INVESTMENT DEALERS ASSOCIATION OF CANADA

IN THE MATTER OF:

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

ELIZA EDENA SOPER

Hearing held at Reportex Agencies Ltd.,
925 West Georgia Street, Suite 1010, Vancouver, BC
on April 30, 2008 at 10:00 am PDT

Panel:

Wade Nesmith, Chair
Don Teatro, Panel Member
Chris Lay, Panel Member

In Attendance:

Barbara G. Lohmann, Counsel for the Investment Dealers Association

Jeffrey P. Scouten, Counsel for the Respondent

Eliza Edena Soper, Respondent

REASONS FOR DECISION

Introduction

Pursuant to a Notice of Hearing dated (the "Notice") dated March 5, 2008, a hearing in respect of certain conduct of Soper (the "Respondent), was held in Vancouver, British Columbia commencing on April 30, 2008. The Notice alleged the following:

"**COUNT 1**

In or about the end of January or early February 2006, the Respondent, at all material times a Registered Representative with Research Capital Corp. ("Research"), a Member firm, failed to deliver two bank drafts, which she received from a client in respect of two client accounts, immediately to Research for deposit to the client accounts, contrary to Research policy and contrary to Association By-law 29.1.

COUNT 2

In or about February 2006, the Respondent, at all material times a Registered Representative at Research, a Member Firm, acted contrary to Association By-law 29.1 in that she accepted $10,000 cash from a client knowing the acceptance of cash was contrary to Research's Money Laundering Policy. The Respondent then took a $10,000 cash advance on her personal credit card, with which she purchased a bank draft, which bank draft was then deposited to the appropriate client account. She subsequently used the cash received from the client to pay back her credit card cash advance."

The Hearing

The hearing was held over the course of the day. While the vast majority of the facts were admitted, the Association called one witness, Katherine Tanaka, who was the investigator in this matter, and the Respondent testified in her own behalf. Following those witnesses, submissions were made.

Facts

The facts are generally not in dispute and with the exception of the state of mind of the accused during certain times, are all admitted. The following is a summary of the facts outlined in the Notice, together with our findings in respect of the few matters in dispute.

1. The Respondent became employed in the securities industry in May 1997 as a Registered Representative ("RR") with Taurus Capital Markets Ltd. in Ontario. In July 1999 she became an RR (Options) with Dundee Securities Corp., also in Ontario. She transferred to Desjardins Securities Inc. (also in Ontario) in September 2002. In September 2003, the Respondent was approved for registration in British Columbia. In January 2005 she joined Research in its Vancouver, British Columbia office as an RR. She remains currently employed with Research.

2. The Respondent has no previous disciplinary history.

Count 1

1. On or about December 7, 2005, DD opened a Canadian and US margin account with the Respondent at Research. On or about December 23, 2005, DD's spouse, LD opened a Canadian and US margin account with the Respondent at Research. On or about January

10, 2006, MN, LD's brother, opened a Canadian and US margin account with the Respondent at Research. On or about January 17, 2006, NI Ltd., a company with MN as its president, opened a Canadian and US margin account with the Respondent at Research.

2. Prior to this series of transactions, we are advised and do find that the Respondent had no relationship, personal or professional, with any of these clients.

3. Between (entry dates) January 13, 2006 and January 25, 2006 (inclusive), LD purchased securities for her account which left a debit closing balance as at January 31, 2006 of US $189,644.19.

4. On January 13, 2006, DD's US dollar account was in a credit position. However, between (entry dates) January 13, 2006 and January 20, 2006, DD purchased securities which created a debit position as of January 31, 2006 of US $546.60. DD also purchased securities in his Canadian dollar account. Between the time that DD's Canadian dollar account was opened and January 31, 2006, no monies were deposited to that account. Accordingly DD's account had a debit balance of CDN $2,229.44 as of January 31, 2006.

5. We were advised and do find that the majority of the securities purchased in these accounts were of companies listed on the Bulletin Board or "pink sheets" and were companies with which the account holders, directly or indirectly, had key roles.

6. It appears that it was not until sometime in the last week of January 2006, that the Respondent received a telephone call from the Risk Management department at Research regarding the debits in the accounts of DD, LD, MN and NI Ltd.

7. At some undetermined point in the last week of January but before February 1, 2006, on a business day approximately at mid-morning, LD met the Respondent in the hallway at the backdoor of Research's office and provided the Respondent with two bank drafts in the amounts of US$190,000 and US$2,500 respectively (the "Drafts"). At the time that the Respondent received the Drafts from LD, Research's Client Services Department was open for business but it was not accessible to the public.

8. The Respondent acknowledges that she knew she should have deposited the drafts immediately into the client accounts but testified that she was under considerable pressure, both professional and personal, and for reasons she cannot now explain, she placed the Drafts in a pocket of clothing she was wearing. She later washed the clothing, destroying the Drafts.

9. On or about February 1, 2006, the Respondent received an e-mail from the Manager of Risk Management at Research which stated the following:

> Subject: SELL OUT NOTICE
>
> Edena,

I will start selling out the following accounts first thing in the morning if they are not paid for today:

[DD]	$2500 U.S.
[LD]	$190,000 U.S.
[MN]	$83,000 U.S.
[NI Ltd.]	$23,300 U.S.

These are all trades resulting from purchasing Brookmount Explorations. No more buying of this stock unless you have funds in the account up front.

New accounts should never have trades placed without adequate funds and/or equity in the account.

Manager, Risk Management

10. Between February 1 and February 21st, a number of conversations took place between the Respondent and the Risk Management department with respect to the debits in the accounts. The Respondent testified, and we so find, that she made numerous attempts to contact the clients and arrange to have the debits covered. Some funds arrived and were deposited, but it is clear that significant friction developed between the Respondent and these clients. As a result, on February 21st, Research started to sell securities in all the accounts in which there remained debit positions.

Count 2

11. On or about February 6, 2006, MN called the Respondent and advised her that he and DD wanted to cross stock from LD's account to the NI Ltd. Account. DD agreed to immediately provide some money, so the Respondent effected the cross transaction. The Respondent then met DD on the street outside her office between 3:00 and 3:30 pm. She was expecting to receive three bank drafts, including two to replace the Drafts. Rather, DD gave her $10,000 cash in $100 bills (the "Cash") and instructed her to deposit the Cash to the NI Ltd. account. She did not provide a receipt to DD nor did he ask for one.

12. The Respondent testified, and we so find, that she was surprised to received the Cash and while she knew that the internal rules at Research prohibited accepting cash, she felt it was important to get something from a client who she viewed as avoiding payment. Because she needed to collect her son from school, she went straight there instead of returning to her office with the Cash.

13. The Respondent did not notify anyone at Research upon receipt of the Cash nor did she ensure that proper receipts and filings were completed in order to comply with Research policy and/or federal legislative requirements.

14. The day following her receipt of the Cash, on or about February 7, 2006, the Respondent forgot the Cash at home, so she went to her bank and took out a $10,000 cash advance on

her credit card. She then used that money to purchase a bank draft which she took to Research and deposited it into the NI Ltd. account.

15. Towards the end of February, Research sold out the accounts to cover then still outstanding debit positions.

16. On or about March 1, 2006, the Respondent used the Cash to pay off the cash advance on her credit card. As a result of taking the cash advance, the Respondent incurred interest charges of $64.06.

17. In or about June 2006, as a result of her acceptance of the Cash, Research placed the Respondent under "Enhanced Supervision" for six months, and she was required to re-write and complete both the *Conduct and Practices Handbook Manual* exam and the *Anti-Money Laundering Course* within ninety days. The Respondent was advised that failure to complete these conditions would result in her immediate termination. The Respondent successfully completed the two courses by the end of June 2006.

Liability

The Respondent has admitted liability in the matter. Having reviewed the evidence and taking into account the admission, we find that her conduct in this matter constitutes a contravention of Association By-law 29.1.

The Respondent readily acknowledges that she made errors of judgment that she attributes to the stress she was under, both at work and at home. Having reviewed the evidence, the facts admitted, and having observed the Respondent during her testimony, we find that she was under considerable and significantly more than average stress at this time of her life. The stress at work was compounded by the lack of an assistant, demanding and difficult clients, and a growing practice. We also note that despite the fact that the accounts with which we are concerned were new accounts, trading in debit positions on securities listed on the Bulletin Board and "pink sheets", the Risk Management department of Research did not apparently become involved until late January and, in fact, did not sell out the accounts until late February. Finally, there is ample evidence of extremely high levels of stress in the Respondent's personal life.

Penalty

We received submissions on penalty from both Ms. Lohmann and Mr. Scouten. Ms. Lohmann argued that the conducted demanded a period of suspension and recommended a 6 month suspension together with a fine of $25,000 to $35,000, six months of strict supervision and a re-taking of certain courses and examinations. Mr. Scouten suggested that in the circumstances, given the stress that the Respondent was under, the fact that Research had already imposed a penalty in the context of her employment, and given the Respondent's cooperation and admissions, a reprimand was all that was required. He added that if the Panel felt a fine was necessary, it should be in the range of $5,000 to $10,000. He argued strenuously that a period of suspension was not appropriate in the circumstances.

We have carefully reviewed the facts and also the authorities cited to us in this matter. In our view, none of the precedents submitted provide any real guidance other than in matters of general principle. The facts in this matter are unique.

We have, however, found guidance in the Association's Disciplinary Sanction Guidelines (the "Guidelines"). Section 4.3.1 of the Guidelines provides 5 circumstances where a period of suspension may be appropriate. They are:

- "there have been numerous serious transgressions;
- there has been a pattern of misconduct;
- the respondent has a disciplinary history;
- the misconduct has an element of criminal or quasi-criminal activity; or
- the misconduct in question has caused some measure of harm to the integrity of the securities industry as a whole."

We have looked for these circumstances in the context of this matter and have come to the conclusion that none of them exist. Accordingly, we reject the Association's call for a period of suspension.

From our perspective, the real issue in this matter is whether a reprimand or a fine is appropriate. With that in mind, we have reviewed the facts of this matter against the considerations identified in Section 3 of the Guidelines.

Harm to Clients, Employer and/or the Securities Market
The only argument that harm has occurred in this matter would relate to the acceptance of cash by the Respondent – conduct that was contrary to the firm's rules and holds the potential for money laundering. However, in the circumstances of this matter, we find the actual harm to be minimal.

Blameworthiness
We have found that the Respondent's conduct was a mistake caused by the stress under which she was operating at the time. Accordingly, there is minimal blameworthiness involved in this matter.

Degree of Participation
The Respondent is solely responsible for these matters.

Extent to which the Respondent was Enriched by the Misconduct
There was no enrichment of the Respondent in this matter.

Prior Disciplinary Record
The Respondent has no disciplinary history.

Acceptance of Responsibilities, Acknowledgement of Misconduct and Remorse
It is clear to us that the Respondent understands that her actions were wrong and that she is remorseful.

Credit for Cooperation
The Respondent cooperated throughout this matter.

Voluntary Rehabilitative Efforts
We do not believe this is a relevant consideration.

Reliance on the Expertise of Others
There is no evidence that the Respondent sought advice from anyone.

Planning and Organization
There was no planning or organization involved in this matter. Indeed, to some extent, this is a bit of a dark comedy of errors.

Multiple Incidents of Misconduct over an Extended Period of Time
This matter involves two unrelated and isolated infractions.

Vulnerability of Victim
This is not a relevant consideration.

Failure to Cooperate with the Association's Investigation
We have found that the Respondent cooperated fully with the Association and her employer.

Significant Economic Loss to the Client and/or Member Firm
There was no economic loss.

In considering the appropriate sanction, we have also reviewed the letters of support provided by the Chief Executive Officer of Research and the Managing Director of Research's Vancouver office. Both of these individuals speak very highly of the Respondent.

This case concerns two specific matters that each comprise what is commonly called "conduct unbecoming". The first relates to not depositing the Drafts immediately, with the result that they were destroyed. While we have found that this conduct was inappropriate, frankly, there is an unfortunate comic aspect to these circumstances and no one was harmed. Were this the only matter in front of us, we would not sanction the Respondent in any way.

However, the accepting of the Cash, while only an error in judgment, breached internal guidelines designed to assist Research in discharging its obligations with respect to money laundering. Such guidelines are fundamentally important to the integrity of the industry. While the stress that the Respondent was under explains, to some extent, this conduct, it does not excuse it. As counsel submitted, many people work in very stressful environments, and it was the Respondent's responsibility to ensure that her stress did not interfere with her ability to discharge her obligations. She did not discharge that responsibility properly. While we are of the view, based on the evidence presented to us, that the firm did not support the Respondent by acting quickly and decisively, it was the Respondent's responsibility to seek that assistance, and she did not. In the result, we believe that a fine is necessary to make it clear to Association members that they are responsible for their own actions and that even a minor infraction of

protocols designed to assist the industry in discharging its responsibilities with respect to money laundering will attract sanction. Having said that, we also accept that this was a one-time mistake, a decision made on the spur of the moment, and involving a relatively small amount of cash. Accordingly, in our view, any fine should be modest. In the result, we impose a fine of $5,000. We will not impose any other sanctions. Having reviewed the precedents provided and the Guidelines, we find the Association's submissions on penalty to be excessive and unsupportable. In the result, we award costs of $1000.

Conclusion

The Hearing Panel orders that:

1. The Respondent shall pay to the Association:
   a. a fine in the amount of $5,000; and
   b. costs in the amount of $1000.
2. The amounts above shall be paid in full prior to a date that is 6 months from the date of this decision.

Dated at Vancouver, British Columbia this 13th day of May, 2008.

Executed on Original by:

"Wade Nesmith"
Wade Nesmith, Chair

"Don Teatro"
Don Teatro, Panel Member

"Chris Lay"
Chris Lay, Panel Member