

Re Dennis

IN THE MATTER OF:

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

and

James Charles Dennis

2011 IIROC 39

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

Heard: April 28, 2011 in the City of Toronto, Province of Ontario
Decision: June 21, 2011
(16 paras.)

Hearing Panel:

Edward T. McDermott (Chair), Colleen Wright, Deborah Archer

Appearance:

Mr. Andrew P. Werbowski, Enforcement Counsel

No one appearing on behalf of James Charles Dennis

PENALTY DECISION

Introduction

¶ 1 By decision dated January 21, 2011 this Hearing Panel found that the Respondent, James Charles Dennis, had been proven guilty of contravening Dealer Member Rule 29.1 in accordance with the following Count with which the Respondent was charged as particularized in the Notice of Hearing dated August 5, 2010:

“Count 1

Between about June 2007 and September 2008, the Respondent failed to disclose to his employer, IPC Securities Corp. certain outside business activities, contrary to IIROC Dealer Member Rule 29.1.”

¶ 2 Following such decision, IIROC requested that this Hearing Panel reconvene in order to hear the evidence and submissions of the parties relative to the sanctions to be imposed upon the Respondent as a result of the findings and decision of this Hearing Panel in its decision on the merits of this matter.

¶ 3 Pursuant to this request by IIROC, a Penalty Hearing was scheduled by the National Hearing Coordinator of IIROC to be held in Toronto on April 28, 2011.

¶ 4 Notwithstanding that the Respondent was provided with notice of the Penalty Hearing and copies of all documents which counsel for IIROC intended to rely upon at such hearing, the Respondent did not attend at the hearing. Counsel for IIROC proceeded to satisfy this Hearing Panel that the Respondent had received due notice of the Penalty Hearing and had in fact indicated to counsel that he was declining to attend. The hearing accordingly proceeded in the absence of the Respondent.

The Sanctions

¶ 5 The Hearing Panel then proceeded to hear the representations of counsel for IIROC in light of the evidence led at the original hearing on the merits and the findings of this Hearing Panel in its decision of January 21, 2011.

¶ 6 In considering the appropriateness of the sanctions to be applied in this particular case, this Hearing Panel gave full consideration to its authority to impose penalties under the Dealer Member Rules; the general principles applicable in determining an appropriate penalty for the particular offence; the Disciplinary Sanctions Guidelines advanced by IIROC and the precedents and submissions presented and referred to by counsel during the Penalty Hearing. We also reviewed and considered all of the potentially mitigating factors disclosed during the course of the hearing on the merits or otherwise referred to by counsel for IIROC during the Penalty Hearing, which might ameliorate the penalties which would otherwise be imposed as a result of the finding of guilt.

¶ 7 This Hearing Panel subscribes to the balanced approach set forth in the oft quoted passage of 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.”

¶ 8 In considering these principles and factors as they relate to the facts of this specific case, this Hearing Panel has noted that the Respondent (who had been in the industry for some 14 years) has no previous disciplinary record and that there was no evidence that any member of the public or his Dealer Member firm sustained any direct harm as a result of the Respondent conducting outside business activities (“OBA’s”) which were not disclosed to his employer.

¶ 9 The Hearing Panel has also taken note of the fact that the Respondent asserted that because of the ongoing investigation and this enforcement proceeding, he has not been able to secure a position in the industry since he separated from his employer in or about October 2008, which, while it was not established in evidence, may have caused him significant economic loss.

¶ 10 Notwithstanding these mitigating factors, the fact remains that the potential for harm to the public and the Respondent’s employer remained very real. The fact that the Dealer Member firm was unaware of the OBA, deprived it of the ability to supervise the activity and the Respondent’s role in it in order to ensure suitable protection for the investing public. It is also of considerable significance that the contravention of the Dealer Member Rules was, as this Hearing Panel has so found, done knowingly and over a long period of time for the predominant purpose of providing a significant economic benefit to the Respondent.

¶ 11 The Respondent had numerous opportunities to disclose the existence and details of his arrangements with GD to his employer which had specifically and directly advised him of the requirement to report all OBA’s. IPC Securities Corp. had also repeatedly provided the Respondent with OBA and Annual Compliance Questionnaires which required him to disclose and report the details of such activities.

¶ 12 The Respondent however failed to provide honest and fulsome responses to these enquiries and instead continued to conceal the arrangement with GD by giving false or deceptive answers to the various enquiries made by his employer and its Compliance personnel requesting full disclosure of any OBA he might be engaged in.

¶ 13 While, during the course of the hearing on the merits, the Respondent did acknowledge that he knew his conduct was wrong and in contravention of the Dealer Member Rules, this acknowledgement was not made

until the hearing was held in November 2010, and even at that time the Respondent attempted to minimize the seriousness of the offence.

¶ 14 Counsel for IIROC acknowledges that the Respondent did cooperate during the course of the investigation. The evidence however also indicated that at the outset of the investigation the Compliance personnel of his employer asked the respondent if he was receiving remuneration for referrals. At that time, he denied receiving any remuneration as a result of his relationship with GD and indicated he was simply recovering his marketing costs which he estimated at over \$200,000.00. This was clearly misleading and is an aggravating factor in assessing the appropriate penalty.

¶ 15 Counsel for IIROC has asked that we impose a fine of \$50,000.00 plus an amount sufficient to disgorge the profits the respondent made as a result of contravening the Dealer Member Rule as alleged in the count. This amount was (as agreed to by the Respondent at the original hearing) proven to be the sum of \$291,855.14. IIROC also asks that pursuant to Rule 20.49 an order be issued requiring the respondent to reimburse it for its costs in investigating and prosecuting this matter in the amount of \$30,000.00.

Decision and Orders

¶ 16 Based upon all of the foregoing considerations, it is the Decision and Order of this Hearing Panel that the following penalties shall be imposed upon the Respondent:

- The Respondent shall pay a fine in the amount of \$321,855.14, which includes an amount of \$291,855.14 representing a disgorgement of the net profit earned by the Respondent as a result of engaging in the outside business activity which was not reported to his employer, as specified in the charges. While the principle of disgorgement may not be applicable in other situations, in our view, on the facts of this particular case, it would undermine the principles which underlie the IIROC disciplinary process if the Respondent were allowed to retain the fruits of his wilful, deliberate and prolonged contravention of the OBA disclosure requirement. The fine also includes a further amount of \$30,000.00 to reinforce the importance of deterring conduct of this nature.
- The Respondent shall be required to re-write and pass the examination based on IIROC Conduct and Practices Handbook Course as a condition of being re-engaged as a registered representative/approved person in a business regulated by IIROC.
- The Respondent shall be subject to strict supervision by his employer for a period of one year from the date of being re-engaged as a registered representative/approved person in a business subject to the regulatory authority of IIROC.
- The Respondent shall pay part of the costs incurred by IIROC in connection with this proceeding in the amount of \$15,000.00.

The fine and payment of costs shall be payable from the date of this decision.

DATED at Toronto this 21st day of June, 2011

Edward T. McDermott, Chair

Colleen Wright

Deborah Archer

Copyright © 2011 Investment Industry Regulatory Organization of Canada. All Rights Reserved.