

Re Jones

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

Michael Thomas Jones

2011 IIROC 17

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

Heard: March 22, 2011 in Toronto, ON
Oral Decision: March 24, 2011
(26 paras.)

Hearing Panel:

Terrance Sweeney (Chair), Daniel Iggers, Brigitte Geisler

Appearances:

Natalija Popovic, Senior Enforcement Counsel

Michael Thomas Jones, in person

DECISION & REASONS

¶ 1 By Notice of Hearing, dated the October 19, 2010, Michael Thomas Jones (the "Respondent") was accused of the following two contraventions:

1. In or about November 2007, the Respondent, while a registered representative with an IIROC regulated-firm, engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he misappropriated funds in the amount of \$25,000 from one of his clients, contrary to IIROC Rule 29.1.
2. In or about June 2010, the Respondent, while a former registrant of IIROC, failed to co-operate with an IIROC investigation by refusing to give information about his conduct, contrary to IIROC Rule 19.5.

¶ 2 We were constituted a Panel of the Ontario District Council to consider the matter.

¶ 3 We convened a hearing on November 23, 2010, in Toronto, to set a date for the hearing. At this time the Panel marked the Affidavit of Service sworn by Ms. Kate Trotman as Exhibit 1.

¶ 4 The Respondent arrived late and said that he was representing himself. We fixed January 18, 2011 as the date for a contested hearing.

¶ 5 In an e-mail, dated December 12, 2010, the Respondent asked for an adjournment of the January 2011

hearing date.

¶ 6 We accommodated the Respondent and fixed Tuesday, March 22, 2011 as the date for the hearing.

¶ 7 On March 21, 2011, the Respondent entered into an "Agreed Statement of Facts and Violations" with IIROC.

¶ 8 The facts having been agreed upon, the hearing on March 22, 2011, therefore, was to determine what sanctions, if any, would be appropriate in the case.

¶ 9 At the hearing, counsel for IIROC tendered the Agreed Statement of Facts and Violations marked as Exhibit 2; a Book of Authorities marked as Exhibit 3; and a Bill of Costs marked as Exhibit 4.

¶ 10 The facts are fully set out in Exhibit 2 and we will not repeat them here. In summary, the Respondent misappropriated \$25,000 from an elderly widow client of his. Approximately three years later, when his former client made enquiries about the insurance policy that was meant to be purchased, he initially lied to his client, but then acknowledged his actions and ultimately repaid the moneys to the client with interest on January 22, 2010.

¶ 11 The Respondent confessed to his Employer/Member, in writing, on February 3, 2010. He was terminated by his Employer/Member the next day.

¶ 12 On June 28, 2010, the Respondent attended with counsel at IIROC's office but refused, on advice of counsel, to answer any questions or give any information in respect to his conduct in relation to his former client or the moneys he misappropriated.

Submissions of Counsel for IIROC

Penalty:

¶ 13 Counsel for IIROC suggested that in this case the appropriate penalties should be as follows:

- a. A permanent ban from acting in any registered capacity with IIROC;
- b. A fine of \$50,000 in respect to the misappropriation of funds;
- c. A fine of \$50,000 in respect of his failure to co-operate with IIROC.

¶ 14 In her submissions, counsel for IIROC conceded that, in addition to the fact that the Respondent had no previous disciplinary history with IIROC, the Panel should treat his repayment of the \$25,000 to the client as a mitigating factor.

¶ 15 She reminded us that the Dealer Member Disciplinary Sanction Guidelines¹ were not binding on us. We noted that the amount recommended by the Guidelines as a minimum fine for misappropriating funds was \$25,000 and for failure to co-operate was \$10,000.

¶ 16 Counsel said that the amount of \$50,000 for each contravention has become standard with Panels. She was, however, unable to point to a case on similar facts to the one in issue to support her assertion. The misappropriation cases she did cite involved much more serious contraventions than the one here. For example, in *Re Richard*² the Respondent misappropriated between \$150,000 and \$170,000, of which \$82,000 he misappropriated while he actually was registered with the predecessor of IIROC. He also forged documents (sell ticket orders) in order to facilitate the misappropriation. He did not repay any of the moneys he misappropriated. In the case of *Re Bishop*³ the Respondent misappropriated about \$175,000.00 from six clients and only reimbursed them approximately \$82,000.

¶ 17 She noted that the Guidelines indicate⁴ that "in almost every case, a permanent ban on approval" is

¹ Exhibit 3, Tab 4

² [2004] I.D.A.C.D. No. 9

³ [2004] I.D.A.C.D. No. 24

⁴ Exhibit 3, Tab 4, p. 19

called for when a registrant misappropriates funds from a client especially in this case where the client was an elderly widow.

Submissions of the Respondent

¶ 18 On consent of counsel for IIROC, the Panel acceded to the request of the Respondent that his submissions in respect of the contravention of misappropriation be heard in camera. He exhibited genuine remorse and acknowledged that his behaviour was inexcusable. He described the events in his life that caused him to do what he did.

¶ 19 We then returned to public session. The Respondent explained that when this problem developed, he was told to retain counsel. He did so and when he attended at IIROC's office in June 2010, he followed his counsel's advice and did not answer any questions or provide any explanation for his conduct. He said that he was puzzled by the direction from his counsel, as he had already told his employer everything.

¶ 20 He said he felt uncomfortable after the meeting and dismissed his counsel. The Chair asked him then why it took him so long to acknowledge his transgressions and to enter into the Agreed Statement of Facts and Violations on the eve of a scheduled hearing. He had no answer save to put it down to his tendency to procrastinate.

DECISION

¶ 21 The Panel retired to deliberate. We quickly concluded that a permanent ban was appropriate in this case. The Respondent took advantage of an elderly widowed client and did nothing to remedy the situation until he was found out. This should also act as a general deterrent to others in the industry to engage in such deplorable conduct.

¶ 22 We had difficulty with the fines of \$50,000 proposed by counsel for IIROC for each of the contraventions.

Misappropriation

¶ 23 We believed the testimony of the Respondent "in camera" and accept that there were extenuating circumstances which should be taken into account. Accordingly, we felt that the minimum fine suggested by the Guidelines would be appropriate.

Failure to Co-operate

¶ 24 We accepted the Respondent's evidence that he did not co-operate on the advice of his counsel. We note that the Guidelines list this as a consideration a Panel may take into account in levying a fine. We agree with the comments in *Re Bassett*⁵ to the effect that the reliance upon legal advice consideration is limited in scope. Nevertheless, where a person is given incorrect advice by a lawyer retained by him, we feel that he should not suffer unduly for that. In these circumstances, the minimum fine should be imposed.

¶ 25 In summary, we wish to stress that the contraventions by this Respondent are serious and warrant a permanent ban. He did repay the moneys with interest. He did finally co-operate with IIROC, albeit at the eleventh hour. The failure to cooperate entailed in declining to answer questions, as advised by counsel, did not in fact materially impede IIROC's investigation or perpetuate concealment of wrongdoing. His contraventions were limited to one vulnerable client. There were extenuating circumstances which should attract only the minimum suggested fines.

¶ 26 ORDER

- a. The Respondent is barred for life from acting in any registered capacity with IIROC;
- b. The Respondent shall pay a fine forthwith in the amount of \$25,000 for his misappropriation of funds;

⁵ [2005] I.D.A.C.D. No. 26

- c. The Respondent shall pay forthwith a fine of \$10,000 for his failure to co-operate with IIROC;
- d. The Respondent shall pay costs of \$8,000.

Given at Toronto, Ontario this 24th day of March 2011.

Terrance Sweeney, Chair

Daniel Iggers

Brigitte Geisler

AGREED STATEMENT OF FACTS AND VIOLATIONS

THE PURPOSE OF THE HEARING is to determine what sanctions, if any, are appropriate in this proceeding, in which Staff of IIROC, on behalf of the IDA (Staff), allege that Michael Thomas Jones (the Respondent) has committed the following contraventions:

1. In or about November 2007, the Respondent, while a registered representative with an IIROC regulated-firm, engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he misappropriated funds in the amount of \$25,000 from one of his clients, contrary to IIROC Rule 29.1.
2. In or about June 2010, the Respondent, while a former registrant of IIROC, failed to co-operate with an IIROC investigation by refusing to give information about his conduct, contrary to IIROC Rule 19.5

TAKE FURTHER NOTICE that the following is a summary of the facts alleged and intended to be relied upon by Staff at the hearing, all of which facts are hereby admitted by the Respondent:

A. Overview

1. In 2007, the Respondent visited his client, IM, at her home while she was recovering from a car accident and on pain medication. IM signed a cheque for \$25,000 made payable to Jones for what he said was an insurance premium payment. Jones cashed the cheque and deposited the funds in to his own bank account. No funds were ever forwarded to IM's insurer. Three years later, in 2010, after IM complained to the firm, the Respondent repaid her \$25,000 with interest. At an IIROC interview as part of the investigation into this matter, Jones refused to provide evidence in response to IIROC questions.

B. Registration History

2. Jones was registered as an RR and worked at RBC Dominion Securities Inc. from 1999 to 2003; and at BMO Nesbitt Burns Inc. (BMO), from 2004 until his termination in February 2010.

C. Background to Investigation

3. IIROC received a Notice of Termination dated February 11, 2010 from BMO indicating that Jones had been terminated for cause and that he had admitted to misappropriating funds from IM.
4. On March 5, 2010, IIROC received a public complaint from IM. She complained that Jones had misappropriated \$25,000 from her in November 2007.

D. Misappropriation of \$25,000

5. IM was Jones' client from November 2006 to July 2009.

6. In or about late October or early November 2007, when IM was approximately 70 years of age, she was in a car accident that required her to be on pain medication for a period of time.
7. On or about November 16, 2007 Jones visited IM at her home. He recommended that she increase the payment of a premium on one of her insurance policies.
8. IM then signed a cheque dated November 16, 2007 for \$25,000 which was made payable to Jones. This cheque was subsequently deposited into Jones' bank account at a financial institution unrelated to BMO.
9. In or about the summer of 2009 IM transferred her investment account from BMO, for reasons unrelated to these proceedings, and Jones ceased acting as her advisor.
10. In or about December 2009 IM unsuccessfully attempted to receive an update from Jones on the status of the insurance policy in question. The insurance company later advised her that they had no record of the \$25,000 payment.
11. Further, the bank division of BMO advised IM that while her cheque had been cashed, there was no record of it being re-deposited or transferred to any other account for her benefit.
12. In or about early January 2010 IM again contacted Jones who advised her that the insurance company would be returning the \$25,000 to her.
13. IM subsequently received a letter dated January 11, 2010, from Jones purporting to explain what had happened with the \$25,000 cheque. On or about January 22, 2010 Jones contacted IM to advise that a cheque for the amount in question was available for her to collect.
14. Jones has since been repaid IM the \$25,000 with interest.
15. On or about February 3, 2010 Jones admitted to BMO in writing that he had taken the funds from IM. On or about February 4, 2010 Jones was terminated by BMO for cause.

E. Failure to Give Evidence

16. On June 28, 2010, Jones attended with counsel at IIROC's offices to answer questions in an interview as part of the investigation into his conduct.
17. Jones refused to answer any questions or give information concerning his conduct in relation to IM or the cheque for \$25,000.
18. Jones has not provided any further information to IIROC Staff since that time.
19. The parties agree that the following mitigating factors are relevant in that the Respondent:
 - The Respondent has no discipline history with IIROC;

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