

IN THE MATTER OF A DISCIPLINARY HEARING  
PURSUANT TO PART 10 OF BY-LAW 20 OF THE  
INVESTMENT DEALERS ASSOCIATION OF CANADA  
("Association")

RE: RANDALL WAYNE REIFFENSTEIN  
("Respondent")

DECISION OF A HEARING PANEL OF THE  
ALBERTA DISTRICT COUNCIL OF THE  
INVESTMENT DEALERS ASSOCIATION OF CANADA

Hearing: September 13, 2007 at Calgary, Alberta

Hearing Panel Decision: December 17, 2007

**Hearing Panel:** Alan V.M. Beattie, Q.C., Chair  
Donald W. Milligan, Industry Representative  
William J. Welton, Industry Representative

**Counsel:** For the Association  
Kathryn Andrews, Enforcement Counsel

**Appearing:** For the Association  
Vernon Cooney, Investigator

The Respondent did not appear nor did anyone appear on his behalf.

## **PANEL DECISION**

### **1. INTRODUCTORY**

The Respondent, although served with the Notice of Hearing, did not attend the Hearing, did not contact the Association, and did not serve a Notice of Response on the Association.

KL, son of the client EL (below), was present during the Hearing.

### **2. NOTICE OF HEARING; PARTICULARS; PENALTIES & COSTS**

The Notice of Hearing dated June 13, 2007 advises that pursuant to Rule 6.2 of the Association's Rules of Practice and Procedure the hearing is "designated on the Standard Track". The Notice of Hearing includes:

**THE PURPOSE OF THE HEARING** is to determine whether Randall Wayne Reiffenstein ("the Respondent") has committed the following contraventions that are alleged by the Association:

**Count 1:**

On or about February 14, 2006, the Respondent refused and/or failed to attend and give information in respect of an investigation being conducted by the Association's enforcement department, contrary to Association By-law 19.5.

### **PARTICULARS**

**TAKE FURTHER NOTICE** that the following is a summary of the facts alleged and to be relied upon by the Association at the hearing:

**Registration history:**

1. The Respondent was employed as a Mutual Fund Salesperson from 1994 to February 2001. On February 12, 2001 he was approved as a Registered Representative ("RR") at Great Pacific Management Co. Ltd. ("Great Pacific"). On October 1, 2001, Great Pacific and Courvie Securities Inc. amalgamated. Following the amalgamation the Member firm was known as Cartier Partners Securities Inc. ("Cartier"). The Respondent's registration as an RR was automatically transferred to Carter.

2. The Respondent was employed by Cartier from October 1, 2001 to June 2, 2004. Effective June 2, 2004, Cartier and Dundee Securities Corporation amalgamated and after that date the Member firm was known as Dundee Securities Corporation, a Member of the Association ("Dundee"). The Respondent's registration as an RR was automatically transferred to Dundee.

3. From June 2, 2004 to July 19, 2005, the Respondent was employed as an RR at Dundee.

4. The Respondent has not been approved by the Association since July 19, 2005.

#### **Association investigation:**

5. The Association received a Comset Report dated June 2, 2005 from Dundee. The Comset Report indicated that a client had complained of unauthorized or discretionary trading. Dundee's internal investigation was also looking into an allegation of forgery.

6. The Association subsequently received a Notice of Termination from Dundee, indicating that the Respondent was terminated by Dundee as of July 19, 2005.

7. The Association's investigation into the Respondent's conduct at Dundee commenced in the summer of 2005, upon receipt of the Comset Report and Notice of Termination.

#### **Opening letter:**

8. On August 8, 2005, the Association advised the Respondent by letter sent by registered mail that he was under investigation by the Association with respect to his conduct while at Dundee. Canada Post records indicate that the letter was signed for on August 9, 2005.

#### **Client EL:**

9. In August 2005, the Association interviewed EL, the client who had complained to Dundee. EL is an elderly widow.

10. During 2005 the Association requested and obtained documentation from Dundee. Dundee's responses included Cartier and Dundee documentation involving the Respondent and EL's accounts.

#### **Initial contact with the Respondent:**

11. On November 2, 2005, the investigator then assigned the file, Vernon Cooney ("Cooney"), called the Respondent on his home phone number and left a message for him. In his message, Cooney identified himself and reminded the Respondent that he was under investigation by the Association. In his message, Cooney asked the Respondent to call him back.

12. The Respondent called back on November 7, 2005 and left a message for Cooney that he would be on Vancouver Island until April 2006, when he would return to Calgary. The Respondent told Cooney he could call if he had any questions but the Respondent did not leave a contact number. On November 25, 2005, when Cooney called the Respondent at his home phone number, he discovered that the number was not in service.

**First letter:**

13. On November 25, 2005, Cooney wrote to the Respondent by registered mail, informing him that his attendance was required by January 31, 2006 at an interview with the Association. Cooney requested a response from the Respondent by December 10, 2005. Canada Post records indicate that the Respondent signed for the letter on December 8, 2005. The Respondent did not subsequently contact Cooney in response to this letter.

14. Cooney had located a cell phone number for the Respondent and called him at that number on January 5, 2006. Cooney left a message advising the Respondent that his attendance was required at an interview, and that should he not attend, he might be charged with failing to cooperate with the investigation. The Respondent did not return this phone call.

**Second letter:**

15. On January 11, 2006, Cooney wrote to the Respondent by registered and regular mail, advising him that he was being compelled to attend at an interview with the Association on February 14, 2006, and that the Association would consider disciplinary proceedings against him if he did not attend. A copy of By-law 19.5 was enclosed with the letter. Canada Post records indicate that the Respondent signed for this letter on January 19, 2006. The Respondent did not contact the Association.

16. On February 7, 2006, Cooney called the Respondent on his cell phone, but was told that the number had been disconnected.

**Did not attend interview:**

17. On February 14, 2006, the Respondent did not appear for his scheduled interview. On that date, Cooney sent the Respondent a letter by way of registered mail and regular mail, advising the Respondent that as he had not attended on February 14<sup>th</sup> for an interview, that the file was being forwarded to Enforcement Counsel in prosecutions. Canada Post records indicate that the Respondent signed for the registered letter of February 22, 2006.

18. On February 15, 2006, Cooney sent the same letter to the Respondent by way of courier. The Respondent did not contact the Association after receipt of the February 14 and 15 letter.

19. As of this date, the Respondent has not been interviewed by the Association. He has not provided any documents or information to the Association.

### **GENERAL PROCEDURAL MATTERS**

**TAKE FURTHER NOTICE** that the hearing and related proceedings shall be subject to the Association's Rules of Practice and Procedure.

**TAKE FURTHER NOTICE** that pursuant to Rule 13.1, the Respondent is entitled to attend and be heard, be represented by counsel or an agent, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

### **RESPONSE TO NOTICE OF HEARING**

**TAKE FURTHER NOTICE** that the Respondent must serve upon the Association a Response to the Notice of Hearing in accordance with Rule 7 within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

### **FAILURE TO RESPOND OR ATTEND HEARING**

**TAKE FURTHER NOTICE** that if the Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5:

- (a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions alleged by the Association in the Notice of Hearing; and
- (c) order penalties and costs against the Respondent pursuant to By-law 20.33, 20.34 and 20.49.

### **PENALTIES & COSTS**

**TAKE FURTHER NOTICE** that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Association in the Notice of Hearing, the Hearing Panel may, pursuant to By-law 20.33 and By-law 20.34, impose any one or more of the following penalties:

**Where the Respondent is/was an Approved Person:**

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
  - (i) \$1,000,000 per contravention; and
  - (ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.
- (c) suspension of approval for any period of time and upon any conditions or terms:
- (d) terms and conditions of continued approval;
- (e) prohibition of approval in any capacity for any period of time;
- (f) termination of the rights and privileges of approval;
- (g) revocation of approval;
- (h) a permanent bar from approval with the Association; or
- (i) any other fit remedy or penalty.

**TAKE FURTHER NOTICE** that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Association in the Notice of Hearing, the Hearing Panel may pursuant to By-law 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

**3. PERTINENT REGULATIONS, INTERPRETATION GUIDELINES AND DISCIPLINARY SANCTION GUIDELINES**

The Notice of Hearing alleges that the Respondent's refusal and/or failure to attend and give information in respect of an investigation being conducted by the Association's enforcement department, was "contrary to Association By-law 19.5. In the "Penalties & Costs" section of the Notice of Hearing (above) the Association incorporated By-law 20.33 which empowers the Panel to impose penalties. By-law 19.5 and extracts from the Association's "Disciplinary Sanction Guidelines" follow:

**BY-LAW NO. 19**

**EXAMINATIONS AND INVESTIGATIONS**

## Investigatory Powers

19.5 For the purpose of any examination or investigation pursuant to this By-law 19, a Member, registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director, officer, investor or employee of a Member or any other person approved or seeking approval or under the jurisdiction of the Association pursuant to the By-laws and Regulations, may be required by the Senior Vice-President, Member regulation, his or her staff, or any other person designated by the Board of Directors:

- (a) To submit a report in writing with regard to any matter involved in any such investigation;
- (b) To produce for inspection and provide copies of any books, records, accounts and documents, that are in the possession or control of the Member or the person, that the Association determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the Association; and
- (c) To attend and give information respecting any such matters;

And the person shall be obligated to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any person subject to an investigation conducted pursuant to this By-law 19 shall be advised in writing of the matters under investigation and may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

## DISCIPLINARY SANCTION GUIDELINES

### GENERAL PRINCIPLES

The following principles and rules are proposed to provide a framework for assessing the gravity of a particular breach of the Association's By-laws, Regulations, Rules and Policies, and help to determine which sanction(s) is reasonable in the circumstances.

#### 1. Main Concerns When Determining An Appropriate Penalty

As set out in *Re Derivative Services Inc.*, [2000] I.D.A.C.D. No.26, at page 3, a Hearing Panel's main concerns in determining an appropriate penalty are:

1. Protection of the investing public;
2. Protection of the Investment Dealers Association's membership;
3. Protection of the integrity of the Investment Dealers Association's process;

4. Protection of the integrity of the securities markets, and
5. Prevention of a repetition of conduct of the type under consideration.

The penalty imposed in a specific proceeding should reflect the Hearing Panel's assessment of the measures necessary in the specific case in accomplish these goals, ranging from a reprimand to an absolute bar, and may take into account the seriousness of the respondent's conduct and specific and general deterrence.

### **5.1 Failure to Cooperate - By-laws 19.5 and 19.6**

By-law 19.5 provides that any person under the jurisdiction of the Association is obliged to submit a report in writing with regard to any matter being investigated by the Association, to produce for inspection and to provide copies of the books, records and accounts relevant to such an investigation, and to meet and give information respecting the investigation. Once an examination or investigation is initiated, the Association's staff is entitled to free access to any and all records of the Member or person concerned, who is prohibited from withholding or concealing any documents reasonably required for the purpose of the examination or investigation (By-law 19.6).

Consequently, failure to cooperate/impeding and IDA investigation, whether by a Member firm or a registered representative, is serious misconduct because it subverts the Association's ability to perform its regulatory function. This category of misconduct is broad enough to include the following:

- failure to cooperate or respond in a timely manner.
- failure to respond truthfully
- failure to cooperate or respond completely

### **Consideration in Addition to General Principles**

1. The disciplinary history of the Respondent.
2. Was the contravention intentional or inadvertent?
3. Was there complete or only partial non-compliance?
4. The impact that the non-compliance had on the investigation.
5. Whether the Respondent can demonstrate that his or her refusal to cooperate was based on reasonable reliance on competent legal advice?
6. What is the nature of the document/information requested? Were they of material importance to the pending investigation/hearing?

### **Recommended Sanctions**

- Fine: Minimum of \$10,000 Approved Persons and \$50,000 for a Member firm.
- Immediate suspension for 30 days to 90 days pending compliance with B-law 19.5
- Expulsion of Member or permanent ban from approval in any capacity of an Approved Person if the respondent still fails to cooperate at the end of the temporary suspension.

#### **4. SERVICE ON RESPONDENT**

Ms. Andrews, Counsel for the Association, referred to the By-laws of the Association regarding service and attempted service of documents. As is apparent from the Notice of Hearing (above) the Affidavit of Ricki Newmarch (Exhibit 1, Tab 1), Investigator Notes Log (Exhibit 1, Tab 6), letters to the Respondent from the Association dated November 25, 2005, January 10, 2006, February 14, 2006 and February 15, 2006 (Exhibit 1, Tabs 7-11) and the Affidavit of Gil Gauthier dated August 8, 2007 (Exhibit 2), many attempts have been made to contact and serve the Respondent with documents relating to the Association's investigation. The Affidavit of Mr. Gauthier includes:

3. In July and August 2007, I made some attempts to locate the respondent Randall Reiffenstein. I contacted and spoke with the respondent's father Don Reiffenstein and with his father's partner Jacqueline Rollins. My notes of these 3 phone conversations are attached hereto as exhibit "A" to this affidavit.
4. According to the respondent's father and Ms. Rollins, the respondent is aware of the hearing in this matter. According to Ms. Rollins, the respondent does not want to know anything about the hearing.
5. I made inquiries to locate a current address for the respondent in Alberta. The information that I received is set out in my notes attached as Exhibit A. The address given for the respondent is the same address as the last known address contained in the IDA registration records.
6. This affidavit is sworn in support of the IDA's disciplinary proceeding against the respondent Randall Reiffenstein and for no other purpose.

The notes of the telephone conversations referred to in paragraphs 3 and 4 of Mr. Gauthier's Affidavit are:

**July 26, 2007**

I called Jacqueline Rollins at 250-757-9314 at 2:45 pm, and told her that the IDA

had issued a notice of hearing against Reiffenstein with a hearing date set for September 13. I also indicated that we had been unsuccessful in contacting Reiffenstein to let him know about the hearing. I asked whether she had an address for him. She told me that she would call me back.

**July 31, 2007**

I called Jacqueline Rollins at 250-757-9314 at 3:30 pm. She said that her partner, Reiffenstein's father, told Reiffenstein about the hearing scheduled for September 13. She said that Reiffenstein's response was that he didn't want to know anything about it. She doesn't know his address, but stated that he no longer lives on Vancouver Island and is currently living in Alberta. She said that he wasn't living in Calgary.

**August 1, 2007**

I called 250-7579314 at 11:45 am and spoke with Don Reiffenstein, Randall's father. He confirmed that Randall was aware of the hearing, but he would not provide any further information and considered any additional attempts to ask about Randall's whereabouts as "harassment".

**August 3, 2007-12-05**

On August 2 I contacted Marc Arseneault, Manager of Case Assessment with the Alberta Securities Commission to ask for assistance in finding the address for Reiffenstein. Arseneault left me a voicemail today advising that the Alberta Motor Vehicles Registry showed the Reiffenstein's driver's license still shows an address of 115 Cedarpark Drive SW, Calgary. We determined in 2006 that (he) moved from this address.

The investigation notes of Ms. Cooney dated August 13, 2007 (Exhibit 3), state:

August 13<sup>th</sup> 2007

9:35 AM

Called Jacqueline Rollins to request Randy Reiffenstein's current address as he is scheduled for a disciplinary hearing on September 13<sup>th</sup> as shown on our website.

Randy did contacted (sic) him and Randy knows about the hearing however does not wish to provide his address to the IDA. (Jacqueline) also did not provide the address.

We declared that we are satisfied with the efforts to contact, and serve, documents on the Respondent, both for the interview and this Hearing, that he knew of both the interview and the Hearing, and that he obviously chose not to attend either. We proceeded to the Hearing without requiring further notice to the Respondent.

## **5. ALLEGED CONTRAVENTION; DECISION**

The Panel Members familiarized themselves with the particulars set out in the Notice of Hearing and Ms. Andrews provided an overview of the particulars. She advised that no charges were being made at this time against the Respondent other than failure to cooperate contrary to Association By-law 19.5 (above, p. 6).

### **Decision on alleged contravention**

The Panel confirms its decision that we are satisfied with the proof of the Respondent's failure to cooperate. The Panel directed Counsel for the Association to proceed to the penalty and costs part of the Hearing.

## **6. PENALTY AND COSTS; DECISION**

The Association had advised in the Notice of Hearing that penalties may be imposed by the Hearing Panel pursuant to By-law 20.33 (above, p. 5) and costs pursuant to By-law 20.49 as may be "determined to be appropriate and reasonable in the circumstances".

Ms. Andrews advised that the Association is seeking a permanent ban on approval as a Registered Representative, a fine of \$50,000 and costs of \$10,000. She provided, and referred to, a "Penalty Book" which included "Disciplinary Sanction Guidelines" (above, pp. 6-8) and the following decisions:

*Katz* (2002) I.D.A.C.D. No. 13 (Ontario District Council of the I.D.A.)

*White* (2003) I.D.A.C.D. No. 28 (Ontario District Council of the I.D.A.)

*Bassett* (2005) I.D.A.C.D. No. 26 (Pacific District Council of the I.D.A.)

*Stewart* (2005) I.D.A.C.D. No. 23 (Alberta District Council of the I.D.A.)

*Puccini* (2007) I.D.A.C.D. No. 11 (Nova Scotia District Council of the I.D.A.)

*Milardovic* (August 10, 2007. Ontario District Council of the I.D.A.)

Ms. Andrews advised that the Association is seeking the significant penalty of a permanent ban because failing to cooperate in not attending an interview is extremely serious. The Association is, as a result, unable to properly investigate and proceed with appropriate action. There is also the importance of deterrence. While the Association recognizes that the Respondent has no previous disciplinary history, it submits that the penalty being sought is appropriate.

Ms. Andrews also submitted the Affidavit of Ricki Newmarch (Exhibit 4). Ms. Newmarch is an Enforcement Litigation Assistant with the Association. She swore the Affidavit in support of the Association's submission on costs. The Affidavit sets out most of the time expended by Association staff on the case, and some of the costs incurred, all of which total \$35,017.34. The Affidavit includes:

14. The IDA is asking the Panel to order costs in the amount of \$10,000. The reason for this reduction is, in part, that some of the investigator and Enforcement Counsel time was spent considering matters which were ultimately not proceeded with in the Notice of Hearing. Accordingly the IDA is seeking \$10,000 in costs for this investigation and prosecution.

### Decision on Penalty and Costs

In all of the decisions relied upon by the Association (above), the Panels imposed a permanent ban on registration in any capacity with the Association, a fine of \$50,000 and costs in varying amounts. In all the cases reference was made to the specific considerations in the Disciplinary Sanction Guidelines Manual (above, pp. 6-8). In most of the cases there was some contact with the respondents but then, generally, refusal by the respondents to cooperate (sometimes based on legal advice). In *Katz* the Panel was concerned about imposing an immediate permanent ban and stated, at p.3:

...We acknowledge that the respondent has contractually bound himself to provide the kind of assistance required by By-law 19.5. Association counsel argues that in failing to do so, he has exposed himself to any penalty provided under By-law 20. While that is literally correct, we are concerned about imposing a large fine - substantially larger than any before imposed for failure to cooperate - plus the ultimate penalty of permanent expulsion from the Association without allowing Mr. Katz the opportunity to defend the allegations against him on the merits.

The obvious problem from the Association's point of view is that without Mr. Katz's cooperation it may be difficult to satisfy the panel as to impropriety in Mr. Katz's conduct, at least without exposing the Association (and ultimately its members) to substantial additional investigation costs. We need not speculate as to Mr. Katz's reasons for refusing to cooperate: there could be many, and we can think of none that would suffice to release him from his contractual duty. Nonetheless, if there is even a remote possibility of a miscomprehension of the matter, or problem with the nature of the advice he has received, we think it would be unfair to penalize him at this stage to the extent requested by the Association without his having the opportunity to respond to the allegations against him on the merits.

We are persuaded that the same reasoning should apply in this case, although we recognize that from all indications it appears that the Respondent has no interest in further contact with the Association. The Panel confirms its decision given at the conclusion of the Hearing, as follows (all time periods to run from the time of service or attempted service of notice of this Decision on the Respondent):

1. Fine of \$50,000.
2. Costs of \$10,000.
3. The Respondent is suspended for a period of 90 days and if he does not contact the Association within that time to indicate he is prepared to fully cooperate he will be permanently banned from approval, or registration in any capacity, with the Association. If the Respondent does contact the Association within 30 days but does not fully cooperate and/or does not pay the fine and costs within 60 days, he will be permanently banned as aforesaid.

December 17, 2007

Executed on original by:

Alan V.M. Beattie  
Donald W. Milligan  
William J. Welton