Re Connacher

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

David Bruce Connacher

2011 IIROC 28

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

Heard: April 20, 2011
Decision: May 10, 2011
(38 paras.)

Hearing Panel:
Hon. Robert S. Montgomery, Q.C. (Chair), Selwyn Kossuth, Richard E. Austin

Appearance:
David McLellan, IIROC Enforcement Counsel
David Bruce Connacher did not appear nor was he represented by counsel

REASONS FOR DECISION

¶ 1 The allegations are that from March to October 2008, the Respondent David Bruce Connacher ("Mr. Connacher") engaged in conduct unbecoming or detrimental to the public interest, contrary to IIROC Rule 29.1, by:

(a) Conducting trades in his firm's average price client inventory account (API) in a manner that was misleading and deceptive; and

(b) Entering into several loan arrangements with two of his clients without the knowledge or consent of his employer.

¶ 2 The alleged violations occurred between March 2008 and October 2008 when Mr. Connacher was the Head Trader and a Registered Representative with Evergreen Capital Partners Inc. Evergreen Capital ceased operations on October 29, 2008, and IIROC began its formal investigation into Mr. Connacher's conduct on November 3, 2008. Evergreen filed an Assignment in Bankruptcy on or about December 2, 2008.

¶ 3 This hearing is to determine whether the Respondent committed the following contraventions:

From March to October 2008, the Respondent engaged in misleading and deceptive trading activity in

relation to the average price client inventory account, thereby acting contrary to Dealer Member Rule 29.1;

From March to October 2008, the Respondent engaged in personal financial dealings with clients in that he was a party to several loan arrangements with two of his clients without the knowledge or consent of his Member employer, thereby acting contrary to IDA by-laws and/or Dealer Member Rule 29.1.

THE FACTS

¶ 4 During the summer and fall of 2008, the Respondent, the Head Trader for Evergreen Capital Partners Inc. ("Evergreen"), intentionally through deceptive means, traded in the average price inventory account ("API") at his own discretion without obtaining instructions from any clients. This was clearly contrary to the true purpose of the API, namely to accumulate large non-contingent client orders.

¶ 5 The Respondent accumulated significant securities positions in the API and would only later decide which clients would receive the securities positions. The accumulated positions would often not be booked out of the API in a timely manner, remaining in the account for weeks, at times months. There were many instances where the Respondent would allocate the trades to a client only once a profit was generated.

¶ 6 As the general market declined in the fall of 2008, the accumulated positions also declined in value, thereby making it more difficult for the Respondent to book out to any of his clients. In late October 2008, attempts were made to book out over $63 million in securities to two of the Respondent's biggest clients, whose directing minds had also loaned the Respondent approximately $345,000. Both clients denied placing these orders and the trades failed to settle.

¶ 7 Evergreen was unable to pay for these failed trades and ceased operations on October 29, 2008. On or about November 4, 2008, Evergreen's IIROC membership was suspended. On or about December 2, 2008, Evergreen filed an Assignment in Bankruptcy.

¶ 8 The Respondent first joined Evergreen in March 2008 as an institutional trader. In July 2008, he was promoted to Head Trader. Evergreen hired him with the intent of growing its institutional sales and trading business.

¶ 9 The Respondent has not been registered with IIROC since late October 2008 when Evergreen ceased operations.

The Accumulation of the API

¶ 10 At Evergreen, an API was used to accumulate securities positions (usually through multiple trades) to fill large non-contingent client orders. Once the order was filled, the trader responsible for the order was required to promptly transfer the position from the API to the client's account at the average price.

¶ 11 Each Evergreen trader was assigned his own API to accumulate positions for his clients.

¶ 12 Evergreen's API were non-proprietary client accounts and therefore financed by the carrying broker of Evergreen, Penson Financial Services Canada Inc. ("Penson"). However, Evergreen was liable for any unsettled trades.

¶ 13 From June to October 2008, the Respondent accumulated increasingly larger positions in his API. The month-end positions as of settlement date were as follows:

Settlement Date	Net Inventory Position
June 30, 2008	$16,470,201.17
July 31, 2008	23,729,204.32
August 30, 2008	21,467,524.05

September 30, 2008	31,326,644.97
October 27, 2008*	44,534,477.39

**October 27, 2008 was the last date before the majority of the positions were booked out to clients.*

¶ 14 The majority of the accumulated positions were in 3 securities: Yamana Gold Inc., Barrick Gold Corp. and Timminco Ltd. As of Oct 27th, these securities constituted approximately 80% of net inventory positions accumulated in the Respondent's API.

¶ 15 The Respondent admitted to freely trading in his API at his own discretion without specific prior instructions from any of his clients. He was effectively using the API as his own trading account to generate profits that would ultimately be allocated to his clients. As part of this trading strategy, the Respondent would at times engage in the following improper and/or deceptive practices:

i. Execute both the buy and sell of a particular security in the API and subsequently book out to his clients. In doing so, he used Penson and/or Evergreen's capital to finance winning trades for his clients;

ii. Allocate positions to his clients at prices less than the market price at which the security was bought. Such pricing discrepancies provided a benefit to his clients at the expense of Penson and/or Evergreen;

iii. Transfer some of his accumulated positions to the API of the other Evergreen traders, thereby creating a misleading impression to the firm that he managed down his own API; and

iv. Book out positions to clients and immediately cancel them days later, thereby creating a misleading impression to the firm that he was managing down his own API.

¶ 16 The majority of the accumulated positions were booked out to two of the Respondent's biggest clients: BC and LH, who each held a non-discretionary Delivery Against Payment account at Evergreen. Individuals who were directing minds of these corporate clients provided loans to the Respondent during the same period of time.

¶ 17 According to the Respondent, he engaged in this trading activity in the API to impress both his clients and the firm. The clients received winning trades without the risk of putting up their own capital and at times obtained a better price. The firm would benefit from increased business in institutional trading, the primary reason it hired the Respondent.

¶ 18 However, the Respondent failed to recognize the risk he exposed the firm and/or the carrying broker as a result of his trading activity.

¶ 19 With the general market decline, especially in the fall of 2008, the Respondent's API positions declined significantly in value. This made it increasingly difficult for the Respondent to promptly book out positions to his clients. While some of the positions were booked out to clients within a matter of days, significant positions were held in his API for weeks. There were a few instances where positions were in the accounts for months and remained there until Evergreen ceased operations in October 2008.

¶ 20 In late October 2008, the total cost of the unbooked positions in Evergreen's API was approximately $74 million. Due to the decline in market value, Penson and/or Evergreen was facing an unsecured liability of approximately $33 million, the majority of which was directly traced back to the accumulated positions in the Respondent's API or to positions which were transferred from the Respondent's API to the other traders' accounts.

¶ 21 Upon learning of the large unsecured liability, Penson attended the Toronto office of Evergreen on October 28 and 29, 2008 and ticketed out approximately $63 million of the $74 million unbooked positions in the API. Most of the positions were booked out to the Respondent's two clients, BC and LH, in amounts of $61

million and $2.2 million respectively. Both clients denied knowledge of these trades and consequently the trades failed to settle.

¶ 22 Penson took the position that Evergreen was responsible for the losses related to the failed client trades and on October 29, 2008 advised Evergreen that it was going to cease acting as its carrying broker. That same day, Evergreen advised IIROC of the situation including the fact that it had no capital and it ceased operations.

¶ 23 On or about October 29, 2008, IIROC invoked its discretionary authority pursuant to IIROC Dealer Member Rule 30.4 and placed Evergreen into Early Warning Level 2.

¶ 24 On November 4, 2008, following an IIROC hearing in Calgary, Alberta, Evergreen's membership was suspended indefinitely.

Personal Loans from Clients

¶ 25 At the relevant time, BK was Chief Executive Officer and sole shareholder of LH. BK provided the majority of trading instructions for the LH account at Evergreen.

¶ 26 At the relevant time, LB was the executive vice-president of BC who was duly authorized to give trading instructions to the Respondent for the BC account at Evergreen.

¶ 27 Prior to joining Evergreen, BK loaned the Respondent $100,000 so that the Respondent could purchase shares in the Member firm where he was employed. Upon leaving the Member firm, the Respondent was to sell the shares and pay back BK with the proceeds. The loan remains outstanding.

¶ 28 In or around June 2008, BK loaned the Respondent an additional $150,000 for the Respondent to use as capital for his personal trading account. The loan remains outstanding.

¶ 29 In or around August 2008, the Respondent approached LB to loan him money to pay for his daughter's school tuition. LB agreed to help and loaned him $50,000. The client understood that the loan was to be repaid by November 2008. The loan remains outstanding.

¶ 30 In or around September 2008, BK loaned another $45,000 to the Respondent for personal finance issues. The loan remains outstanding.

¶ 31 The Respondent borrowed $345,000 in total, comprised of $295,000 from BK and $50,000 from LB.

¶ 32 The Respondent did not disclose these loan arrangements to Evergreen.

¶ 33 The Panel finds that the Respondent was properly served with Notice of Hearing that made him fully aware of all the allegations against him. He failed to file a response as required by Rule 7.2 and, further, he failed to appear at the hearing.

¶ 34 Rule 7.2 and Rule 13.5 provide in the absence of a response, the Panel may accept the facts and violations as proven. The blatant disregard by the Respondent cannot circumvent the hearing.

¶ 35 The Panel accepts all of the allegations against the Respondent. In accepting the facts and allegation as proven the Panel accepted Enforcement counsel's position that while BK and LB were not clients of the Respondent in a strict sense, they were the directing minds of BC and LH, and given the intent and purpose of the Dealer Member Rule 29.1, these individuals should be considered to be clients of the Respondent. We have heard the argument of Enforcement Counsel as to penalty. We prefer to craft our own penalty and costs award.

¶ 36 The conduct of the Respondent was contemptible. He knowingly violated critical rules of his employer and his industry. He created a staggering loss to his employer of $33 million which resulted in its bankruptcy. He borrowed large sums from clients and never repaid them. His conduct was tantamount to fraud.

¶ 37 It is vital to send a strong message to the securities industry and the investing public that this type of conduct must bear harsh sanctions.

¶ 38 It is ordered that:

1. The Respondent is barred for life from any form of registration in any capacity with a Member firm of the Association.
2. The Respondent pay a fine of $500,000. Any disgorgement is subsumed in the fine.
3. The Respondent pay costs of $71,315.50. This is full indemnity. We find that appropriate given the deception of the Respondent.

Dated at Toronto, this 10th day of May 2011.

The Hon. Robert S. Montgomery, Q.C., Chair

Selwyn Kossuth

Richard E. Austin