

¶ 4 IIROC Staff provided documentary evidence of the attempts made to serve the Respondent with the Notice of Hearing. This evidence included documentation proving service on the Respondent of a letter, dated November 6, 2009, at her last known address as recorded in IIROC’s Registration file. This letter sought to compel the attendance of the Respondent at an interview on November 23, 2009. This letter was personally served on November 9, 2009.

¶ 5 Staff also ascertained the name and address of the Respondent’s then current employer, as well as a viable e-mail address. A copy of the November 6, 2009, letter was forwarded to the Respondent at the e-mail address. Staff obtained and produced to the Hearing Panel receipts confirming that the e-mail had been successfully delivered and had been read.

¶ 6 With respect to the Notice of Hearing, Staff made, *inter alia*, the following attempts to effect service:

- (a) Personal service was attempted at the Respondent’s work address, the last known address, as recorded in the IIROC Registration file, as well as an alternative home address. Personal service could not be effected despite numerous attendances.
- (b) An e-mail attaching the Notice of Hearing was sent to the Respondent’s e-mail address. The e-mail was successfully delivered.
- (c) A letter enclosing a copy of the Notice of Hearing was sent to the Respondent’s work address. This letter was successfully delivered.
- (d) A letter, also containing a copy of the Notice of Hearing, was sent via registered mail to the Respondent’s last known address as recorded in IIROC’s Registration file. This letter was returned.

¶ 7 After considering the above and hearing submissions from Staff, the Hearing Panel concluded that service of the Notice of Hearing had been effected, in accordance with Rule 5.2(b) of the IIROC Rules of Procedure, which provides, in part, as follows:

“A Notice of Hearing shall be served . . . by delivering a copy of the Notice of Hearing by registered mail to the Respondent’s last known address as recorded in the Organization’s Registration file; . . .”

¶ 8 On April 8, 2010, this Hearing Panel ordered that the Hearing was to take place on June 23 and 24, 2010, in Toronto. We also ordered that a copy of the April 8, 2010 Order, together with a further copy of the Notice of Hearing, was to be served on the Respondent by regular mail at her place of employment, by process server at her place of employment, by regular mail at what purported to be her new home address and by e-mail.

¶ 9 These service provisions were complied with by Staff.

¶ 10 On June 2, 2010, the Hearing Panel made a further Order, adjourning the Hearing to July 26 and 27, 2010, in recognition of the expected delays in transportation and access to the Hearing Room, which was anticipated would be caused by the G20 Summit meetings scheduled for Toronto. We ordered that service of the Order was to be effective upon the Respondent if it was made in accordance with the service provisions set out in our Order of April 8, 2010. This Order was complied with by Staff.

¶ 11 The Respondent did not attend the Hearing, not did anyone appear on her behalf.

¶ 12 Rule 13.5(1) of the IIROC Rules of Practice and Procedure provides as follows:

### “13.5 Where Respondent Fails to Attend Disciplinary Hearing

(1) Where a Respondent, having been served with a Notice of Hearing, fails to attend a disciplinary hearing, the Hearing Panel may proceed in the absence of the Respondent and may accept as proven the facts and violations alleged by the Organization in the Notice of Hearing.”

¶ 13 Despite this provision, the Hearing Panel determined that it wished to hear and consider all relevant admissible evidence.

### THE EVIDENCE

¶ 14 The evidence on liability, which was presented to the Hearing Panel, was extensive. It was both testamentary and documentary. The testamentary evidence was presented by Denise Carson, an Investigator in the IIROC Enforcement Department.

¶ 15 The evidence established the following:

A. Allegation No. 1:

¶ 16 The Respondent was registered as an Investment Representative with either IIROC or the Investment Dealers Association from September of 2002 until her resignation was accepted on July 17, 2008. She has not been registered with IIROC in any capacity since July 17, 2008.

¶ 17 Her registration history is as follows:

From	To	Firm and Position
September 2002	August 2004	Pacific International Securities Inc.
September 2004	September 2005	First Associates Investments Inc.
September 9, 2005	July 17, 2008	RBC Dominion Securities Inc. (RBC DS)

¶ 18 At all material times, the Respondent was an Investment Representative with RBC DS. She worked for a Registered Representative as a sales associate. Part of her role was to introduce and bring new business to the Registered Representative.

¶ 19 She did, in fact, bring in at least two new clients, who opened accounts with RBC DS in August of 2007 and February of 2008, respectively.

¶ 20 The Respondent received a bonus on assets brought in, plus a percentage of the revenue generated by those assets.

¶ 21 On or about July 8, 2008, the RBC DS Compliance Department became aware of the cancellation and correction of an order, involving the accounts of two clients serviced by the Registered Representative for whom the Respondent worked.

¶ 22 This cancellation and correction had been entered by the Respondent.

¶ 23 On July 9, 2008, the RBC DS Compliance Department raised questions concerning trading in the account of one of the clients brought to the firm by the Respondent. When RBC DS management was not satisfied with the Respondent's initial response to the inquiries, an expanded investigation was conducted into cancellations and corrections conducted by her.

¶ 24 The review indicated a pattern whereby the Respondent would cancel orders and reconstruct them in another account in order to confer a benefit, primarily on the two clients, HVB and YA, who had been introduced to RBC DS by the Respondent.

¶ 25 The cancel and correct orders conferred benefits for the accounts of HVB and YA in one of two ways, depending upon whether the original order was a buy or a sell. The evidence showed that the following methods were employed by the Respondent:

- A. Buy Orders: A buy order was processed in the account of an affected client. After the share price of the security in question had gone up, the order was cancelled and recontracted into an account of HVB or YA. The original buy order was then replaced by a second buy order, which was at a higher price due to the movement in the share price. However, in some cases, the original buy order was not replaced by a second buy order in the account of the affected client.
- B. Sell Orders: a sell order was processed in an account of HVB or YA. After the share price had gone up, the order was then cancelled and recontracted into the account of an affected client. The share price for the sale by the affected client was thus at a lower price than the client should have received.

¶ 26 According to the evidence proffered at the Hearing, the Respondent did not receive instructions from any of the clients or from the Registered Representative, for whom she worked, to complete the cancel and correct orders.

¶ 27 On July 16, 2008, RBC DS branch management confronted the Respondent who confirmed that she had, in fact, conducted transactions to favour the accounts of HVB and YA because, according to the Respondent, they referred clients to RBC DS.

¶ 28 On July 17, 2008, the Respondent faxed a letter of registration to RBC DS, which was immediately accepted.

¶ 29 Further investigation by RBC DS revealed that the accounts of 15 clients had sustained losses as a result of the cancel and correct orders processed by the Respondent. The losses sustained totalled \$163,842.90. On or about December 10, 2008, RBC DS credited each of these accounts with an amount equal to the loss sustained.

¶ 30 RBC DS permitted the accounts of HVB and YA to retain the benefit that had occurred to their respective accounts as a result of the Respondent's conduct.

¶ 31 The evidence revealed that the Respondent processed at least 53 improper trade tickets. On some tickets, the account numbers were improperly changed. On others, the number of shares bought and sold was altered. The change requests were handwritten by the Respondent.

B. Allegation No. 2:

¶ 32 On November 6, 2009, Denise Carson, an Investigator in the Enforcement Department of IIROC, prepared a letter addressed to the Respondent at her last known address as recorded in IIROC's Registration file.

¶ 33 The letter read as follows:

“Dear Ms. Dettelbach:

RE: IIROC File # 0789/Jul/08

By letters dated September 15, October 15, and November 3, 2009 you were advised that the Enforcement Department (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) had decided that it was necessary in the course of the above noted investigation to compel you to provide a statement. All three letters were returned to IIROC.

Staff is prepared to rely on the Investigatory Powers as stated in Section 19.5 of the Rules, to compel your attendance at an interview at 1:00 pm on Monday, November 23, 2009 at IIROC's Toronto offices, Suite 1600, 121 King Street West. A copy of Rule 19.5 has been attached for your reference as well as a copy of our letter dated April 27, 2009 informing you that your conduct is under investigation.

Should you fail to attend this interview, the Enforcement Department of IIROC may consider this as a failure to cooperate and may initiate disciplinary proceedings against you.

Please confirm by Monday, November 16, 2009 that you will be attending the interview. Should you have any questions or need further clarification you can contact me directly at 416.943.6924.

Yours very truly,

“D. T. Carson”

Denise T. Carson

Investigator

Enforcement Department”

¶ 34 Attached to this letter was a copy of Rule 19.5, as well as a copy of a letter from Ms. Carson to the Respondent, dated April 27, 2009, informing her that her conduct was under investigation.

¶ 35 Rule 19.5 provides as follows:

“19.5. For the purposes of any examination or investigation pursuant to this Rule 19, a Dealer Member, registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director, officer, investor or employee of a Dealer Member or any other person approved or seeking approval or under the jurisdiction of the Corporation pursuant to the Rules, may be required by the Corporation:

- (a) To submit a report in writing with regard to any matter involved in any such investigation;
- (b) To produce for inspection and provide copies of any books, records, accounts and documents, that are in the possession or control of the Dealer Member or the person, that the Corporation determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the Corporation; and
- (c) To attend and give information respecting any such matters;

And the person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any person subject to an investigation conducted pursuant to this Rule 19 shall be advised in writing of the matters under investigation and may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any person in the course of an investigation be recorded by means of electronic recording device or otherwise and may require that any statement be given under oath.”

¶ 36 On November 9, 2009, the Respondent was personally served with the November 6, 2009 letter, as well as the attachments.

¶ 37 On November 6, 2009, Ms. Carson e-mailed the November 9, 2009 letter, as well as the extract of IIROC Rule 19, to the Respondent. Ms. Carson obtained, and had entered as an Exhibit at the Hearing, separate delivery and read receipts confirming that the e-mail had been successfully delivered to the Respondent and that it had been read.

¶ 38 Notwithstanding the above, the Respondent did not appear for the scheduled interview. Not did anyone attend on her behalf. According to the sworn testimony of Ms. Carson, the Respondent has never contacted her with respect to these matters, despite multiple requests to do so.

## THE LAW

¶ 39 IIROC Rule 29.1 provides, in part, as follows:

“29.1 Dealers Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board.”

¶ 40 The Notice of Hearing alleged that the Respondent “misappropriated funds” by improperly transacting cancel and correct orders, without instructions, resulting in a benefit to 2 clients and a detriment to approximately 15 other clients.

¶ 41 It is clear that the improper actions of the Respondent caused significant financial harm to a number of clients. It is also clear that there was a corresponding and offsetting benefit to other clients. None of her actions were authorized either by the clients who lost or by the clients who gained. It would also appear that the Respondent did not personally retain any of the proceeds of any of the transactions.

¶ 42 The issue to be determined is whether, under these circumstances, her actions amounted to a “misappropriation” of funds.

¶ 43 The IIROC Dealer Member Disciplinary Sanction Guidelines deals with the misappropriation of funds under Rule 29.1, in part, as follows:

“Misappropriation of funds is related to theft. Theft is the taking or converting of something that belongs to another person without the other person’s knowledge or consent. . . . the dishonesty inherent in the offence lies in the intentional and unmistakable application of funds to an improper purpose.”

¶ 44 We were advised by Enforcement Counsel that, to her knowledge, this is the first case in which a Hearing Panel has been asked to consider whether the use of the “cancel and correct” technique to benefit certain clients and cause a loss to other clients, with the respondent not directly being advantaged in a monetary fashion, constitutes misappropriation.

¶ 45 We were, however, referred to a series of cases whether previous Hearing Panels had reviewed the actions of individuals to determine if they constituted “misappropriation”:

(a) In *Dass (Re)* [2009] I.D.A.C.D. No. 22, clients had made a cheque payable to Mr. Dass’s personal company. The Hearing Panel determined that the clients clearly intended the funds to be used to enable them to participate in a private placement and that, consequently, the use of these funds by Dass for his own purposes constituted misappropriation.

(b) In *Silcoff (Re)* [2004 I.D.A.C.D. No. 24, on two occasions a Registered Representative took funds from accounts of clients, without their knowledge and consent, and transferred the funds to accounts of other clients to conceal losses he had caused in the accounts of these latter clients. The Registered Representative received no funds for himself. The Hearing Panel concluded that the funds had been misappropriated.

(c) In *Richard (Re)* [2004] I.D.A.C.D. No. 9, a Registered Representative repeatedly took funds from the account of one client to pay a monthly income to another client, the latter believing that the income had been generated from funds which she had provided to the Registered Representative for investment purposes. The Hearing Panel concluded that misappropriations had occurred.

(d) In *Tang (Re)* [2003] I.D.A.C.D. No. 25, a Registered Representative was found to have misappropriated funds when she caused her Member firm employer to engage in transactions, without its knowledge or consent, involving the exchange of Canadian and U.S. dollars, with the holders of certain client accounts which

improperly benefited the holders of the accounts. The exchange rate applied was found by the Hearing Panel to be “inordinately more favourable to the client than the Bank of Canada rate for the date of the transaction.”

¶ 46 In our view, the Respondent misappropriated \$163,842.90. The fact that there was no evidence that she personally directly benefited in a financial manner is irrelevant. She created at least 53 trade tickets without the knowledge or consent of the clients on either end of the transactions and without any authorization to do so.

¶ 47 The Respondent clearly engaged in business conduct or practice which was unbecoming and detrimental to the public interest.

¶ 48 We find Allegation No. 1 to be established.

¶ 49 Rule 19.5 provides IIROC with the power and authority to require the Respondent to attend an interview and provide information respecting the matters under investigation.

¶ 50 The Respondent was personally served with proper Notice of the interview. She failed to attend on the appointed date. She has declined to communicate with IIROC Staff investigators despite several requests.

¶ 51 She has clearly failed to co-operate. She has breached Rule 19.5.

¶ 52 Allegation No. 2 is established.

### **Penalties**

¶ 53 IIROC Enforcement Counsel requested that the following penalties be imposed upon the Respondent:

- (a) a permanent ban from approval to act in any registered capacity with any IIROC Member;
- (b) a fine in the amount of \$25,000 for the contraventions of IIROC Rule 29.1;
- (c) a fine in the amount of \$50,000 for the contravention of IIROC Rule 19.5; and
- (d) costs in the amount of \$40,000.

### **Permanent Ban**

¶ 54 According to the uncontradicted evidence before us, the Respondent, over a period of time, engaged in 53 acts of misappropriation resulting in losses to clients of \$163,842.90. When called upon to attend and provide information with respect to her activities, she refused.

¶ 55 Both misappropriation and a failure to co-operate are extremely serious offences.

¶ 56 According to the Dealer Member Disciplinary Sanction Guidelines “misappropriation is one of the more serious regulatory offences and the penalty upon conviction is generally a permanent ban, with few exceptions.”

¶ 57 A failure to co-operate, such as that engaged in by the Respondent, is, likewise, serious misconduct as it subverts IIROC’s ability to perform its regulatory function.

¶ 58 The only mitigating factor that we are aware of, with respect to the Respondent, is that she has no previous discipline history.

¶ 59 However, in our view, this does little to offset the very serious nature of the misconduct established.

¶ 60 We believe that it is incumbent upon this Hearing Panel to communicate to the Respondent, to the public and to the investment industry as a whole, that serious consequences will befall those who engage in activities similar to those of the Respondent in the case before us. Consequently, pursuant to IIROC Rule 20.33(2)(b), we order a permanent ban from approval of the Respondent to act in any registered capacity with any Member of IIROC.

### **Fines:**

#### **(a) Contravention of IIROC Rule 29.1**

¶ 61 The IIROC Disciplinary Sanction Guidelines suggest a minimum fine in the amount of \$25,000 for

misappropriation of funds.

¶ 62 However, the cases cited to us by Enforcement Counsel show that Hearing Panels view the misappropriation of funds, especially client funds, as a very serious violation of the Rules and, routinely, impose very significant fines – see- for example, the following:

- (a) *McRea (Re)*: [2000] I.D.A.C.D. No. 1 - \$100,000;
- (b) *McCaffrey (Re)*: [2003] I.D.A.C.D. No. 18 - \$585,000;
- (c) *MacKay (Re)*: [2005] I.D.A.C.D. No. 14 - \$100,000;
- (d) *Hart (Re)*: [2006] I.D.A.C.D. No. 2 - \$1.3 million; and
- (e) *Petriello (Re)*: [2007] I.D.A.C.D. No. 21 - \$150,000.

¶ 63 In the case before us, the misappropriations exceeded \$160,000. The clients were reimbursed by the Member. There was no evidence that the Respondent has repaid any of the misappropriated funds.

¶ 64 We are prepared to accept the recommendation of Enforcement Counsel and impose a fine of \$25,000 with respect to the contraventions of IIROC Rule 29.1. However, if requested, we would have been prepared to impose a significantly larger fine.

### **(b) Contravention of IIROC Rule 19.5**

¶ 65 The IIROC Disciplinary Sanction Guidelines suggest a minimum fine of \$10,000 for a breach of Rule 19.5.

¶ 66 However, a large number of Decisions of Hearing Panels indicate that the appropriate level of fine is \$50,000. These Decisions include:

- (a) *Stauffer (Re)*: [2002] I.D.A.C.D. No. 40;
- (b) *White (Re)*: [2003] I.D.A.C.D. No. 28;
- (c) *Williams (Re)*: [2004] I.D.A.C.D. No. 23;
- (d) *Loewen (Re)*: [2004] I.D.A.C.D. No. 45;
- (e) *Crittall (Re)*: [2004] I.D.A.C.D. No. 51;
- (f) *Bassett (Re)*: [2005] I.D.A.C.D. No. 26;
- (g) *Puccini (Re)*: [2007] I.D.A.C.D. No. 11; and
- (h) *Milardovic (Re)*: [2007] I.D.A.C.D. No. 31.

¶ 67 The quantum of the fine is meant to reflect the seriousness of this contravention of the Rules.

¶ 68 We see no reason to depart from the established pattern and, consequently, impose a fine of \$50,000 on the Respondent for the contravention of Rule 19.5.

### **Costs**

¶ 69 Rule 20.49(1) of the IIROC Rules, provides as follows:

“20.49 Assessment of Costs

- (1) In addition to imposing any of the penalties set out in Rule 20.33, Rule 20.34 or Rule 20.45, the Hearing Panel may assess and order any Corporation Staff investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.”

¶ 70 Enforcement Counsel filed a detailed summary of the time expended by the lead investigator (253.5 hours) and herself (99.5 hours), as well as disbursements, which amounted to \$43,293.63. The Bill of Costs encompasses the time spend until July 16, 2010. It does not include either costs for the actual Hearing itself or

costs for other individuals who worked on the file.

¶ 71 The claim for costs was rounded down to \$40,000. We find this amount to be reasonable and make an Order that same be paid by the Respondent.

### **Penalties Imposed**

¶ 72 The Hearing Panel impose the following penalties upon the Respondent:

- (a) A permanent ban from approval to act in any registered capacity with any IIROC Member;
- (b) A fine in the amount of \$25,000 for the contraventions of IIROC Rule 29.1;
- (c) A fine in the amount of \$50,000 for the contravention of IIROC Rule 19.5; and
- (d) Costs in the amount of \$40,000.

DATED the 21<sup>st</sup> day of January, 2011.

Thomas J. Lockwood, Q.C., Chair

David W. Kerr, Member

Selwyn Kossuth, Member

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