

THE INVESTMENT DEALERS ASSOCIATION OF CANADA

PACIFIC DISTRICT COUNSEL

**IN THE MATTER OF: THE BY-LAWS OF THE INVESTMENT
DEALERS ASSOCIATION OF CANADA**

AND

GERALD DANNY STEFANIUK

Hearing Panel

Stephen D. Gill, Chair

Chris Lay, Member

Douglas J. Stewart, Member

Appearing for the IDA

Paul J. B. Smith

Appearing for the Respondent

No-one appearing

Heard: March 4, 2008 at Vancouver, BC

INTRODUCTION

1. The Investment Dealers Association of Canada (the “Association”) applied for an Expedited Hearing pursuant to Association Bylaws 20.41, 20.43(1)(d) and Rule 16 of the Rules of Practice and Procedure, in relation to Gerald Danny Stefaniuk (hereinafter the “Respondent” or “Stefaniuk”). The Order sought, as per the Notice of Application (Exhibit 1) was to suspend the Respondent’s approval for registration in any capacity indefinitely pending the resolution of criminal charges brought against the Respondent in the United States District Court for the District of New Jersey.
2. The Panel was advised by counsel for the Association that these were expedited proceedings; Rule 20.41(1) provides:

“(1) Expedited hearings are held upon application by Association Staff and without notice to the Respondent in the circumstances prescribed in By-law 20.42 and By-law 20.43.”
3. Rule 16 provides that the Notice of Application is not required to be served on the Respondent, and counsel for the Association advised that the Respondent had not been informed of these proceedings.
4. In support of the application, the Association tendered the Affidavit of Tim Ferguson, sworn March 4, 2008 (Exhibit 2) and further, Mr. Ferguson gave evidence at the hearing.
5. At the conclusion of the Hearing, having considered all of the evidence, the Panel was satisfied that the Association had made out a proper case for the Expedited Hearing, and granted an Order, which has been published. Reasons were to follow and these are those Reasons.

FACTS

6. Counsel for the Association advised that recently disclosed information indicated that the Respondent was the subject of criminal charges. By-law 20.43 provides:

“20.43 Types of Expedited Hearings – Approved Persons

(1) A Hearing Panel may impose any of the penalties prescribed by By-law 20.45 upon an Approved Person in any of the following circumstances:...

Criminal Charges

(d) where an Approved Person has been charged with a criminal offence relating to theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading, and such criminal charge likely brings the capital markets into disrepute;”

7. As to the powers of the Hearing Panel on an Expedited Hearing, By-law 20.45 provides:

“20.45 Powers of Hearing Panel

(1) A Hearing Panel has the power to impose any of the following penalties upon a Respondent who is an Approved Person or Member in the circumstances prescribed in By-law 20.42 and By-law 20.43: ...

(a) suspension of approval or Membership; ...

(d) direction to immediately cease dealing with the public;”

8. Rule 16 entitled “Expedited Hearings” provides at Rule 16.4:

“16.4 Evidence Relied Upon

(1) Evidence relied upon for the application may be provided by sworn statement.

- (2) The Hearing Panel may require the deponent of the sworn statement to attend and provide oral evidence at the hearing.”
9. In connection with Expedited Hearings, it is important to note that pursuant to Rule 20.47, the Respondent may file a written request for review of any decision made pursuant to By-law 20.45 within thirty calendar days after release of the decision of the Hearing Panel, and if a request for review is made, a hearing shall be held as soon as reasonably possible and no later than twenty-one calendar days after filing of the written request.
10. The evidence in support of the Association’s application was the Affidavit of Tim Ferguson (Exhibit 2) and the evidence Mr. Ferguson gave at the Hearing. Mr. Ferguson is the Manager of investigations of the Pacific Region of the Association; in 1996, after a twenty-five year career with the RCMP, he took a position as investigator with the Vancouver Stock Exchange. From 1996 to 2003 he was an investigator with the VSE and subsequently, the Canadian Venture Exchange and Market Regulations Services Inc. In 2003 he joined the IDA in his present position.
11. The Respondent was born in 1959, and entered the securities industry in 1980. From 1993 until February, 2007 the Respondent was a Registered Representative (“RR”) at Golden Capital Securities Limited in Vancouver. He was subsequently an RR at Gateway Securities Inc. in Vancouver, and since November 22, 2007 has been an RR at First Canada Capital Partners Inc. in Vancouver (Ferguson Affidavit, para. 3).
12. On or about July 23, 2007, the United States District Court, District of New Jersey, issued an Indictment, in case Criminal No. 07-611 entitled United

States of America v. Phil Wong and Jerry Stefaniuk, Defendants. Count one of the Indictment alleged “Conspiracy to Commit Securities Fraud”, and Count two alleged “Securities Fraud”. On the same day the Indictment was filed, upon application of the United States of America, the court issued a sealing order (Ferguson Affidavit, at Exhibit A) which states:

“This matter having come before the Court upon the application of the United States of America (Steven Feldman, Special Assistant U.S. Attorney, appearing), for an arrest warrant, and its concurrent application that the Indictment filed against the person named in the warrant be filed under seal, and good cause having been shown,

IT IS, on this 23rd day of July, 2007,

ORDERED that, except for such copies of the arrest warrants as are necessary to accomplish this purpose, the Indictment and all other documents filed in this matter be and hereby are SEALED until the arrest warrants are executed or until further order of the Court.”

13. Mr. Ferguson advised the Panel that arrest warrants had been issued for Phil Wong and Jerry Stefaniuk.
14. On February 28, 2008 the Court issued an order unsealing the Indictment (Ferguson Affidavit, at Exhibit A). The order states:

“It appearing that the above captioned action was sealed pending the execution of the arrest warrants and defendant Wong having been arrested on 13 February and arraigned on 28 February 2008; and

for good cause shown;

It is on this 29th day of February 2008,

ORDERED that the temporary seal shall be lifted against all pleadings, and all defendant’s in this matter.”

15. Mr. Ferguson advised the Panel that he understood Mr. Wong had been arrested in the U.S.A., and that he had been granted bail, and one of the conditions was that he report, from time to time, at Bellingham, U.S.A. Mr. Ferguson further advised the Panel that he understood Mr. Wong was a Canadian. Mr. Ferguson also advised the Panel that he understood that the Respondent was engaged in the securities industry in Vancouver at First Canada Capital Partners Inc. and was at the office.
16. As a result of the unsealing of the Indictment, Mr. Ferguson was contacted by the RCMP Integrated Market Enforcement Team, and through them obtained a copy of the Indictment. Mr. Ferguson also obtained a copy of the Indictment directly from the Court on March 3, 2008. On March 3, 2008 the RCMP advised Mr. Ferguson that, *inter alia*, they planned to interview the Respondent and requested that the IDA not disclose the Indictment to the Respondent until after the RCMP investigators had an opportunity to interview the Respondent.
17. The jurisdiction of the Association and the RCMP in relation to the Respondent, are distinctly different. In view of the fact that Mr. Wong had been arrested on February 13, 2008, and arraigned on February 28, 2008, and was granted bail on conditions, and may have returned to Canada, and the Indictment was unsealed, the Panel was of the view that it would be highly unlikely that the Respondent would not be aware that the Indictment was outstanding against him, and the U.S. Authorities had issued a warrant for his arrest.
18. In order to make out its case, the Association must establish that the Respondent has been charged “with a criminal offence relating to ... fraud, ... market manipulation, ... misrepresentation or unauthorized trading, and such

criminal charge likely brings the capital markets into disrepute.” (By-law 20.43(1)(d)). For ease of reference, we attach a copy of the Indictment and Orders as Appendix A to these Reasons.

19. The Indictment charges an individual named as “Jerry Stefaniuk”. The Respondent is “Gerald Danny Stefaniuk”. However, in Count One, para. 3, the Indictment describes Jerry Stefaniuk as:

“At all times relevant to this Indictment, the Defendant Jerry Stefaniuk was a stockbroker at Golden Capital Securities Limited, a firm located in Vancouver, British Columbia, Canada.”

20. Having heard submissions from counsel for the Association, we are satisfied that the Respondent and the person named as Jerry Stefaniuk in the Indictment are one and the same person.
21. As is set forth in greater detail in the Indictment, it is alleged that Stefaniuk was involved in a conspiracy to commit securities fraud (Count one), and also securities fraud (Count two), in connection with a scheme to manipulate the market for common stock of Secureware, Inc. (“Secureware”), a Nevada corporation that provided short term, small loans to consumers. Secureware’s common stock was publicly traded on the over-the-counter “Pink Sheets” market, an electronic, screen based market for securities. It was alleged that Phil Wong was a stock promoter who purported to be a major shareholder in Secureware. From in or about June, 2002 through to August 1, 2002 (the “Material time”), it is alleged that the defendant Phil Wong and the Respondent schemed to manipulate the market for Secureware’s common stock by artificially inflating the demand for and price of that stock, in order to allow Wong to sell his Secureware stock holdings at a profit. Wong and the Respondent planned to do so by paying secret bribes to stockbrokers to cause

their customers to purchase Secureware's stock. In furtherance of the scheme, during the Material time, the defendant Wong and the Respondent had numerous discussions with a confidential informant (the "CI") working at the direction of the Federal Bureau of Investigation (the "FBI"). The CI purported to know stockbrokers who would sell Secureware stock to their customers in return for secret, undisclosed bribes that would be paid by defendant Wong. According to the plan, when the brokers purchased Secureware stock on behalf of their clients, these orders would be filled using sales of Secureware shares from an account controlled by defendant Wong; and defendant Wong would in turn pay the CI 50% of the proceeds of such sales, who would in turn pay the brokers 25% of the proceeds of such sales. In order to ensure that defendant Wong paid the 50% owed to the CI following the purchases, defendant Stefaniuk agreed to accompany defendant Wong to the bank to ascertain that the funds owed to the CI were in fact wire transferred to the CI. (Indictment, Ferguson Affidavit, Exhibit A).

22. As is set forth in more detail in the Indictment, between July 11, 2002 and July 26, 2002 there were a number of discussions between the CI, defendant Wong and the Respondent in which it was alleged that approximately 25,000 shares in Secureware stock was purchased at a price of approximately 40 cents per share, for a total cost of approximately \$10,000 not including commissions and fees, using an undercover brokerage account in Jersey City, New Jersey. On or about July 12, 2002 defendant Wong allegedly left a voice mail message for the CI saying that he was aware that the orders to purchase had been placed, and that Wong had attempted to fill those orders by selling Secureware stock that he controlled. Specifically, defendant Wong stated that orders for approximately 13,000 shares at a price of 40 cents per share had come in and

they had got at least eight of that. (Indictment, Ferguson Affidavit, paras. 6 to 8).

23. The Indictment states:

“9. On or about July 17, 2002, in a recorded phone call, defendant STEFANIUK told the CI that defendant WONG had been trying to get the CI on the phone because **they** had some money to give the CI.” (emph. added)

24. The Indictment went on to allege that between July 17 and July 26, 2002, the defendant Wong wire transferred approximately \$4,200 from an account in the name of “Phil Wong” at Canadian Imperial Bank of Commerce in Canada, to a brokerage account in the United States in the name of the CI, as payment to the CI and the stockbrokers for the July 12th stock purchases.

25. The Indictment goes on to allege that defendant Wong and the Respondent engaged in a conspiracy from on or about June, 2002 through to August 1, 2002 by the use of, *inter alia*, the facilities of the national securities exchange, directly and indirectly, to use and employ, in connection with the purchase and sale of Secureware common stock, manipulative and deceptive devices and contrivances, by employing devices, schemes and artifices to defraud; making untrue statements of material facts and omitting to state material facts necessary in order to make the statements, made in light of the circumstances under which they were made, not misleading; and engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, all contrary to U.S. Law. (Indictment, para. 12).

26. The Indictment went on to allege that it was an object of the conspiracy for defendant Wong and the Respondent (and others) to obtain money from the

sales of Secureware's common stock induced by conspirators' offers to pay bribes to stockbrokers who sold Secureware common stock to members of the investing public. It alleged that Wong and the Respondent agreed to pay secret bribes to brokers in order to induce them to cause the brokers' retail customers to purchase and hold Secureware's stock. (Indictment, paras. 13 and 14).

27. Paragraph 15 of the Indictment describes the Overt Acts pursuant to which the conspiracy was allegedly effected.
28. Count Two (Securities Fraud) is based upon many, if not all of the facts alleged earlier in the Indictment, and alleges that defendant Wong and the Respondent (and others) knowingly and willfully by the use of, *inter alia*, the facilities of national securities exchanges, directly and indirectly, in connection with the purchase and sale of Secureware common stock, did use and employ manipulative and deceptive devices and contrivances, by employing devices, schemes, and artifices to defraud; by making untrue statements of material facts, etc., and by engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon other persons. (Indictment, paras. 16 and 17).

ANALYSIS

29. The Indictment alleges very serious criminal offences which, at this stage, are simply allegations; they have not been proven in Court. Further, the Respondent has apparently not been arrested in connection with the Indictment, nor has he had any opportunity here to respond to the allegations. In the circumstances, the Panel must examine, with great care, the allegations being made against the Respondent. This we have done. We are satisfied that the

Association has made out a proper case for an Expedited Hearing, and for the imposition of certain orders. We are also mindful of the provision in the By-laws for the Respondent to initiate a review hearing.

30. Having carefully reviewed all of the evidence tendered to us at the hearing, bearing in mind that this hearing has proceeded on an ex parte basis, and having considered the obligation of the Association to protect the investing public and the capital markets, we are satisfied that upon the evidence before us, the Association has established that:

- (a) The Respondent has been charged with a criminal offence relating to fraud, market manipulation, and misrepresentation, and that such criminal charge likely brings the capital markets into disrepute;
- (b) The Association was justified in invoking the Expedited Hearing procedure in seeking the Orders that it has sought.

31. As a result of the foregoing, on March 4, 2008, the Panel ordered that:

- (a) The Respondent Gerald Danny Stefaniuk's approval for registration in any capacity is suspended indefinitely;
- (b) The Respondent shall immediately cease dealing with the public;
- (c) The Order and the written Reasons for Decision which will follow this Order may be signed in counterparts.

DATED this 11th day of March, 2008

Executed on original by:

“Stephen D. Gill”

Stephen D. Gill, Chair

“Chris Lay”

Chris Lay, Member

“Douglas J. Stewart”

Douglas J. Stewart
Member