

# Re Park

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**

**Jamie Seong Il Park**

2011 IIROC 16

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

Heard: October 1, 2010  
Oral Decision: October 1, 2010  
(29 paras.)

**Hearing Panel:**

Julia Dublin (Chair), Dusty Graham, Selwyn Kossuth

**Appearances:**

Natalija Popovic Counsel for IIROC

No one appearing for the Respondent

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## DECISION & REASONS

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### INTRODUCTION

¶ 1 By Notice of Hearing, dated August 18, 2010, the following Allegation was made against Jamie Seong Il Park (“the Respondent”):

A. In or about April 2010, the Respondent, a former registrant of IIROC, failed to co-operate with IIROC in that he refused to attend and give evidence at an IIROC interview, in contravention of IIROC Rule 19.5

¶ 2 The Notice of Hearing provided that a Hearing would be held before a Hearing Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”), on October 1, 2010, at Legal Transcript Services, 390 Bay Street, 11th Floor, Suite 1102 Toronto at 10:00 a.m., or as soon thereafter as the Hearing could be heard.

¶ 3 This proceeding was designated as “Standard Track”.

¶ 4 The Respondent did not appear on October 1, 2010. No one appeared on his behalf.

¶ 5 The Hearing Panel considered a preliminary question as to whether the Respondent had received sufficient notice for the hearing to proceed.

¶ 6 Documentary and oral evidence presented to the Hearing Panel showed that, on August 20, 2010, a letter went out to the Respondent by process server and by registered mail at the address recorded for him on the

NRD system enclosing the Notice of Hearing. On August 19, 2010, the process server attended at this address and received no response. On August 24, 2010, the process server again attended at this address as was advised by the occupants that the Respondent did not live there.

¶ 7 On September 20, 2020 the August 19, 2010 registered letter was returned to IIROC marked “Return to Sender”.

¶ 8 On September 21, 2010 the IIROC Mr. Arthur, the IIROC investigator, sent an email to the Respondent advising him of the hearing scheduled for October 1, 2010, advising him of the service difficulties and requesting an address update. The original covering letter and Notice of Hearing were attached. Mr. Arthur obtained electronic confirmation that the email had been delivered to the address previously effective for the Respondent. The Respondent did not reply.

¶ 9 On September 24th the same process server served the Respondent personally with the Notice of Hearing at an address obtained from the Ministry of Transport.

¶ 10 Rule 6.4 of the IIROC Rules of Practice and Procedure provides, in part, as follows:

“6.4 Service of Notice of Hearing

For a discipline proceeding designated on the Standard Track, the Organization shall serve a Notice of Hearing at least 45 days prior to the date of the hearing.”

¶ 11 Rules 7.1, 7.2 and 13.5 of the IIROC Rules of Practice and Procedure provide, in part, as follows:

“7.1 Service of Response

For a discipline proceeding designated on the Standard Track, the Respondent shall serve a Response within 20 days from the effective date of service of the Notice of Hearing.

7.2 Failure to Serve Response

If a Respondent served with a Notice of Hearing fails to serve a Response in accordance with Rule 7.1:

- (a) the Organization may proceed with the hearing of the matter as set out in the Notice of Hearing without further notice and in the absence of the Respondent; and
- (b) the Hearing Panel may, accept as proven the facts and violations alleged by the Organization in the Notice of Hearing, and may impose penalties and costs pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.

13.5 Where Respondent Fails to Attend Disciplinary Hearing

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.”

¶ 12 No Response was served by the Respondent. The Respondent did not attend the Hearing.

¶ 13 Rules 5.2 and 5.4 of the IIROC Rules of Practice and Procedure provide, in part, as follows:

“5.2 Manner of Service – Notice of Hearing

A Notice of Hearing shall be served by one of the following methods:

- (a) by personal service on the Respondent;

- (b) by delivering a copy of the Notice of Hearing by registered mail to the Respondent's last known address as recorded by the Organization's registration file;...

#### 5.4 Effective Date of Service

Service of a document is deemed effective:

- (a) if served personally, on the same day of service;  
(b) if sent by mail in the fifth day after the day of mailing;"

¶ 14 On August 20th a letter was sent by registered mail to the Respondent at the last known address on the NRD records. This was 45 days prior to the date of the hearing, as required by Rule 6.4. Under Rule 5.4 the effective date for service would be August 24, 2010 and the 20 day period for a Response expired on September 13, 2010.

¶ 15 The Hearing convened on October 1, 2010. The Respondent did not attend. Section 13.5 allows the Hearing Panel to proceed where the Respondent fails to attend. However, IIROC staff was on notice as of September 20, 2010 that the address on the NRD was incorrect. IIROC staff responded with personal service on the Respondent at the correct address on September 24, 2010. The Hearing Panel considered whether the original deemed service and related time periods were superseded by the subsequent personal service by IIROC and whether the related time periods were consequently reset such that the Hearing Panel was not entitled to proceed on October 1st in the Respondent's absence.

¶ 16 We felt that it was important to ask staff to present arguments on this issue given the Respondent was not present to raise it himself. However we found that the more reasonable interpretation of the IIROC rules was that the subsequent service did not void the earlier service which continued to comply with plain language of Rules 5.2, 7.2 and 13.5. It ensured that the Respondent was aware of the proceedings. We concluded that it was therefore proper to proceed, but that in fairness to the Respondent we should hear and consider all the available evidence. We noted that, as an additional procedural safeguard, should our view be incorrect the Respondent could appeal the decision under IIROC rules with the option of a rehearing being available.

#### **THE EVIDENCE**

¶ 17 The evidence as to the efforts IIROC staff made to interview the Respondent and to serve the Notice of Hearing were presented to the Hearing Panel in the form of oral testimony and an affidavit with attached exhibits. The oral evidence was presented by Michael Arthur, a Senior Investigator in the IIROC Enforcement Department.

¶ 18 The evidence established the following registration history:

- The Respondent was first employed by an Investment Dealers Association ("IDA") member, RBC Dominion Securities Inc., in March 2001.
- The Respondent transferred to Scotia Capital Inc. as a salesperson and registered options representative in August 2002.
- The Respondent resigned and transferred to TD Waterhouse Canada Inc. on October 3, 2008.
- The Notice of Termination Notice ("NOT") filed by Scotia Capital Inc. stated that the Respondent resigned in good standing with unresolved client complaints under investigation.
- The Respondent was terminated from TD Waterhouse Inc. on January 19, 2009. The TD Waterhouse NOT indicated that the Respondent was terminated for cause after admitting in an interview with Human Resources to creating false spreadsheets overvaluing a client's portfolio and manipulating a Manulife report to provide one client's portfolio performance to a different client.

- The NOT also referred to the complaints at Scotia Capital Inc. The Respondent has not been registered with IIROC in any capacity since January 19, 2009.

¶ 19 The IIROC investigation history for the Respondent is as follows:

- (a) IIROC received a NOT from TD Waterhouse Canada Inc. in January 2009. IIROC began its investigation based on this NOT in April, 2009. As the Respondent left the industry and was no longer a registrant, IIROC took no further action until the decision of the Ontario Court of Appeal in Re: Taub in August 2009, confirming IIROC jurisdiction over former registrants.
- (b) On October 4, 2009 IIROC sent a registered letter from to the Respondent's last known address advising the Respondent that an IIROC investigation had commenced into to circumstances of Respondent's termination.
- (c) On November 2, 2009 IIROC sent a registered letter to the Respondent seeking to arrange an interview to discuss the allegations in the NOT.
- (d) On December 2, 2009 IIROC sent a registered letter to the Respondent advising him that he was compelled to attend at IIROC offices on January 7, 2010 to answer questions under oath regarding his termination, failing which disciplinary proceedings would be initiated.
- (e) On December 22, 2009 the Respondent left a voice message with the IIROC investigator advising that he would be abroad at scheduled time due to the serious illness of his grandmother.
- (f) On January 4, 2010 Respondent left a voice message with the IIROC investigator advising that he would be available in mid-February.
- (g) On February 2, 2010: the IIROC investigator left a voice message for the Respondent asking for a interview date before the end of February.
- (h) On February 22, 2010 the IIROC investigator received an email from the Respondent's counsel that he had now been retained and would need time to prepare for interview.
- (i) On February 23, 2010 the IIROC investigator agreed with the Respondent's counsel to a document review by the Respondent on March 11, 2010 and an interview on March 18, 2010.
- (j) On March 9, 3 2010 the Respondent's counsel left a voice message for the IIROC investigator that the Respondent had been hospitalised.
- (k) On March 17, 2010 Respondent's counsel left voice message suggesting a March 24, 2010 interview as the Respondent was suffering with severe appendicitis and had been released from hospital on antibiotics.
- (l) On March 24, 2010 the Respondent attended at the IIROC offices to review IIROC's documents. On the same day Respondent's counsel spoke to the IIROC investigator indicating that that Respondent had examined the documents and proposing settlement in lieu of the scheduled interview. On the same day the IIROC investigator left a message with the Respondent's counsel seeking details of the proposed settlement.
- (m) On March 26, 2010 the Respondent's counsel left a message with the IIROC investigator indicating he would provide the settlement information requested and seeking a copy of a transcript of an interview between the Respondent and TD Waterhouse Canada Inc.'s corporate security staff, which transcript Mr. Arthur believes was provided.
- (n) On March 27, 2010 the IIROC investigator and Respondent's counsel agreed to reschedule the Respondent's interview to April 15, 2010.
- (o) On April 12, 2010 the Respondent's counsel sent an email to the IIROC investigator that he was no longer representing the Respondent and that Respondent would not be attending interview on April 15, 2010.

- (p) On April 12, 2010 IIROC sent a registered letter to the Respondent advising him that he was compelled to attend on April 15, 2010, and advising him of IIROC's power to discipline him for failure to co-operate under Rule 19.5 of the Dealer Member Rules.
- (q) The Respondent did not attend interview on April 15, 2010. The Respondent has had no further communication with IIROC.

## THE LAW

¶ 20 Rule 19 of the IIROC Dealer Member Rules provides as follows:

“19.1. The Corporation shall make such examinations of and investigations into the conduct, business or affairs of any Dealer Member, registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director or 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 as he or she considers necessary or desirable in connection with any matter relating to compliance by such person with (i) the Rules or Rulings of the Corporation, (ii) any legislation applicable to such person concerning trading in securities or commodity contracts, including any rulings, policies, regulations or directives of any securities commission, or (iii) the by-laws, rules, regulations and policies of any self-regulatory organization. The Dealer Member shall require all employees to comply with Rule 19.

19.2. Any examination or investigation made pursuant to Rule 19.1 may be instituted upon the basis of (i) a complaint received by or directed to the Corporation, (ii) the direction of the Board of Directors, (iii) the request of a securities commission having jurisdiction, or (iv) any information received or obtained relating to the conduct, business or affairs of the Dealer Member or person involved.

...

### Investigatory Powers

19.5. For the purpose 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 an electronic recording device or otherwise and may require that any statement be given under oath.

19.6. For the purpose of any examination or investigation pursuant to this Rule 19, the Corporation shall be entitled to free access to, and to make and retain copies of, all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person concerned, and no such person shall withhold, destroy or conceal any information, documents or thing reasonably required for the purpose of such examination or investigation.”

¶ 21 The Respondent failed to comply with an IIROC request to attend and give evidence in connection with an investigation of his conduct. By so acting, the Respondent breached IIROC Rule 19.5.

¶ 22 We find the Allegation against the Respondent to be established.

## **PENALTIES**

¶ 23 The Respondent had no previous disciplinary history and breaches of IIROC rules could not be established based on information available to IIROC staff without further inquiries of the Respondent.

¶ 24 Staff recommended that the penalties be assessed as \$50,000 and referred to precedent decisions in which penalties in this range were imposed for an individual failing to attend an interview and evading IIROC disciplinary processes.

¶ 25 There was little doubt that the Respondent persistently evaded his duties to cooperate in an IIROC investigation. What, if anything, constituted his misconduct therefore could not be established under IIROC Dealer Member Rule 19.1. IIROC staff presented evidence that at the time of the hearing the Respondent had left the industry to pursue another occupation. There was no evidence he was still seeking employment with an IIROC member firm. We were thus faced with a quandary in assessing the penalty.

¶ 26 The IIROC Hearing Panel has no legal means in Ontario to enforce penalties imposed on non-members, its powers deriving only from the IIROC membership contract. In contrast, the Ontario Securities Commission (OSC) has the power under s. 151 of the Securities Act (Ontario) to apply to court to enforce the disciplinary penalties imposed on registrants as orders of the Superior Court of Justice. There seemed little prospect that, given the Respondent’s history, he would pay any fine imposed: a heavier fine would probably not have a concomitantly more punitive effect. We were troubled by the public policy implications of imposing significant monetary penalties and cost recoveries on individuals in circumstances where it is unlikely that monies will ever be collected where aggregate sums are publicly reported. We note in this regard that the IIROC Annual Report for 2009-2010 states that only 17.5% of the fines imposed on individuals were collected. We also note that in contrast to the situation in Ontario, in Alberta under s.69 of the Securities Act (Alberta) IIROC has similar enforcement powers to the OSC.

¶ 27 Taking all relevant factors into consideration, we have imposed a fine in the amount of \$25,000.00 on the Respondent and a permanent prohibition against registration in any capacity with an IIROC member firm.

## **COSTS**

¶ 28 Rule 20.49(1) of the IIROC Rules of Practice and Procedure 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.”

¶ 29 We have concluded that it is appropriate and reasonable to require the Respondent to pay the costs claimed by IIROC Staff for investigation and enforcement proceedings against the Respondent, particularly in

view of the fact that the Respondent made a major contribution to those costs by failing to cooperate with staff to submit to an interview and supply information. Having reviewed IIROC staff's Bill of Costs and the Affidavit of Shermina Karim, we assess these costs at \$15,000.00 and order the Respondent to pay same. However we reiterate our concern that this sum will be effectively uncollectible if the Respondent does not choose to return to employment with an IIROC member firm.

DATED the 14th day of March, 2011.

CORRECTED version issued April 15, 2011.

Julia Dublin, Chair

Dusty Graham, Member

Selwyn Kossuth, Member

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