

Re Rao

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Gregory Rao

2011 IIROC 12

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

Heard: January 25, 2011
Decision: January 27, 2011
(12 paras.)

Hearing Panel:

John B. Webber, Q.C. (Chair), Peter Gribbin, Charlie MacFarlane

Appearances:

Natalija Popovic, Senior Enforcement Counsel

Scott Fenton, Counsel for the Respondent

DECISION AND REASONS

¶ 1 The Panel accepts the joint settlement recommendation of counsel in the Settlement Agreement dated January 21, 2011, which is as follows:

- (a) A permanent ban of registration with IIROC;
- (b) A global fine in the sum of \$270,000.00. The Respondent also agrees to pay costs to IIROC in the sum of \$15,000.00.

¶ 2 The investigation by the Enforcement Department Staff disclosed matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No. 1, Schedule C.1, Part C. The Settlement Agreement contained the previous Registration History of the Respondent commencing in 1995 and ending on July 3, 2009 when he was terminated by BMO Nesbitt Burns (“BMO NB”).

¶ 3 The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-laws, Regulations or Policies:

From or about May to November 2008 the Respondent, while a Registered Representative, engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he misappropriated client funds, contrary to IIROC Rule 29.1.

¶ 4 The conduct which led to the breach of the Rules included the misappropriation of \$195,000.00 from two clients without the clients' knowledge or consent. This conduct took place in 2008. First, on May 28, 2008, the Respondent arranged for cheque from his client in the amount of \$60,000.00 to be deposited to his own account without the knowledge of his client. Second, on June 17, 2008, the same process was followed for a cheque in the amount of \$35,000.00. Third, on November 13, 2008, the Respondent received a cheque from a client in the amount of \$324,000.00 representing the proceeds from the sale of a property. These funds were to be deposited into a BMO NB account. The Respondent deposited the said sum of \$324,000.00 into the client's bank account and issued a bank draft for \$100,000.00 payable to himself.

¶ 5 Enforcement Counsel drew to our attention the general principles which should be considered when there is a breach of business conduct which is unbecoming or detrimental to the public interest. The penalty must reflect the protection of the investing public and the Investment Industry Regulatory Organization's membership. The decision must also protect the integrity of the investment industry, the securities market and prevent repetition of such conduct of the type under consideration.

¶ 6 As Enforcement Counsel pointed out, the discipline sanctions must act as a deterrence and in cases of blameworthiness, as found in this case, which involved manipulative, fraudulent and deceptive conduct, an appropriate penalty should be imposed. The financial penalty agreed to reflects the recommended sanction found in Dealer Member Rule 29 and the repayment of the sum of \$195,000.00 which was wrongfully misappropriated. The fine agreed to serves to express general condemnation of the specific misconduct. The permanent bar from approval and registration in the industry is clearly appropriate when one considers the nature of the misappropriation. Enforcement Counsel also referred the Panel to three decisions as to the appropriate monetary sanctions in relation to the contravention that is presently before us.

¶ 7 Mr. Fenton, on behalf of the Respondent, advised that the Respondent is presently 38 years of age. He is married with two children ages 9 and 6. After working for several years in the industry, he was dismissed for cause by BMO NB. He has not been in the industry ever since his dismissal. He cooperated both with the BMO and the IIROC investigators. He expressed his remorse for his conduct by agreeing to the Settlement Agreement which he has approved and signed. He has been sued by BMO NB and the Bank of Montreal for \$2.2 million. On October 14, 2009, BMO NB and the Bank of Montreal obtained a consent judgment for this amount. BMO NB and the Bank of Montreal petitioned the Respondent into bankruptcy on December 2, 2009. He has not been discharged from bankruptcy. As a result of the judgment, all of his assets have been seized. The matrimonial home has been sold as well as other real property. The proceeds from the sale have been placed in escrow pending the conclusion of the bankruptcy. He has by entering into the Settlement Agreement accepted responsibility for his acts from which one may find an implied remorse and an acknowledgment of responsibility. He must receive credit for his cooperation with all the authorities.

¶ 8 Mr. Fenton advises further that on January 13, 2001, the Respondent was charged with fraud over \$5,000.00 and theft over \$5,000.00. He has been released on bail of \$100,000.00. Mr. Fenton advises that the Respondent is attempting to re-build his life. It is Mr. Fenton's submission that the Respondent is indeed paying the price for his misconduct.

¶ 9 We are urged by counsel for Enforcement and for the Respondent that this is an agreement that should be accepted because it is in the public interest and is in the range of the appropriate sanctions to be imposed. The sanctions set forth in paragraph 7 of the Settlement Agreement are submitted to be appropriate given the nature and the background of the activities of the Respondent. Counsel referred us to the decision of *Gaudet*, [2010] IIROC No. 29, paragraph 4, which reads as follows:

4. We adopt what was said by the Panel in *Re Darcy Alan Higgs*, a February 9, 2010 decision concerning a settlement agreement pursuant to rule 20-36 of the IIROC Rules as follows:

[4] There are two broad related principles that apply in connection with a decision to accept or reject a settlement;

[5] The first is succinctly stated in the following passage from the decision in *Re Milewski* [[1999] I.D.A.C. No. 17, August 5, 1999 at page 11]:

A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

[6] Secondly, in the recent decision of the Saskatchewan Court of Appeal in *Rault v. Law Society of Saskatchewan* [2009 SKCA 81 (Can Lii)], the court cited with approval and applied to an administrative tribunal the principles applicable to joint submissions on sentencing in criminal cases described by the Alberta Court of Appeal in *R. v. G.W.C.* [2000 ABCA 333 (Can Lii)], namely, that there is an obligation on the tribunal to give serious consideration to a joint submission on sentencing agreed upon by counsel unless the sentence is unfit or unreasonable; or contrary to the public interest; and, it should not be departed from unless there are good or cogent reasons for doing so.

¶ 10 There is a further principle to the same effect found in the decision of *Re Graydon Elliot Capital Corporation*, [2007] IDAC No. 43, at paragraph 9, which reads as follows:

The Panel accepts that its role under the By-laws in reviewing a Settlement Agreement is not the same as its role considering penalty following a hearing on the merits. As has been said in a number of cases, in considering a Settlement Agreement, the Panel should not simply substitute its discretion to that of Staff in negotiating the settlement. The Panel must be cognizant of the important of the settlement process, and it should not interfere lightly in a negotiated settlement. We acknowledge that the 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 the Panel determines the penalty.

¶ 11 The Panel is of the unanimous view that the rejection of the Settlement Agreement would be inconsistent with the foregoing principles. The settlement agreed to is, in the Panel's opinion, reasonable as it includes the removal of the Respondent from the industry. In addition, the imposition of a fine in the amount of \$270,000.00 with costs is reasonable.

¶ 12 In the result, we advised counsel that we were satisfied that the Settlement Agreement proposed was reasonable and consistent with these principles and we would prepare reasons for that ruling. These are our reasons.

Dated at Toronto, this 27th day of January 2011.

John B. Webber, Q.C., Chair

Peter Gribbin, Member

Charlie MacFarlane, Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Gregory Rao consent and agree to the settlement of this matter by way of this settlement agreement ("the Settlement Agreement").
2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") into the conduct of Gregory Rao.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment

Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.

4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (“the Hearing Panel”).

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

From or about May to November 2008 the Respondent, while a Registered Representative, engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he misappropriated client funds, contrary to IIROC Rule 29.1.

8. Staff and the Respondent agrees to the following terms of settlement:

- a) Global fine of \$270K; and
- b) A permanent ban on registration with IIROC.

9. The Respondent agrees to pay costs to IIROC in the sum of \$15,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

10. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

A. Overview

11. The Respondent worked at a sub-branch of BMO Nesbitt Burns [BMO NB] located within a BMO bank branch. On three occasions in 2008 he misappropriated funds from two clients for a total of approximately \$195,000 without the clients’ knowledge or consent.

B. Registration History

12. Throughout the period in question, Rao worked at the Woodbridge branch of BMO NB. Rao’s employment was terminated by BMO NB on or about July 3, 2009. Rao first became a registrant in 1995; he is no longer a registrant with an IIROC firm.

C. Misappropriation from Client NI.

13. On or about May 28, 2008 Rao arranged for the issuance of a cheque for \$60,000 from his client NI’s BMO NB brokerage account. The cheque was made payable to NI.
14. On or about the same day, Rao negotiated the cheque and arranged for a bank draft for \$60,000 to be deposited into his own personal BMO bank account.
15. Rao completed the transactions in relation to the amount of \$60,000 without the knowledge or consent of his client NI.
16. On or about June 17, 2008 Rao arranged for the issuance of a cheque for \$35,000 from his client NI’s BMO NB brokerage account.
17. On or about June 24, 2008, Rao cashed the cheque for \$35,000 and took the funds for his own use.

18. Rao completed the transactions in relation to the amount of \$35,000 without the knowledge or consent of his client NI.

D. Misappropriation from Client DM

- 19. On or about November 13, 2008 Rao DM gave Rao a cheque for \$324,000 representing the proceeds from the sale of a property. DM instructed Rao to deposit the funds into a BMO NB account in her name.
- 20. On or about November 14, 2008 Rao, rather than opening a BMO NB account for DM, instead deposited the cheque for \$324,000 into DM's BMO bank account.
- 21. On or about the same day Rao issued a bank draft for \$100,000 from DM's bank account and subsequently deposited the \$100,000 to his own personal bank account at an unrelated financial institution.
- 22. Rao completed the transactions in relation to DM without her knowledge or consent.

IV. TERMS OF SETTLEMENT

- 23. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
- 24. The Settlement Agreement is subject to acceptance by the Hearing Panel.
- 25. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
- 26. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
- 27. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
- 28. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
- 29. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
- 30. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
- 31. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
- 32. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Toronto, in the Province of Ontario, this 21st day of January, 2011.

Witness signature

Witness

AGREED TO by Staff at the City of Toronto, in the Province of Ontario this 24th day of January, 2011.

"Witness signature"

Witness

"Respondent's signature"

Respondent

"Natalija Popovic"

Natalija Popovic

Enforcement Counsel on behalf of Staff of the
Investment Industry Regulatory Organization of
Canada

ACCEPTED at the City of Toronto, in the Province of Ontario, this 25th day of January, 2011, by the following Hearing Panel:

Per: “John Webber”

Panel Chair

Per: “Peter Gribbin”

Panel Member

Per: “Charlie MacFarlane”

Panel Member

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