

Re Schiesser

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada (IIROC)**

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Robert Werner Schiesser

2011 IIROC 78

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

Hearing: December 9, 2011 in Calgary, Alberta
Decision: January 23, 2012
(9 paras.)

Hearing Panel:

The Hon. H. Benjamin Casson, Q.C. (Chair), Mr. Gary Godard, Mr. Martin Davies

Appearances:

Mr. David McLellan, Senior Enforcement Counsel, Mr. Tayen Godfrey, Enforcement Counsel, and Mr. Gil Gauthier, Manager Investigations, for IIROC
Mr. James Rooney, Q.C., for the Respondent

DECISION

¶ 1 On December 9, 2011, a Hearing Panel (the “Panel”) accepted all the terms of a Settlement Agreement executed on October 27, 2011, between ROBERT WERNER SCHIESSER, an Approved Member (the “Respondent”), and DAVID McLELLAN (“Enforcement Counsel”) on behalf of Staff of the Investment Industry Regulatory Organization of Canada (“IIROC”).

¶ 2 The Settlement Agreement was based on an agreed Statement of Facts as follows:

Registration History

- The Respondent became licensed in the securities industry as a registered representative (RR) in March 1987. During the Relevant Period he was employed by Canaccord. He is currently employed at Raymond James Ltd. (Raymond James).
- The Respondent was disciplined by the Alberta Securities Commission (ASC) for creating a false appearance of trading activity, and concealing the trading from his managers. His license was suspended for six months commencing December 5, 1994 and he was ordered to pay costs of \$106,967.23.

Aspen

- Aspen, a private company, was incorporated in March 2006 in Nevada and the Respondent's wife, TS, was the sole shareholder. Between March 2006 and March 2007 TS loaned \$197,418.84 as working capital to Aspen. In March 2007, an Aspen principal, DM, who was to invest \$5,000 in exchange for founders shares was diagnosed with cancer and as a result TSW, the sister of TS, invested \$5,000 for founders shares.
- TSW was the Secretary-Treasurer, Vice-President and a director of Aspen. DM, a close friend of the Respondent's, was the President, CEO and a director of Aspen. Aspen's principal office was located at the Respondent's home address. Aspen changed its address after becoming public and at the request of Canaccord.
- TS was Aspen's only source of funds prior to August 2007. She provided non-interest bearing loans of US\$196,903 to Aspen as working capital from August 2006 to August 2007 (the Loans).
- In June 2007, Aspen filed a registration statement and preliminary prospectus (Preliminary Prospectus) under the Securities Act of 1933 with the U.S. Securities and Exchange Commission, relating to an initial public offering to sell 1,000,000 common shares.
- In August 2007, Aspen raised \$300,000 by private placement, selling 1,000,000 shares at US\$0.30 a share (Aspen Private Placement). The Preliminary Prospectus was posted on EDGAR.

Off Book Transactions

- The Respondent solicited some of the Clients to participate in the Aspen Private Placement. The Clients invested \$226,500.00 subscribing for 755,000 shares. At that time both TS and DM invested at the same price as the other investors.
- The Respondent instructed the Clients to make payment to Securities Transfer Corp., Aspen's transfer agent in Texas, U.S.
- Client share certificates were delivered directly to the Clients. The Respondent instructed the Clients to deposit their Aspen share certificates in their Canaccord accounts, and 48 of the Clients complied between September 2007 and March 2008, and their account statements indicated that the share certificates were received.
- The Clients monthly statements for May 2007 to March 2008 indicate that the Aspen share purchases were not recorded in the books of Canaccord.
- The Respondent failed to obtain the proper, or any, approval from Canaccord for the Aspen share purchases. Further, no due diligence review was done by the corporate finance department as required by Canaccord's policy manual for private placements over \$100,000.
- The Respondent received no commissions or fees for soliciting and facilitating investments in the Aspen Private Placement.

Financial Interest

- Aspen's Preliminary Prospectus indicated that the net proceeds of the Aspen Private Placement would be used for working capital, horse purchases and salaries. However, management had significant flexibility to apply the net proceeds.
- Aspen's Preliminary Prospectus also indicated that TS would not call the Loans and would cover operating costs for at least 12 months after the closing of the Aspen Private Placement.
- However, by October 31, 2007, Aspen had paid TS \$193,419, representing 64% of the gross proceeds raised by the Aspen Private Placement. At that time, Aspen retained \$82,000 in treasury.

- The Respondent did not disclose to the Clients or Canaccord that:
 - a) his family was involved in the management of Aspen; and
 - b) his wife loaned \$197,103 as working capital to Aspen.

¶ 3 On those facts, the Respondent admitted to the following contraventions of IIROC’s Rules, Guidelines, Investment Dealers Association (“IDA”) By-Laws, Regulations and Policies:

a) Contravention 1:

Between July 2007 and March 2009 (Relevant Period), the Respondent engaged in conduct unbecoming contrary to Dealer Member Rule (Rule) 29.1 by soliciting and facilitating investments in a private placement by Aspen Racing Stables Inc. (Aspen) to 49 clients, without the knowledge of Canaccord Genuity Corp. (Canaccord) and in contravention of existing firm policies.

b) Contravention 2:

During the Relevant Period, the Respondent engaged in conduct unbecoming contrary to Rule 29.1. by having an undisclosed indirect financial interest in Aspen.

¶ 4 The Settlement Agreement provides for penalties for the above-mentioned contraventions as follows:

- a) A total fine in the amount of \$45,000, broken down as follows:
 - (i) \$15,000 fine for contravention 1
 - (ii) \$30,000 fine for contravention 2.

The Respondent agrees to pay costs to IIROC in the sum of \$4,500.

¶ 5 5. In his submission recommending acceptance, by the Panel, of the sanctions agreed to in the Settlement Agreement, Enforcement Counsel referred the Panel to the following guidelines:

1. General Principles set out in the Dealer Member Disciplinary Sanction Guidelines;
2. Dealer Member Rule 29.1 (Undisclosed Personal Business with a Client without the Member Firm’s knowledge or consent); and
3. Dealer Member Rule 29.1 (Outside Business Activities).

¶ 6 The Panel recognizes that the General Principles apply in imposing sanctions for any contravention of IIROC’s regulatory process whereas Deal Member Rule 29.1 applies, specifically, to the two contraventions which the Respondent has admitted.

¶ 7 The Panel reviewed and considered the General Principles and Dealer Member Rule 29.1 as it applies to Contravention 1 and Contravention 2 in this matter.

¶ 8 The Panel agrees with the reasoning in paragraph 14, page 4 of the decision in the Mutual Fund Dealers Association of Canada and Christopher Andrew Nivet (File No. 200940 dated May 11, 2010):

We are of the view that a negotiated settlement should not be disturbed provided that the penalties are within the reasonable range of appropriateness. In that regard, we have considered the remarks of the panel of the District Council in *Re Milewski*, [1999] I.D.A.C.D. No. 17, decided on July 28, 1999. The Panel made these comments at page 9:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

¶ 9 The Panel has concluded that the Joint Settlement Recommendation i.e. a total fine in the amount of \$45,000.00, broken down as follows:

- (i) \$15,000.00 fine for Contravention 1;
- (ii) \$30,000.00 fine for Contravention 2

and costs to IIROC in the sum of \$4,500.00 is reasonable, proportionate and appropriate having regard to the conduct of the Respondent and the circumstances of the case and has accepted and signed the necessary Order dated December 9, 2011.

DATED this 23rd day of January, 2012.

The Hon. H. Benjamin Casson, Q.C., Chair

Mr. Gary Godard, Industry Representative

Mr. Martin Davies, Industry Representative

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