

Re Conville

IN THE MATTER OF:

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

and

Steven George Conville

2012 IIROC 34

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

Heard: February 21, 22, 23, 2012

Decision: June 11, 2012

Hearing Panel:

Thomas J. Lockwood, Q.C., Chair, Leo Ciccone, F. Michael Walsh

Appearance:

Rob DelFrate, for IIROC

David Greenwood, for the Respondent

Decision and Reasons

A. HISTORY OF PROCEEDINGS

¶ 1 On December 5, 2011, the Investment Industry Regulatory Organization of Canada (“IIROC”) issued a Fresh as Amended Notice of Hearing against Steven George Conville (the “Respondent”) making the following Allegation:

“Between March 2009 and May 2009, the Respondent participated in and facilitated a scheme in which two friends of his would obtain a mortgage based on fraudulent grounds and use the proceeds to purchase the Respondent’s residence, thereby violating Dealer Member Rule 29.1.”

¶ 2 The Hearing took place in Toronto over the course of three days, from February 21, 2012 to February 23, 2012. There was extensive evidence presented to the Hearing Panel, both in *viva-voce* and documentary form.

¶ 3 While there was some agreement on basic facts, the majority of the critical evidence was contested.

B. REGISTRATION HISTORY OF THE RESPONDENT

¶ 4 It is agreed that:

- a) Between January 9, 2004 and August 25, 2006, the Respondent had been registered as a Branch Manager with HSBC Securities (Canada) Inc. (“HSBC”), a Dealer Member of IIROC. The Respondent worked at the HSBC branch located in Richmond Hill, Ontario.
- b) Since September 5, 2006, the Respondent has been registered as a Registered Representative with the Markham, Ontario branch of Macquarie Private Wealth Inc., formerly Blackmont Capital Inc. (“Blackmont”), a Dealer Member of IIROC.

c) On June 1, 2008, the Respondent became a regulated person of IIROC.

C. RESPONDENT'S FINANCIAL CIRCUMSTANCES IN EARLY 2009

¶ 5 It is common ground between the parties that, in late 2008 and early 2009, the Respondent was experiencing very significant financial distress.

¶ 6 The position of the Respondent is that there were three major contributing factors:

I. 32 Castlewood Road

¶ 7 According to the Respondent, in late 2007, he was approached by a long-time friend, Lascalles Williams ("Williams"), with respect to a home which Williams owned at 32 Castlewood Road ("Castlewood Property") in Forest Hill.

¶ 8 The Respondent testified that Williams told him that he had been renovating this property for two years and had sold it but that the closing could not happen for approximately 30 days when the purchasers would be closing a sale on their previous home.

¶ 9 Williams allegedly told the Respondent that he had creditors to pay and that his construction financing had expired.

¶ 10 Without viewing the property, the Respondent purchased it for \$1,190,000.00. He secured a mortgage for \$952,000.00 with monthly payments in excess of \$6,000.00 per month. It was a variable rate mortgage, tied to prime. The Respondent testified that, at times, the mortgage payments were over \$7,000.00 per month.

¶ 11 According to the Respondent, Williams referred him to a mortgage broker by the name of Mahnaz Mahourvand ("Mahourvand"). The Respondent had never dealt with her before.

¶ 12 In his Response to the Notice of Hearing, the Respondent alleged that he had subsequently discovered that "one or more false documents had been used in support of his application for mortgage financing" in respect of the Castlewood Property.

¶ 13 With respect to the mortgage on the Castlewood Property, the Respondent testified that he did not remember filling out a Mortgage Application. He stated, however, that he received a telephone call indicating that he was conditionally approved.

¶ 14 The Respondent identified his signature on a "Mortgage Approval" document with respect to the Castlewood Property, below the heading "Client Acceptance", which stated, in part:

"I the undersigned Applicant accept the terms of this mortgage, as stated above, and agree to fulfill the conditions of approval as outlined in the attached Schedule A to the lender's satisfaction . . ."

¶ 15 One of the special conditions was that the Respondent was to provide "verification of monthly rental income, satisfactory to us, for not less than \$3,500.00."

¶ 16 In purported compliance with this alleged "Special Condition" was a document entitled "Agreement to Lease" pursuant to which the Respondent was apparently agreeing to lease his principal residence for \$3,500.00 per month, to a named individual.

¶ 17 The Respondent identified his signature and initials in five separate locations on this document. However, he stated that he did not know who the alleged lessee was and never had any intention of leasing his principal residence.

¶ 18 His explanation was that Williams had attended upon him and said that Mahourvand needed some documents signed. The Respondent stated that he was "really, really busy" that day and so he just signed and initialed whatever was put in front of him.

¶ 19 The Respondent testified that he was surprised to find out a couple of days later that he now owned the Castlewood Property. He testified "I was not supposed to own it."

¶ 20 The Respondent testified that, subsequent to the closing of his purchase transaction, he learned that there

was no purchaser for the property, as Williams had led him to believe. He said that he then learned that Williams had been charged with mortgage fraud.

¶ 21 The Respondent inspected the property and found that a considerable amount of work had to be done before he could either sell or rent it. He testified that he spent over \$100,000.00 in renovations.

¶ 22 He listed the property for sale but was unable to secure a buyer. He testified that he kept the mortgage current.

¶ 23 By March of 2009, at the time of the commencement of the alleged events set out in the Fresh as Amended Notice of Hearing, the Respondent had been able to secure an offer in the amount of \$800,000.00 at a time when his mortgage balance was approximately \$940,000.00. He sought an unsecured loan from the Bank of Nova Scotia to close the transaction. It was declined.

II. HSBC

¶ 24 The Respondent left his position as a Branch Manager with HSBC on August 25, 2006. He testified that it was not an amicable separation and that litigation ensued. He brought an action for constructive dismissal and wrongful dismissal. HSBC counterclaimed with respect to his signing bonus.

¶ 25 According to the Respondent, he spent over \$150,000.00 in legal fees over the four years of the litigation. The litigation was on-going at the time of the alleged events in question.

III. Decline in Income

¶ 26 The Respondent testified that when he joined Blackmont in September of 2006, he was not a Branch Manager and there was no salary component to his earnings. He was working totally on commissions.

¶ 27 Owing to the disruption caused by his move from HSBC, as well as the very poor economic conditions in 2008 and early 2009, his income declined considerably while his expenses increased dramatically.

D. THE MORTGAGE APPLICATION

¶ 28 In or about early 2009, the Respondent testified that he had come to the conclusion that he had no alternative but to sell his principal residence at 46 Emerald Heights Boulevard in Stouffville, Ontario (“Emerald Heights Home”). He had purchased this home in 2006. He was living there with his wife and three children.

¶ 29 He testified that he had made attempts to refinance the Emerald Heights Home through Mahourvand and either one or two other mortgage professionals. According to the Respondent, he was eventually turned down by over 30 different mortgage companies.

¶ 30 The Respondent testified that, in March of 2009, he had a conversation with two friends of his, namely Jacqueline Bishop-Martin (“Bishop-Martin”) and Dashiell Vazquez (or Vasquez) Vina (“Vazquez-Vina”), who offered to assist him.

¶ 31 Bishop-Martin and Vazquez-Vina offered to purchase the Emerald Heights Home. Under the proposed agreement, Vazquez-Vina and his wife would live in the basement and the Respondent and his family would continue to live on the main floor. The Respondent would pay rent to Bishop-Martin and Vazquez-Vina.

¶ 32 According to the Respondent, an Agreement of Purchase and Sale was put together and a mortgage application was made by Bishop-Martin and Vazquez-Vina through Mahourvand. This application was ultimately rejected.

¶ 33 Shortly thereafter, the Respondent had a conversation with K.H. (“K.H.”). K.H. was a close friend of the Respondent. During the relevant period of time, K.H. was a branch administrator with RBC Dominion Securities in Barrie. She had previously worked together with the Respondent at HSBC, where he had been a Branch Manager. They had had a brief romantic relationship.

¶ 34 The Respondent discussed his situation with K.H.. She agreed to act as a co-signer on the mortgage application, along with Vazquez-Vina.

¶ 35 On April 9, 2009, the Respondent obtained a credit report with respect to K.H. from Equifax Consumer Services Canada. The report indicated that, looking solely at the score in this report, “most lenders would consider this score as a somewhat higher risk.” The Respondent e-mailed this report to both K.H. and Mahourvand.

¶ 36 On April 13, 2009, at 2:23 a.m., the Respondent e-mailed a blank Mortgage Alliance Mortgage Application to K.H.. The Respondent had received the Application earlier in the morning from Mahourvand.

¶ 37 The proper completion of this document would have required K.H. to reveal that she was currently working for RBC Dominion Securities, that her salary was approximately \$40,000.00 per year, that she had previously worked at HSBC Securities where her base salary was approximately \$38,000.00.

¶ 38 The Mortgage Application did not require her to provide any paystubs but rather an indication of gross annual income.

¶ 39 At 8:44 a.m. on April 13, 2009, K.H. replied to the e-mail from the Respondent asking: “How am I supposed to get a HSBC pay slip?”

¶ 40 We were not provided with any e-mail response from the Respondent, although he testified that he was aware that K.H. did not, at that time, work for HSBC. He said that he knew that she was employed by the Royal Bank in Barrie.

¶ 41 When questioned by IIROC Staff about this e-mail, the Respondent indicated that Mahourvand had asked K.H. for an HSBC pay slip.

¶ 42 This would appear to be inconsistent with the Affidavit evidence of K.H., filed by the Respondent at the Hearing, where she stated that she had received the Mortgage Application from Conville, faxed it to Mahourvand “shortly after it was sent to me.” K.H. attached a copy of the Mortgage Application to her Affidavit. It was dated April 13, 2009.

¶ 43 This is consistent with an e-mail exchange between the Respondent and K.H. on the afternoon of April 13, 2009, where the Respondent sent K.H. a fax number requesting that she “fax statement to this number please.” K.H. replied by asking to whose attention should the statement be sent. The Respondent replied “Mahnaz”. K.H. reacted by saying “really?”, as though this name was new to her.

¶ 44 She also swore that she remembered having her first telephone conversation with Mahourvand “on or around April 15, 2009” She said that it was only after she had faxed the Mortgage Application to Mahourvand that she was requested to forward documents showing her income and assets.

¶ 45 The Respondent testified that he did not participate in the completion of the Mortgage Application.

¶ 46 The Mortgage Application forwarded to K.H. by the Respondent was three pages long. K.H. stated that she returned two pages. Her signature was on the bottom of page two. It was dated April 13, 2009. The page dealing, *inter alia*, with rental properties was, apparently, not returned to Mahourvand by K.H..

¶ 47 The second page of the Mortgage Application had three headings:

- 1) “Tell Us About Your Employment” – there then followed 11 lines seeking current and past employment details – K.H. left all 11 lines blank.
- 2) “Tell Us About Your Finances” – there then followed 16 lines detailing the type of information requested. K.H. left all 16 lines blank.
- 3) “We Need Your Authorization” – there then followed the sentence “I warrant and confirm that the information given in the mortgage application form is true and correct and I understand that it is being used to determine my credit responsibility.” There then followed sentences seeking her authorization and indemnity. After this paragraph, K.H. signed and dated the Mortgage Application.

¶ 48 K.H.’ sworn statement was that: “I do not know why I did not complete the second page of the mortgage

application, but I am certain what (sic) no one told me not to complete it.”

¶ 49 It is inconceivable that anyone such as K.H., who was a Branch Administrator with RBC Dominion Securities and who had a long history in the financial services industry, would think that she could enter into a transaction as a legitimate co-signer of a mortgage in excess of \$700,000.00 without providing any financial information on the Mortgage Application.

¶ 50 The only logical explanation is that K.H. had been told to leave the page blank as the provision of accurate information could create difficulties in obtaining mortgage approval.

¶ 51 As K.H. swore that she had not had any contact with Mahourvand at this time, the only individuals that she had been discussing the mortgage with were the Respondent and, perhaps, Vazquez-Vina.

¶ 52 On April 20, 2009, at 1:45 p.m., K.H. e-mailed to the Respondent a copy of an Annual Mortgage Statement on her home at 35 B* Court in Barrie. The following morning she faxed a further copy of this Statement to Mahourvand at Mortgage Alliance.

E. AGREEMENT OF PURCHASE AND SALE

¶ 53 As part of the mortgage application, Scotiabank received an executed Agreement of Purchase and Sale with respect to the Respondent’s premises at 46 Emerald Heights Drive.

¶ 54 The evidence is clear that this was a fraudulent document. The issue before us is not as to the authenticity of this document. It is whether “the Respondent participated in and facilitated a scheme in which two friends of his would obtain a mortgage based on fraudulent grounds and use the proceeds to purchase the Respondent’s residence.”

¶ 55 On April 20, 2009, at 4:22 p.m., an e-mail was forwarded by Mahourvand to the Respondent with the following message: “send me back initialed and signed purchase agreement ASAP.”

¶ 56 Attached to this e-mail were 8 pages. Seven of the pages consisted of an Agreement of Purchase and Sale with respect to the Respondent’s home. There were no signatures, initials or dates on this document.

¶ 57 The Agreement was dated April 10, 2009, and purported to show an agreement to purchase 46 Emerald Heights Drive from the Respondent.

¶ 58 The 8th page received by the Respondent from Mahourvand was the first page of what purported to be an Agreement of Purchase and Sale, dated March 28, 2009, with respect to the Respondent’s home with different purchasers. There was handwriting at the top and bottom of this document.

¶ 59 The handwriting indicated after the word “Buyers” – “K***** K.H.”. When asked about this handwriting at the Hearing, the Respondent replied: “I have no idea about it or what it’s about.”

¶ 60 The Respondent agreed, in cross-examination, that the earliest he could have received and opened the e-mail and the attachments was 4:22 p.m. on April 20, 2009.

¶ 61 At 5:16 p.m. on April 20, 2009, some 54 minutes later, the Respondent scanned a series of 8 pages to himself.

¶ 62 Included in those pages was the first page of the March 28, 2009 Agreement of Purchase and Sale. It was in all ways identical to the document received from Mahourvand except that the name “K*****” was crossed out and the name “K*****” (different spelling) was written on top.

¶ 63 The remaining 7 pages consisted of the Agreement of Purchase and Sale, a blank copy of which had been received less than an hour earlier, only now it purported to be fully executed.

¶ 64 Counting amendments, initials and signatures, there were now 45 additions to the blank copy.

¶ 65 Seven minutes later, at 5:23 p.m. on April 20, 2009, the Respondent e-mailed to Mahourvand the 8 pages containing the 45 additions, as well as the alteration in the name of K.H. on the first page.

¶ 66 The Respondent does not deny that he scanned these documents to himself or that he forwarded them to

Mahourvand.

¶ 67 The Respondent states that his signature appears on 6 occasions on these pages. On the 8 occasions where he purportedly initialed the documents, the Respondent denied that those were his initials.

¶ 68 The Respondent testified that he did not recall having anyone witness his signature. In cross-examination, he stated that he was “pretty confident” that the witness signatures were there when he signed the documents, but he did not know who the witness was.

¶ 69 He testified that the signatures and initials purporting to be those of Vazquez-Vina and K.H. were not theirs. He stated that he did not know who put either his initials or the signatures or initials of Ms. K.H. and Mr. Vazquez-Vina on the document.

¶ 70 In a sworn statement to the IIROC Enforcement Department on December 17, 2009, K.H. was shown a copy of the Agreement of Purchase and Sale. She testified that she had never seen the document before the date of the recorded interview. She stated that neither the initials nor the signatures which purported to be hers were in fact hers. She did recognize the Respondent’s signature on the document.

¶ 71 The transcript of this interview was filed as an Exhibit at the Hearing.

¶ 72 The Respondent filed an Affidavit of K.H. which was sworn on December 6, 2011. In this Affidavit, K.H. did not take any issue with any of the statements referred to in paragraph 70 herein.

¶ 73 The Respondent, at the Hearing, did not have a credible innocent explanation as to how all of the false signatures and initials were on the copy of the Agreement of Purchase and Sale which he returned to Mahourvand.

¶ 74 In an affirmed interview with the IIROC Enforcement Department on March 22, 2010, the Respondent proffered a variety of answers with respect to the execution of the Agreement of Purchase and Sale. He stated that he could have signed it when there were no other signatures on the document. He also stated that he could have signed it when the other signatures were on the document and he just was not paying attention.

¶ 75 He had no idea who witnessed the signature of himself and the purported signatures of K.H. and Vazquez-Vina, although it was suggested to him that all three signatures looked similar.

¶ 76 When asked how he received this document with the signatures on it – he stated that he could have picked it up from his Hotmail account. When questioned further, he said he did not know. When asked again how he got this document to sign, he stated: “This exact one, no, no. No. I don’t, I don’t and I’m not, I’m just, I’m being dead honest. I have no idea.”

¶ 77 By the time of the Hearing, the Respondent was clear that he received it in his Hotmail account, although he could produce no copy of that e-mail. However, he testified he was certain that it was already signed when it came from his Hotmail.

¶ 78 The Respondent’s explanation strains credulity. He would have us believe that he received a document with initials that were not his, with signatures of K.H. and Vazquez-Vina that were not theirs, with witness signatures of a person unknown, who was not present with him, but that he signed the document on 6 occasions, sent it back to Mahourvand for forwarding to Scotiabank but he raised no issue whatsoever.

¶ 79 We are unable to accept his version of events.

¶ 80 We also note that, amongst the documents forwarded to Mahourvand by the Respondent, was the first page of the March 28, 2009 Agreement of Purchase and Sale with the incorrect first name of Ms. K.H. stroked out and the correct spelling inserted. It is logical to assume that the Respondent knew the correct spelling of Ms. K.H.’ first name owing to their past relationship and that the Respondent either corrected the spelling or caused it to be corrected. It is, further, logical to assume that whoever corrected the spelling on this document would have caused the similar corrections to be made, as they were, in the April 10, 2009 Agreement of Purchase and Sale.

¶ 81 On the morning of April 24, 2009, Scotiabank received a copy of the Agreement of Purchase and Sale

which the Respondent had e-mailed to Mahourvand at 5:23 p.m. the previous evening. With two exceptions, the document was identical even down to a “fax header” identification seen both on the blank as well as the completed Agreement which was sent to and by the Respondent on April 20, 2009.

¶ 82 The two exceptions were as follows:

- a) The documents received by Scotiabank had a “fax header” from Mortgage Alliance commencing at 9:45 a.m. This is, presumably, the time when Mahourvand started to fax them.
- b) Dates had been inserted on pages 4 and 7 of the Agreement of Purchase and Sale. The dates next to the admitted signature of the Respondent were, variously, April 10, April 11 and April 19, 2009. The Respondent testified that he executed the Agreement on April 20, 2009.

¶ 83 At the Hearing, the Respondent, through his counsel, objected to the introduction of the Scotiabank documents.

¶ 84 The documents had been obtained from Scotiabank, at the request of IIROC, by the Ontario Securities Commission pursuant to an Order, issued under Section 11(1) of the *Securities Act*. After obtaining the documents, the Securities Commission had forwarded them to IIROC in care of Doug Cope, the Manager of Investigations.

¶ 85 The Respondent’s objection was that IIROC Staff sought to introduce these documents through Robert Natanson and not Mr. Cope. The evidence was clear and undisputed that both Mr. Cope and Mr. Natanson worked together on the investigation into the alleged conduct of the Respondent. Mr. Natanson was a Senior Investigator and Mr. Cope was his Manager.

¶ 86 During the course of the investigation, Mr. Natanson had met with a representative of Scotiabank and had been shown copies of the documents received by Scotiabank in connection with the Mortgage Application. As Scotiabank was not under IIROC's jurisdiction, it indicated that it preferred that the request for documents come from the Ontario Securities Commission instead of IIROC. This was done.

¶ 87 This proceeding against the Respondent was brought pursuant to Part 10 of Dealer Member Rule 20. Section 1.5(b) of the IIROC Rules of Practice and Procedure provides that:

"A Panel may: (b) admit as evidence in a hearing, whether or not given or proven under oath or affirmation, anything that is relevant to the proceedings;"

¶ 88 As no objection was made to the authenticity of the Scotiabank documents but only to the individual through whom they were sought to be introduced, the Panel, unanimously, concluded that they were admissible.

¶ 89 The Agreement of Purchase and Sale received by Scotiabank as part of the Mortgage Application was, clearly, a severely compromised document. Apart from the 6 signatures acknowledged by the Respondent as being his, the remaining markings on the document would appear to be fictitious. They were placed on the documents to seek to convince Scotiabank of a state of affairs that, in reality, was untrue. The signatures, apart from those of the Respondent, were fictitious, the initials were fictitious, the dates were fictitious, the witness signatures were those of an individual who witnessed nothing that was genuine.

¶ 90 After carefully reviewing all of the evidence, we have concluded that the Respondent "participated in and facilitated" the creation of a fraudulent Agreement of Purchase and Sale which was used by two friends of his as part of a scheme to obtain a mortgage, the proceeds of which would be used by them to purchase the Respondent's residence.

F. THE COMMITMENT LETTER

¶ 91 On April 21, 2009, at 5:21 p.m., Mahourvand e-mailed a series of documents to the Respondent with a message: “initial and sign please”. There were three attachments:

- a) an 8 page document, which Scotiabank called “a Commitment Letter”;
- b) a 2 page document called “Disclosure to Borrower”;

- c) 2 copies of a Mortgage Protection Plan, one of which is made out to “K*****” (sic) K.H. and the second to “Dashi Vazquez Vina”.

¶ 92 It is the position of the Respondent that, at no relevant time, did he review the commitment letter. He acknowledged, however, that the commitment letter contained a number of items which were false. These included:

- (a) Under “Income” on page 2, it stated:

“For K***** K.H., you are to provide verification of employment and/or eligible income, satisfactory to us, for at least \$89,000. Verification is to be provided by way of a signed letter on HSBC Securities’ letterhead, and a recent paystub.”

The Respondent admitted that he knew that on April 21, 2009, K.H. was neither employed by HSBC nor was earning \$89,000.00.

- (b) Under “Income-Rental” – there was a stipulation that Scotiabank was to be provided with “verification of monthly rental income” of \$1,650.00 per month. The rental property indicated was 35 B* Court in Barrie. The Respondent acknowledged that he knew on April 21, 2009, that 35 B* Court in Barrie was K.H.’ principal residence and that she had no intention of renting these premises.

¶ 93 On April 21, 2009, at 6:42 p.m., the Respondent acknowledged that he scanned the three attachments to himself after making certain alterations in same. He circled the amount of the monthly mortgage payment, entered the following day’s date on the signature pages, ticked a box requesting that correspondence be in English and highlighted in yellow the places to be signed by K.H. and Vazquez-Vina.

¶ 94 According to the Respondent, on the evening of April 21, 2009, he either personally delivered or e-mailed the documents to Vazquez-Vina to secure his signature.

¶ 95 He testified that the documents were returned to him by Vazquez-Vina in an executed form and, on April 22, 2009, at 2:22 p.m., the Respondent scanned the signature pages to himself.

¶ 96 It is interesting to note that on the last of the scanned signature pages, the spelling of Ms. K.H.’ name has been changed in two places from “K*****” (given name misspelled) to “K*****” (given name spelled correctly), with the changes apparently initialed by a “KH”. Those initials could not have been placed on the documents by Ms. K.H. as she had not received this version of the documents as yet from the Respondent.

¶ 97 The position of the Respondent at the Hearing was that he had sent the entire commitment letter and the other two attachments to K.H., although he could provide no documentary proof that he had done so. The position of K.H. is that she was only sent the signature pages and, thus, had no knowledge of, *inter alia*, the matters referred to in paragraph 92 when she executed the documents.

¶ 98 What is clear and undisputed is that on April 22, 2009, at 3:05 p.m., the Respondent e-mailed the highlighted signature pages to K.H. with the message: “Please sing (sic) and scan back asap.” The Respondent acknowledged that the word “sing” should have been “sign”.

¶ 99 The testimony of the Respondent as to why he only sent the signature pages is as follows:

Q. Why were the signature pages removed?

A. After following up with K.H., I said “I’ve sent you the documents.” She said, “Yes, I’ve got the document. I am too busy. I cannot read this. I don’t have time.” She said, “It is a very busy day for me in the office. I don’t have access to my Hotmail from here. Can you do me a favour and scan me what I need to sign?” She said, “Do not send me a bunch of documents.” She said, “I have the document. Just scan me what I need to sign.” So I scanned her the pages that required her signature, as per her request, and nothing further.

¶ 100 On the other hand, K.H., in an Affidavit filed by the Respondent at the Hearing, stated as follows:

“There was one occasion where MM (Mahourvand) required me to sign documents. My recollection

is that Conville called me and told me that there were additional documents to be signed. He also told me that there were a number of other pages to review. I told Conville that I did not have time to go through all of the documents and asked that he send me only the pages which I needed to sign. Conville complied and sent me the documents which are attached hereto as Exhibit J. I signed the documents and sent them back to Conville or MM.”

¶ 101 What is undisputed is that, at 3:57 p.m. on April 22, 2009, K.H. e-mailed the signature pages back to the Respondent, executed as requested.

¶ 102 The Respondent testified that he sent the complete package of executed documents back to Mahourvand although he could not produce any documentary proof he had done so.

¶ 103 What is clear is that Scotiabank, apparently on April 23, 2009, received a further 17 pages of documents with respect to the Mortgage Application. These included all of the pages of the commitment letter, including the Pre-Authorized Payment Form, the Disclosure to Borrower and the Mortgage Protection Plan documents, all of which purported to be appropriately executed.

¶ 104 The documents were clearly fraudulent in that they represented things to Scotiabank which both K.H. and the Respondent knew were false and misleading.

¶ 105 The position of the Respondent is that he never looked at the critical parts of the documents and thus did not know that they were false and misleading. The position of K.H. is that she never received the critical parts of the documents and thus did not know that the executed documents received by Scotiabank were false and misleading.

¶ 106 Both stories lack credibility.

¶ 107 K.H. was a Senior Associate at the Royal Bank. She knew that she was co-applying for a mortgage from Scotiabank for an amount in excess of \$700,000.00. She would have known that Scotiabank would be relying on the information contained in the documents carrying her signature. Yet, she took no steps to ascertain what information was being conveyed to Scotiabank through those documents but affixed her signature just below a paragraph which stated, in part, that “You affirm that all information obtained from you is true.”

¶ 108 The Respondent would have us believe that he received, altered and forwarded documents without reviewing them in any way. This despite the fact that he was in a desperate financial position and it was critical that the documents be prepared, executed and conveyed to Scotiabank in an efficient manner. K.H. was doing the Respondent a tremendous favour. Consequently, it is logical to assume that the Respondent would review the documents in great detail not only to ensure their accuracy and completeness but also to make certain that his friend, K.H., was not committing herself to anything more onerous than was absolutely necessary.

¶ 109 In our view, the Respondent knew what the commitment letter said, knew that it was false and misleading, yet participated in and facilitated the completion of this document with the hope and the expectation that Scotiabank would act on the false representations contained therein to advance the mortgage funding.

¶ 110 During the course of examination-in-chief, the Respondent submitted, and had marked as an Exhibit, an e-mail from K.H. which she sent to him on April 22, 2009, at 12:42 p.m. It stated: “You are cordially invited to my housewarming party. LOL. I will call you in a bit. K.H..”

¶ 111 He testified that this said to him that the mortgage application had been approved and that “there was no more dealing with Mahnaz (Mahourvand) or documents or language issues and everything was okay.” He said he had a subsequent confirmatory telephone conversation with K.H..

¶ 112 While there is no dispute that the Respondent received this e-mail, the alleged inference which he took from same is not logical as, at the time of its receipt, he still had not sent the signature pages to K.H., something which he did later that afternoon.

G. THE LEASE AGREEMENT

¶ 113 On April 22, 2009, at 1:35 p.m., Mahourvand e-mailed two documents to the Respondent. One was a blank Agreement to Lease with a Schedule A. The second was entitled “Schedule “A” to Listing Agreement”.

¶ 114 The subject of the e-mail was: “Fwd: FW: lease for K.H.”

¶ 115 The attachments were described as “collateral RAY.doc; lease for K.H..pdf.”

¶ 116 The message was “sign both attachments and fax back please.” There was a handwritten attachment with a telephone number which was described in evidence as being Mahourvand’s fax number.

¶ 117 The four-page unsigned Agreement to Lease was dated April 15, 2009, and purported to describe a lease between K.H. as Landlord and a David Brown as tenant. The premises were described as 35 B* Court in Barrie, which was the principal residence of Ms. K.H.. The lease was for one year commencing on June 1, 2009, and was in the amount of \$1,650.00.

¶ 118 The terms of the lease were consistent with the provisions of the Commitment Letter.

¶ 119 In examination-in-chief, the Respondent testified that he did not recall seeing this document. He said that, in any event, he had never reviewed the document as he only reviewed documents if someone asked him to do so. He stated that, if he was not asked to review it or forward it, it would just sit unread in his inbox.

¶ 120 However, here there was a request for both attachments to be signed and faxed back to Mahourvand. The Respondent testified that, shortly prior to receipt of this e-mail, he had received the e-mail from Ms. K.H., described in paragraph 110, inviting him to a party. He then said that he had talked to K.H. who advised him that she had talked to both Mahourvand and Vazquez-Vina and confirmed to him that “the deal was done.”

¶ 121 Thus he said he had “no reason to read the document.”

¶ 122 This version of events is not credible. The Respondent admitted that, at 2:22 p.m. on April 22, 2009, he scanned the signature pages of the Agreement of Purchase and Sale to himself, sent them to Ms. K.H. at 3:03 p.m. with a request that she sign and send them back to him, which she did at 3:57 p.m. after which he forwarded them to Mahourvand. These are all things he would not have done if, in fact, the deal was complete.

¶ 123 In answer to questions from IIROC Staff, Ms. K.H. stated that she had never seen this Lease Agreement and that none of the signatures or initials on the document, which was forwarded to Scotiabank, were hers. The Respondent testified, in cross-examination, that he was aware that Ms. K.H. had stated that she was not aware of the existence of the e-mail from Mahourvand to the Respondent with respect to the Lease Agreement.

¶ 124 The second attachment dealt with the real estate commission allegedly payable by the Respondent should the purchase be completed. No evidence was tendered by the Respondent as to whether this document was executed and returned to Mahourvand as requested.

¶ 125 The documents received by Scotiabank, apparently on April 23, 2009, included what purported to be a fully executed Agreement to Lease. In cross-examination, the Respondent agreed that the terms of the Agreement to Lease in the Scotiabank file appear to be identical to the ones he received from Mahourvand on April 22, 2009.

¶ 126 It is clear that what purported to be a four-page fully executed Agreement to Lease of the K.H. residence at 35 B* Court, which was received by Scotiabank as part of the Mortgage Application, was a fraudulent document.

¶ 127 The Respondent would have us believe that:

- a) On April 22, 2009, he received an unexecuted copy of the Agreement to Lease via an e-mail with a subject matter description of “lease for K.H.”, with a description of an attachment as “lease for K.H.” and a request to have it signed and faxed back.
- b) That he was aware that K.H. was not going to lease her home at 35 B* Court.
- c) That because of an e-mail received from K.H. and an alleged conversation with her in which she confirmed that “the deal was done”, he neither reviewed the Agreement to Lease nor sought to

secure her signature on it.

- d) That less than an hour later, he commenced steps to have K.H. execute documents relating to a Scotiabank Commitment Letter which contained clauses dealing with the lease of K.H.' premises in terms identical to the Agreement to Lease.
- e) That he had no knowledge relating to the fraudulent execution of this Agreement to Lease and/or its delivery to Scotiabank.

¶ 128 In our view, the Respondent was aware of the terms of the Agreement to Lease, was aware of the provisions of the Commitment Letter dealing with same, was aware that K.H. had no intention or desire to lease her principal residence, yet participated in and facilitated a scheme in which a fraudulent Agreement to Lease would be forwarded to Scotiabank with the hope and the expectation that Scotiabank would act on the false representations contained therein to advance mortgage funding.

H. BLACKMONT PORTFOLIO EVALUATIONS

¶ 129 Filed with Scotiabank in support of the Mortgage Application were three documents which purported to be Blackmont Capital Portfolio Evaluations for Vazquez-Vina. They were, respectively, dated "as of" February 20, 2009, March 20, 2009, and April 21, 2009. They purported to show that the "Total Portfolio Value of Canadian Dollar Accounts" to be in the range of \$87,000.00 for each of the three months.

¶ 130 A Blackmont Capital account number for Vazquez-Vina showed on all three evaluations. The Financial Advisor was listed as being "Stephanie Vicari".

¶ 131 One of the terms of the Scotiabank Commitment Letter was that K.H. and/or Vazquez-Vina had to provide verification, satisfactory to Scotiabank, that the purchasers had \$79,500.00 for the downpayment available from their own resources.

¶ 132 On the edge of each of the three portfolio evaluations was the following: "04/21/2009 18:20 (or 18:21) 905-968-1915 Blackmont Capital." The documents were numbered sequentially 001, 002, 003/003. The time of 18:20 appeared for the first two documents, with 18:21 appearing on the third one.

¶ 133 As a result of a Request to Admit, which was marked on consent as an Exhibit at the Hearing, the parties agreed that the following evidence of Stephanie Vicari was true:

- 1) Stephanie Vicari is registered as a Registered Representative with Macquarie Private Wealth Inc. (formerly Blackmont Capital Inc. ("Blackmont")). She has been in this position since October 2006.
- 2) She has been registered in various capacities in the securities industry dating back to 1986.
- 3) She is currently Mr. Conville's Associate Investment Advisor and has been in this position since October 2006.
- 4) At the time of her interview with IIROC Enforcement Staff on October 21, 2009:
 - a. She did not have any client accounts of her own;
 - b. To her knowledge, her name should not appear alone on any client documents;
 - c. She did not know that Mr. Conville was selling his house;
 - d. She was not the financial advisor for Dashiell Vazquez-Vina;
 - e. She did not recognize Mr. Vazquez-Vina as one of Mr. Conville's clients.
- 5) When shown the Blackmont Capital Portfolio Evaluations for Mr. Vazquez-Vina, dated February 20, 2009, March 20, 2009, and April 21, 2009, Ms. Vicari advised:
 - a. Her name would not appear on this type of statement, only Mr. Conville's name would show on this type of statement.

- b. The fax number that appears on the statements (905-968-1915) is the fax number for the Markham, Ontario branch of Blackmont Capital where she and Mr. Conville worked.
- c. Mr. Vazquez-Vina is not her or Mr. Conville's client.
- d. The phone number that appears on the statement is her phone number.
- e. She did not create these documents.
- f. She does not know why the Portfolio Evaluations were created.
- g. She had not seen these documents prior to the date of her interview with IIROC Staff.
- h. Although she does not recall where she was on April 21, 2009, at 6:21 p.m., she is "never at work, and anybody will tell you that, after four. Anyone."

¶ 134 The position of the Respondent is that he did not have any part in the preparation of these Portfolio Evaluations and had no idea "how, why or by whom these documents were sent to Scotiabank."

¶ 135 He admitted that Ms. Vicari did not have any of her own clients, that Mr. Vazquez-Vina was not a client of Blackmont at the time stated on the evaluations and that the account number listed did not exist or resemble a Blackmont account.

¶ 136 He agreed that the fax number that appeared on the documents was his office fax number and that the documents appeared to have been faxed from this number at 6:20 p.m. and 6:21 p.m. on April 21, 2009.

¶ 137 In cross-examination, the Respondent agreed that Ms. Vicari was never in the office after 4:00 p.m.

¶ 138 He admitted that, on April 21, 2009, he either sent or received e-mails or scanned and printed documents to himself at the following times: 4:35 p.m., 4:36 p.m., 5:21 p.m., 6:42 p.m. and 6:47 p.m. He agreed that all of these were with respect to the Mortgage Application.

¶ 139 There was evidence before us that, while the Respondent did have access to a special application which would have given him the ability to send and receive e-mails from a computer outside of his office, he had not logged on or used that access at any time between March of 2008 and December of 2009.

¶ 140 There is no doubt in our minds that the Respondent was aware of the fictitious Blackmont Portfolio Evaluations and either personally faxed them or caused them to be faxed on April 21, 2009, at 6:20 p.m. and 6:21 p.m., despite his sworn testimony to the contrary.

I. EMPLOYMENT VERIFICATION

¶ 141 The Scotiabank Commitment Letter required K.H. to "provide verification of employment and/or eligible income, satisfactory to us, for at least \$89,000.00. Verification is to be provided by way of a signed letter on HSBC letterhead and a recent paystub."

¶ 142 The difficulty, of course, was that, at the time in question, Ms. K.H. was neither employed by HSBC nor earned \$89,000.00.

¶ 143 However, on April 21, 2009, Scotiabank received, along with what purported to be a fully executed Agreement of Purchase and Sale, a letter, dated April 14, 2009, on what purported to be HSBC letterhead, which stated the following:

"To whom it may concern:

This letter is to confirm that K.H. has been an employee in good standing with HSBC from December 22, 2003 until present. Since March 1st, 2008 she has held the position of Branch Manager and earns an annual salary of \$89,000.00 plus benefits. If you require any further information, please do not hesitate to contact me at 905-477-2105.

Sincerely,

"Robert Onianwah"

Robert Onianwah, FCSI

Regional Manager”

¶ 144 The letter is fraudulent in, *inter alia*, the following areas:

- a) Ms. K.H. did not work for HSBC in April of 2009 – she worked for the Royal Bank.
- b) Ms. K.H. had never been a Branch Manager at HSBC.
- c) Ms. K.H. had never earned an annual salary of \$89,000.00.
- d) While the purported signatory of the letter, Robert Onianwah, did work for HSBC, he was not and had never been a Regional Manager.

¶ 145 The sworn statement of the Respondent is that he had nothing to do with the creation or delivery of this letter. He readily admitted that the contents were fictitious. The sworn statement of K.H. is that she had nothing to do with the creation or delivery of this letter. She readily acknowledged that the contents were fictitious. According to the Respondent, Mr. Onianwah, the purported signatory of the letter, “vehemently denies having anything to do with it.”

¶ 146 As noted above, the day before the date on this fictitious employment verification letter, K.H. had signed the Mortgage Application leaving blank the portion of the document which would have required her to reveal that she did not in fact work for HSBC or earn \$89,000.00.

¶ 147 While the Mortgage Application did not require her to submit paystubs, she did inquire of the Respondent how she was supposed to "get a HSBC pay slip."

¶ 148 The fictitious letter appears to solve both of these problems.

¶ 149 The fictitious letter is provided to the Scotiabank, along with a series of other fraudulent documents on April 21, 2009.

¶ 150 Robert Onianwah, the alleged signatory of the fraudulent employment letter, had worked with the Respondent at HSBC. He had been recruited by the Respondent. The Respondent had been his Branch Manager.

¶ 151 The fraudulent employment letter was part of a scheme in which two friends of the Respondent would seek a mortgage based on fraudulent grounds and use the proceeds to purchase the Respondent’s residence.

J. CONCLUSION

¶ 152 We have carefully scrutinized the evidence, both documentary and testimony. We gave special attention to the *viva voce* testimony given by the Respondent before us. After a thorough analysis, we are, unanimously, of the view that the contravention alleged by Staff in the Fresh as Amended Notice of Hearing has been established.

¶ 153 We find that: "Between March 2009 and May 2009, the Respondent participated in and facilitated a scheme in which two friends of his would obtain a mortgage based on fraudulent grounds and use the proceeds to purchase the Respondent’s residence, thereby violating Dealer Member Rule 29.1", which provides, in part, that a “Registered Representative . . . (i) shall observe high standards of ethics and conduct in the transaction of [his] business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute . . . as is consistent with the standards described in clauses (i) and (ii) or may be prescribed by the Board.”

K. PENALTY

¶ 154 During the course of the Hearing, the Respondent tendered significant testamentary evidence as to his career in the financial services industry, his community activities, as well as his various charitable and philanthropic endeavours.

¶ 155 We have made no finding, or given any consideration, as to what should be the appropriate penalty, if

any, in all of the circumstances of this case.

¶ 156 We are prepared to hear both evidence and submissions from the parties on the question of penalty. We would ask Counsel to confer as to how much time should be set aside for the Penalty Hearing and when the parties are ready to proceed with same.

¶ 157 If the parties are unable to agree, we will hear submissions and make the appropriate Order with respect to the Penalty Hearing.

DATED the 11th day of June, 2012.

Thomas J. Lockwood, Q.C., Chair

Leo Ciccone, Member

F. Michael Walsh, Member

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