

Re Stefiuk

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

Todd Stefiuk

2011 IIROC 24

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

Heard: February 14, 2011 at Calgary, Alberta
Decision: April 26, 2011
(18 paras.)

Hearing Panel:

Alan V.M. Beattie, Q.C. - Chair
Kathleen Jost - Industry Representative
Gary Godard - Industry Representative

Appearances:

David McLellan, for the Association
William O'Neill, for the Respondent
The Respondent did not attend

HEARING PANEL REASONS FOR DECISION SETTLEMENT AGREEMENT

INTRODUCTION

¶ 1 The Settlement Agreement was entered into dated January 26, 2011 between Todd Stefiuk (“the Respondent”) and the Investment Industry Regulatory Organization of Canada (“IIROC”) 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.

¶ 2 In the Settlement Agreement the Respondent admits to contraventions (below). The Settlement Agreement contains a complete Statement of Facts, a description of the Contraventions and the Terms of Settlement. It is stated that the Settlement Agreement is subject to acceptance by the Hearing Panel and, if the Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal. IIROC and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

¶ 3 A Settlement Hearing Book was provided in advance of the Hearing by IIROC to the Respondent and members of the Hearing Panel.

STATEMENT OF FACTS

¶ 4 The Statement of Facts in the Settlement Agreement includes:

Factual Background

Overview

11. While employed with MGI Securities Inc. (“MGI”) between March, 2006 and October, 2008, the Respondent failed to disclose to his member firm his position as director and/or officer of seven corporations, and his business involvement in one other corporation. Part of his outside business activity involved the facilitation and participation in an off-book private placement.

Background

12. The Respondent has been a Registered Representative (“RR”) since 1995.
13. From May, 2002 to March, 2006 the Respondent worked as a RR at Leede Financial, and from March, 2006 to October, 2008, the Respondent worked as a RR with MGI. From October, 2008 until December, 2008 the Respondent worked briefly with Jennings Capital (“Jennings”). All positions were at branches in the City of Calgary.
14. On September 28, 2008 MGI advised IIROC via ComSet that it was conducting an internal investigation of the Respondent with respect to possible undisclosed outside business activities.
15. The MGI internal investigation identified eight companies in which the Respondent had possible undisclosed outside business activities.
16. On or about October 14, 2008, the Respondent resigned from his position with MGI and accepted a position with Jennings.
17. In or about December, 2008, the Respondent was terminated from his position with Jennings.
18. Staff opened an investigation, and interviewed the Respondent on March 2, 2010.
19. The Respondent has not been registered with any IIROC Dealer Member firm since December, 2008.
20. The Respondent has no previous disciplinary history with the IDA or IIROC.

Outside Business Activities

21. While employed with MGI, the Respondent completed three internal outside business activities declaration forms in which he stated that he was not in violation of the member firm policy which required disclosure of any outside business activities.
22. The Respondent did advise MGI that he was a director of “Nexum Energy Corp.” He stated that this directorship was for the purpose of introducing Nexum to MGI for financing.
23. However, when Staff interviewed the Respondent, he admitted that while employed at MGI, he was a director, and in some cases an officer, of the following seven corporations:
 - a) Amcan Forest Products Ltd.;
 - b) Econcept Bio-Energy;
 - c) Enersys Concepts Inc.;
 - d) Nexum Ethanol;
 - e) Nexum Renewables;

- f) Nexum Energy Corp.;
 - g) 1325709 Alberta Ltd.
24. The Respondent failed to disclose his outside business activities in these corporations to his member firm.
25. The Respondent was also engaged in outside business activities with a biofuel startup named Okanagan Biofuels Inc. (“OBI”) which was not disclosed to his member firm.

Off-Book Securities Transactions

26. In September, 2005 the Respondent incorporated a private corporation named Amcan Forest Products Ltd. (“Amcan”), which was to be used as a funding vehicle to purchase equity in OBI.
27. At all material times, the Respondent was the sole director, and a shareholder, of Amcan.
28. Between approximately December, 2006 and May, 2007, while employed with MGI in Calgary, the Respondent facilitated and participated in two common share distributions of Amcan on behalf of forty-two individuals, thirty-seven of whom were clients. In total, the Respondent raised approximately \$837,000 for Amcan through this private placement. These securities transactions were conducted off the books of MGI and were not settled through the MGI back office.
29. The Respondent has admitted that the off-book securities transactions were conducted without the knowledge or consent of his employer.
30. The Respondent did not receive any commissions or fees from the off-book transactions.

CONTRAVENTIONS

¶ 5 The Settlement Agreement includes:

7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:
- a) Between approximately March, 2006 and October, 2008, the Respondent failed to disclose outside business activities in approximately eight corporations to his member firm and thereby engaged in conduct unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1; and
 - b) Between approximately December, 2006 and May, 2007, the Respondent facilitated and participated in the purchase and sale of securities on behalf of forty-two investors, thirty-seven of whom were clients, pursuant to a private placement which was conducted off the books of his member firm and thereby engaged in conduct unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.

TERMS OF SETTLEMENT

¶ 6 The Settlement Agreement includes:

8. Staff and the Respondent agree to the following terms of settlement:
- a) The Respondent agrees to pay a fine to IIROC in the amount of thirty-five thousand dollars (\$35,000.00);
 - b) As a condition of re-approval in any capacity, the Respondent shall successfully complete the Conduct and Practices Handbook examination;
 - c) As a condition of re-approval in any capacity, the Respondent shall be subject to a period of one (1) year of strict supervision with reports to be filed with IIROC.
9. The Respondent agrees to pay costs to IIROC in the sum of five thousand dollars (\$5,000.00).

SUBMISSIONS OF IIROC

¶ 7 The foregoing Agreed Statement of Facts, Contraventions and Terms of Settlement were reviewed by Mr. McLellan.

¶ 8 Mr. McLellan referred to pertinent parts of the Settlement Hearing Book. He made the following further submissions:

1. The **IDA Disciplinary Sanction Guidelines**, “General Principles” are very relevant in this case including protection of the investing public, protection of IIROC’s membership, protection of the integrity of IIROC’s process, protection of the integrity of the securities markets and prevention of a repetition of conduct of the type under consideration.
2. With reference to **Dealer Member Rule 29.1 (Undisclosed Personal Business)**, the respondent did, with one exception, conceal his activity from the Dealer Member firm. He signed forms stating that he was not involved in any outside activity, other than the one exception being noted. There was a potential conflict between the Respondent’s interests and those of his clients. However no complaints were received from clients and there is no evidence that any clients were harmed.
3. With respect to **Dealer Member Rule 29.1 (Outside Business Activities)**, the outside business activity was of significant magnitude (\$837,000.00), and there were thirty-seven clients affected. On the other hand there were no complaints from clients, the Respondent did not receive any compensation and there was nothing illegal about the outside placement.
4. The terms of settlement are in line with the “recommended sanctions”. The fine of \$35,000.00 is significantly more than the recommended minimum fine of \$10,000.00.
5. The Respondent has been very forthcoming and cooperative with IIROC.
6. The Respondent has no disciplinary history.
7. The following decisions provide assistance in determining the reasonable range of penalties:
Milewski (1999) IDACA No. 17; Bulletin No. 2605, August 5, 1999 (Ontario District Council) - failed to use due diligence to ensure recommendations for an RRSP account were appropriate - failed to ascertain directly from a client her investment objectives - failed to make or keep a written authorization naming the client’s husband - \$20,000 fine for three contraventions, disgorge \$1,650 in commissions, strict supervision for six months, successfully rewrite the CPH exam, costs \$1,500.
White (2010) IIROC No. 25 (Ontario District Council) - somewhat convoluted off-book private placements in excess of \$500,000.00, over two years - engaged in personal financial dealings with the clients in private placement distribution - received benefits of \$97,000.00 from a third-party for his facilitation of, and solicitation of clients for, the transactions - the Respondent’s Member firm had no knowledge of the transactions - no client complaints - cooperated in the investigation - fined \$97,000.00, 45 day suspension, close supervision for one year, successfully rewrite the CPH exam, costs \$15,000.00.
Gaudet (2010) IIROC No. 29 (Pacific District Council) - facilitated participation of clients in off-book transactions (\$20,000) without the knowledge and consent of the Member firm - entered into personal financial dealings with client - did not receive compensation - no disciplinary record - fined \$20,000, successfully complete the CPH exam, costs \$4,000.
Paziuk (2009) IIROC No. 47 (Pacific District Council) - over three years facilitated and participated in the purchase and sale of off-book securities in at least 20 client accounts - received remuneration from clients - advised and assisted clients with respect to the purchase and sale of shares when his registration was restricted to the sale of mutual funds - provided a

misleading document to his Member firm during course of the Member firm's investigation - no client complaints and no harm to clients - trivial financial benefit to respondent - no disciplinary record - fined \$20,000, prohibition against re-approval in any capacity for one month, strict supervision for one year, successfully rewrite the CPH exam, costs \$5,000.

Couture (2009) IIROC No. 45 (Québec District Council) - accounts of 35 clients held securities other than mutual fund securities with approximate book value of \$1.5 million without the securities being recorded in the books of his Member firm - failed to inform clients of a conflict of interest when they purchased promissory notes which the respondent advised them to purchase - cooperated with the investigation and acknowledged responsibility - no prior disciplinary record - fined \$35,000, strict supervision for one year, successfully rewrite the CPH exam.

SUBMISSIONS OF THE RESPONDENT

¶ 9 Mr. O'Neill, Counsel for the Respondent, agreed with the submissions of IIROC (above).

DECISION

¶ 10 In the Settlement Agreement the Respondent admits to the contraventions of IIROC Rules, IDA By-Laws, Regulations or Policies set out at p. 3, 4 above.

¶ 11 The Hearing Panel accepts that the contraventions have been established.

¶ 12 **IDA By-Law No. 29** provides, in part:

BUSINESS CONDUCT

29.1 Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a 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 of Directors.

....

¶ 13 The **IDA Disciplinary Sanction Guidelines**, under the heading "General Principles", include the following:

1. Main Concerns When Determining An appropriate Penalty

As set out in *Re Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26, at page 3, a Hearing Panel's main concerns in determining an appropriate penalty are:

1. Protection of the investing public;
2. Protection of the Investment Industry Regulatory Organization's membership;
3. Protection of the integrity of the Investment Industry Regulatory Organization's process;
4. Protection of the integrity of the securities markets, and
5. Prevention of a repetition of conduct of the type under consideration.

The penalty imposed in a specific proceeding should reflect the Hearing Panel's assessment of the measures necessary in the specific case to accomplish these goals, ranging from a reprimand to an absolute bar, and may take into account the seriousness of the respondent's conduct and specific and general deterrence.

2. Disciplinary Sanctions As Deterrence

Registrants and Dealer Member firms have significant responsibilities that they must meet if investors are to be protected and market integrity maintained. Registrants who choose to act in ways that threaten the integrity of the capital markets must have the expectation that they will be held accountable through enforcement action by regulators. Sanctions should be based on the circumstances of the particular misconduct by a respondent with an aim at general deterrence.

General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations. As was observed by the Hearing Panel in *Re Mills*, [2001] I.D.A.C.D. No. 7, April 17, 2001, at p. 3:

Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment.

....

3. Key Considerations When Determining Sanctions

The following list of factors should be considered in conjunction with the imposition of sanctions. Individual guidelines may list additional factors. This list is illustrative, not exhaustive, and the Hearing Panel should consider case-specific factors in addition to those listed here and in the guidelines. Since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate to the gravity of the misconduct and the relative degree of responsibility of a respondent. To properly assess the gravity of specific misconduct, the decision-maker should look to a number of factors, including, but not restricted to the following:

[Hearing Panel note: The factors are listed, below, without the extensive explanatory comment related to each factor.]

- 3.1 Harm of Clients, Employer and/or the Securities Market
- 3.2 Blameworthiness
- 3.3 Degree of Participation
- 3.4 Extent to which the Respondent was Enriched by the Misconduct
- 3.5 Prior Disciplinary Record
- 3.6 Acceptance of Responsibilities, Acknowledgement of Misconduct And Remorse
- 3.7 Credit for Cooperation
- 3.8 Voluntary Rehabilitative Efforts
- 3.9 Reliance on the Expertise of Others
- 3.10 Planning and Organization
- 3.11 Multiple Incidents of Misconduct Over An Extended Period Of Time
- 3.12 Vulnerability of Victim
- 3.13 Failure to Cooperate with the Association's Investigation
- 3.14 Significant Economic Loss to the Client and/or Member Firm

The **IDA Disciplinary Sanction Guidelines** contain the following “Considerations in Addition to General Principles” and “Recommended Sanctions”:

Guideline 2.4 Undisclosed Personal Business - Dealer Member Rule 29.1

Considerations in Addition to General

Recommended Sanctions:

Principles:

- | | |
|---|--|
| <ol style="list-style-type: none">1. Did the RR conceal or attempt to conceal his activity from the Member firm?2. Were any clients harmed by the activity and if so to what extent?3. Was the client advised of the prohibited nature of this activity and if so did he appreciate same?4. Was the client coerced to accept the Settlement offered? | <ul style="list-style-type: none">• Fine: Minimum of \$10,000 for individual• Temporary suspension from acting in relevant capacity for 6 to 12 months• Successful completion of appropriate industry program within 6 months• Period of close supervision for 12 to 24 months• In egregious cases, consider permanent prohibition on approval in any capacity |
|---|--|

Guideline 3.10 Outside Business Activities - Dealer Member Rule 29.1

Standard C of the Standards of Conduct relates to professionalism and states among other things, that all methods of conducting business must be such as to merit public respect and confidence. Outside business activities that is not known or consented to by the Dealer Member firm, does not merit public confidence or respect. As explained in the related commentary to Standard C of the CPH handbook, “Dealings in securities outside of the normal business of the firm, sometimes referred to as selling away or outside deals may expose clients to unknown risks and expose registrants and firms to civil liability. Such activity done without the knowledge of the firm also prevents effective supervision of the handling of client accounts, which is a requirement placed upon firms by the SROs. Firms may be exposed to liability for the actions of their employees in the effecting such trades, even though the firm is unaware of the activities.”

Considerations in Addition to General

Recommended Sanctions

Principles

- | | |
|---|--|
| <ol style="list-style-type: none">1. Magnitude (in size and value) of outside business activity.2. Number of clients affected.3. Magnitude of client losses.4. Suitability of outside business activity if involving securities.5. Compensation received by registrant. | <ul style="list-style-type: none">• Fine: Minimum fine of \$10,000.• Disgorgement of profits received from outside business activity.• Re-write of CPH.• Period of strict/close supervision• Period of suspension (in most egregious cases involving large value |
|---|--|

high risk off-book distributions).

6. Any personal interest of registrant in Outside business activity.
7. Existence of client complaints.
8. Whether registrant had honest but mistaken belief that proper approval obtained.
9. Legality of outside activity.

* * * * *

¶ 14 In applying the general principles set out above: the protection of the investing public, protection of the integrity of the IIROC process, protection of the integrity of the securities market, prevention of a repetition of conduct of the type under consideration, and general deterrence, lead us to the conclusion that the penalties agreed upon between IIROC and the Respondent in the Settlement Agreement are appropriate and should be accepted. We consider the penalties to be within the reasonable range appropriate to cases of this nature. We adopt the reasoning of the Hearing Panel in *Milewski* (above), at p. 12:

...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.

¶ 15 The actions by the Respondent could have resulted in significant financial losses by clients. The Member firm having no knowledge of the transactions could not carry out its responsibility of seeking to ensure that investors are protected and market integrity maintained. On the other hand, we have taken into consideration the factors in favour of the Respondent including that the clients did not suffer financial harm, that he received no compensation for the transactions, that he had no disciplinary record and that he has cooperated in the investigation and in negotiating the Settlement Agreement.

¶ 16 The Hearing Panel advised, at the conclusion of the Hearing, that we accepted, and we signed, the Settlement Agreement. We confirm that decision.

¶ 17 The Respondent, in the Settlement Agreement, agreed to the following terms of settlement, which we have accepted as appropriate:

- a) The Respondent agrees to pay a fine to IIROC in the amount of thirty-five thousand dollars (\$35,000.00);
- b) As a condition of re-approval in any capacity, the Respondent shall successfully complete the Conduct and Practices Handbook examination;
- c) As a condition of re-approval in any capacity, the Respondent shall be subject to a period of one (1) year of strict supervision with reports to be filed with IIROC.

¶ 18 The Respondent has agreed to pay costs to IIROC in the sum of \$5,000.00 which we accept as a reasonable amount considering the reduced involvement and cost for IIROC resulting from the Respondent's cooperation.

April 26, 2011

Alan V.M. Beattie, Chair

Kathleen Jost

Gary Godard

