

Re Weekes et al

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Ralph Weekes, David Weekes and Matthew Weekes

2022 IIROC 01 R

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

Heard: March 11, 2022 in Toronto, Ontario by videoconference
Decision: March 11, 2022
Reasons for Decision: April 26, 2022

Hearing Panel:

Christopher Brett, Chair, Colleen Wright and Shaine Pollock

Appearances:

Sylvia M. Samuel and Danielle Bastarache, Senior Enforcement Counsel

Clarke Tedesco and Alexandra Grishanova, for Ralph Weekes, David Weekes and Matthew Weekes

Ralph Weekes, David Weekes and Matthew Weekes (present)

DECISION ON REVIEW OF THE REGISTRATION SUBCOMMITTEE DECISION

INTRODUCTION

¶ 1 This is an application for hearing and review brought by Ralph Weekes (“Ralph”), Matthew Weekes (“Matthew”) and David Weekes (“David”), (collectively, the “Weekes”) of the decisions of the Registration Subcommittee (or “RSC”) of the Ontario District Counsel dated November 26, 2021 (the “RSC Decisions”), which denied the requests of the Weekes for removal of the terms and conditions on their registrations and approvals (the “Terms and Conditions”). The Terms and Conditions were imposed pursuant to an IIROC hearing panel decision dated October 29, 2020, which also permitted the Weekes to apply for removal or variance of the Terms and Conditions after one year. In its submissions to the Registration Subcommittee, IIROC staff supported the Weekes’ requests that the Terms and Conditions be removed. However, without the Weekes being given an opportunity to be heard, the Registration Subcommittee refused the application for removal of the Terms and Conditions and extended them for at least another year.

¶ 2 We conclude that in circumstances where the Registration Subcommittee does not accept the recommendation of IIROC staff, it is contrary to IIROC rules and the rules of procedural fairness not to provide the Weekes with an opportunity to be heard before making any decision. A review proceeding under Rule 9304 is a hearing *de novo*. Accordingly, this Panel has broad discretion to hear the evidence and to determine the issues that were before the Registration Subcommittee. IIROC staff considered the Weekes’ suitability under the “fit and proper” test and whether their continual approvals without terms and conditions was in the public interest, and recommended that the Registration Subcommittee remove the Terms and Conditions on the Weekes’ approvals. There was no evidence before us that would require the continuation of

the Terms and Conditions. Accordingly, at completion of the hearing, we made an order removing the Terms and Conditions on the Weekes' registration, with written reasons to follow. These are our reasons.

BACKGROUND

¶ 3 In March 2019, the Weekes applied for IIROC registration with a new dealer, Manderville Private Client Inc. Concerns were raised about the application arising out of events that had taken place while the Weekes were registered with the Mutual Fund Dealers Association of Canada through their prior dealer, Investors Group Financial Services. In June 2019, the Registration Subcommittee imposed terms and conditions on the Weekes which included strict supervision and restrictions on leverage. These terms and conditions were to remain in place for at least two years.

¶ 4 In early 2020, the Weekes applied for a hearing and review of the 2019 Registration Subcommittee decisions. On October 29, 2020, an IIROC hearing panel released its decision on the application for hearing and review (the "October 2020 Decision"). In its decision, the hearing panel varied the terms and conditions on the Weekes' registrations and approvals and imposed the following terms and conditions:

- (i) The Applicants are to be under Close Supervision with the following enhancement: the Applicants must not engage in any new leverage business for clients, including new leveraged accounts or additional leveraged investments in existing leveraged accounts;
- (ii) Monthly Enhanced Close Supervision Reports in a form as prescribed by IIROC are to be submitted to the Registration Department of IIROC within ten business days after the end of each relevant reporting month; and
- (iii) The above terms and conditions will remain in place for a period of at least one year from the date of this decision. After which, any of the Applicants may apply to IIROC to have the terms and conditions varied or removed. Upon receiving the request, the matter will be referred to the Registration Subcommittee for consideration.

¶ 5 On November 12, 2021, more than a year following the 2020 decision, the Weekes applied to the Registration Subcommittee to have the Terms and Conditions on their registration removed. On November 23, 2021, IIROC staff made its recommendations that the Terms and Conditions be removed. Staff included the following as the reasons for its recommendation:

- The sponsoring firm and the Approved Person applied to have the terms and conditions removed
- The applicant(s) has been subject to:
 - Enhanced Close Supervision since October 29, 2020
 - Enhanced Strict Supervision from June 6, 2019 to October 28, 2020
- Based on the information reviewed to date, following the Hearing Panel decision dated October 29, 2020, IIROC Staff do not plan to recommend any additional terms and conditions at this time.

¶ 6 IIROC Staff included the following documents in its submissions which it delivered to the Registration Subcommittee by email on November 25, 2021:

- a. IIROC Staff Submissions;
- b. the 2019 Registration Subcommittee Decisions;
- c. the October 2020 Decision;
- d. Requests to remove terms and conditions dated November 12, 2021; and
- e. A blank Decision Document.

¶ 7 On November 26, 2021, the Registration Subcommittee rendered the RSC Decisions in respect of the

Weekes' requests for removal of the Terms and Conditions. The RSC Decisions read as follows:

The Registration Subcommittee has reviewed the request and at this time are not in agreement with Staff's recommendation to remove the terms and conditions currently in place.

Reasons:

- The complex regulatory history of Weekes
- Recent (in 2020) warnings by Mandeville to the Weekes

The Registration Subcommittee requests that the current restrictions continue for a minimum of 1 year, at which point they can be reviewed further.

In addition, we recommend that IIROC consider conducting a review of the Weekes activities in the near future prior to a future request being submitted to remove applicable restrictions.

¶ 8 The Registration Subcommittee's decision was made without providing the Weekes an opportunity to attend a hearing or to make submissions.

¶ 9 By notice of application dated January 28, 2022, the Weekes made a request for a hearing and review of the 2021 RSC decision.

ANALYSIS

¶ 10 This proceeding raises the following issues:

- (i) The Hearing Panel's jurisdiction on a hearing and review under Rule 9304;
- (ii) Review of the decision of the Registration Subcommittee; and
- (iii) Should the Hearing Panel exercise its authority to order the removal of the Terms and Conditions.

(i) The Hearing Panel's jurisdiction on a hearing and review under Rule 9304

¶ 11 Pursuant to IIROC Rule 9304(2), a hearing panel may, on a review of a decision of the Registration Subcommittee:

- (i) affirm the decision under review,
- (ii) quash the decision,
- (iii) vary or remove any terms and conditions imposed by the decision,
- (iv) prohibit, as applicable, a further application for approval under section 9204 by the applicant for a period of time it considers appropriate, or
- (v) make any decision authorized by IIROC requirements under which the decision was made.

¶ 12 The parties are in agreement that a review hearing under Rule 9304(2) is a hearing *de novo*. The Hearing Panel, therefore, has broad discretion to re-decide the issue that was before the Registration Subcommittee. In reaching its determination with respect to the appropriateness of the Terms and Conditions, the Hearing Panel is required to consider the evidence available to the Registration Subcommittee and any new evidence that may assist the Panel in reaching its conclusion on the new evidence, having regard to the material presented in the prior hearing.

(ii) Review of the decision of the Registration Subcommittee

¶ 13 It is not entirely clear the procedural rule that is applicable to the Weekes' application for removal of

the Terms and Conditions. IIROC Rule 9200 sets out IIROC's authority regarding the registration of individuals, and there are two potential rules that could be applicable: Rule 9204 and Rule 9207.

¶ 14 Rule 9204 addresses individual approval applications. It provides as follows:

9204. Individual approval applications

- (1) An individual may make an application to a District Council for approval as a:
 - (i) Supervisor under section 2552,
 - (ii) Director or Executive under section 2552,
 - (iii) Registered Representative, Investment Representative, Portfolio Manager and Associate Portfolio Manager under section 2553,
 - (iii) Chief Financial Officer, Chief Compliance Officer, or Ultimate Designated Person under section 2552, or
 - (v) Trader under section 2557.
- (2) A District Council must approve an application under subsection 9204(1), unless in its opinion:
 - (i) the applicant:
 - (a) does not comply with IIROC requirements,
 - (b) is likely not to comply with IIROC requirements, or
 - (c) does not comply with securities laws relating to or is not suitable for approval on the basis of training, experience, solvency or integrity, or
 - (ii) the approval is otherwise not in the public interest.
- (3) A District Council may approve an application under subsection 9204(1), subject to any terms and conditions it considers appropriate.

¶ 15 Rule 9207 deals with continued approval and provides as follows:

9207. Continued approval

- (1) A District Council may, in its discretion, impose terms and conditions on the continued approval of an Approved Person to ensure continuing compliance with IIROC requirements.
- (2) A District Council may suspend or revoke the approval of an Approved Person, if it appears to the District Council that:
 - (i) the Approved Person is not suitable for approval by reason of integrity, solvency, training or experience,
 - (ii) the Approved Person has failed to comply with IIROC requirements, or
 - (iii) the approval is otherwise not in the public interest.

¶ 16 Regardless of whether the Weekes' application was made under Rule 9204 or Rule 9207, the procedural requirements set out in Rule 9203(3)(4) are applicable. Those sections provide as follows:

- (3) A District Council must not:
 - (i) refuse an application,
 - (ii) impose terms and conditions on an approval, or
 - (iii) suspend or revoke an approval,

- (iv) unless the applicant or Approved Person has been given an opportunity to be heard.
- (4) Written reasons must be provided with notice of a decision that:
 - (i) refuses an application,
 - (ii) imposes terms and conditions on an approval, or
 - (iii) suspends or revokes an approval.

¶ 17 Rule 9203(3) clearly afford the Applicant an opportunity to be heard in circumstances where an adverse determination is to be made against them.

¶ 18 Rule 9203(3) is linked to IIROC Rule 9405, which imposes a notice requirement if IIROC Staff intends to recommend that the District Council “refused to grant, revoke or suspend an IIROC approval or that terms and conditions be imposed on that approval. Following from that notice requirement, Rule 9406 sets out the procedure to be followed by an approved person upon receiving notice from staff pursuant to IIROC Rule 9405 as well as Staff’s next steps if there is no response from the approved person. Rule 9407 to 9410 of the IIROC Rules then sets out the procedure to be followed once an opportunity to be heard has been afforded.

¶ 19 The Weekes made an application for removal of the Terms and Conditions. As noted above, although this may not specifically be contemplated by the IIROC Rules, the request for the removal of Terms and Conditions may be considered by analogy to either Rule 9204 or Rule 9207. Therefore, if it had been IIROC’s staff recommendation to deny the Weekes request, Staff would have provided to them an opportunity to be heard consistent with the provisions of IIROC Rule 9405.

¶ 20 IIROC Staff, in response to the requests from the Weekes, made recommendations to the Registration Subcommittee that the Weekes’ application be granted. Therefore, the requirement to give notice of an opportunity to be heard under Rule 9405 was not triggered.

¶ 21 In circumstances where the Registration Subcommittee determines that it is not going to accept a staff recommendation that an application be granted, it is incumbent on them to give notice to the applicant and provide an opportunity to be heard prior to making a decision adverse to the interest of the applicant. While the Registration Subcommittee has authority to disagree with an IIROC Staff’s recommendation and refuse an application, it is not permitted to do so without first giving the applicant an opportunity to be heard.

¶ 22 Because the Registration Subcommittee failed to comply with the applicable Rules, its decision to deny the Weekes’ application cannot stand. We now turn to the final issue of whether the Hearing Panel should exercise its authority to order the removal of the Terms and Conditions.

(iii) Should the Hearing Panel exercise its authority to order the removal of the Terms and Conditions?

¶ 23 The parties were in agreement that it would be most efficient for this Hearing Panel to decide the issue of whether the Terms and Conditions should be removed, rather than sending the matter back to a Registration Subcommittee for determination. We agree with that approach. We have all of the material before us that the Registration Subcommittee had before it, and no purpose would be served by sending the matter back to the Registration Subcommittee for a redetermination.

¶ 24 It is well established that IIROC approval of a registration is subject to an assessment of suitability. Assessments of suitability are made based on an evaluation of whether an individual is “fit and proper” or whether the approval is not in the public interest or otherwise objectionable. Guidance Note 9200-21-001 provides guidance on the factors considered when assessing whether a person is “fit and proper” for registration having regard to the fundamental criteria, namely integrity, financial solvency and confidence. An assessment of a person’s integrity is done on a case-by-case basis and “will take into account the seriousness of, and circumstances surrounding any matter that may impact the individual’s suitability, the explanation provided by the individual, the passage of time since the matter occurred, and evidence of the individual’s appreciation for the seriousness of the matter.”

¶ 25 Guidance Note 9200-21-001 explains that there exists a distinction (both under IIROC Rules and securities legislation) between whether an applicant is suitable for registration on the basis of integrity, financial solvency and competence or whether registration is not in the public interest (or otherwise objectionable in the case of securities legislation). In considering whether an approval is not in the public interest or is otherwise objectionable, Staff will consider the public interest mandate of securities regulation. As such, a suitability assessment is not determinative of the issue. Registration or approval may be denied as not in the public interest or otherwise objectionable even where registration is not unsuitable based on integrity, financial solvency and competence as Staff will consider whether approval or registration should be granted on broader public interest grounds.

¶ 26 Whether the Weekes are fit and proper for registration was considered by the 2020 hearing panel, which ordered the Terms and Conditions be in place for a minimum of one (1) year from the date of the decision. The Weekes complied with the Terms and Conditions imposed by the 2020 panel. There are no new facts or new evidence arising since the 2020 decision that would justify the continuation of the Terms and Conditions. The decision of the Registration Subcommittee, which is the subject of review before us made reference to “the complex regulatory history” and “recent warnings”. However, these matters were considered by the 2020 panel, and no new regulatory concerns have arisen during the period between the 2020 decision and the application to remove the Terms and Conditions.

¶ 27 After considering the Weekes’ suitability under the fit and proper test and whether their continued approvals without the Terms and Conditions was in the public interest, IIROC staff recommended on November 23, 2021 that the Registration Subcommittee remove the Terms and Conditions on the Weekes’ approvals.

¶ 28 In these circumstances, we are of the view that the Registration Subcommittee’s decision should be quashed, and the Terms and Conditions removed.

CONCLUSION

¶ 29 Accordingly, at the conclusion of the hearing, the Panel made the following order:

1. The decision of the Registration Subcommittee dated November 26, 2021 is quashed; and
2. The terms and conditions on Ralph Weekes’, David Weekes’ and Matthew Weeks’ registration and approval imposed on October 29, 2020 are removed.

Dated at Toronto, Ontario this 26 day of April 2022.

Christopher Bredt

Colleen Wright

Shaine Pollock

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
AND
RALPH WEEKES**

ORDER

THIS APPLICATION made by Ralph Weekes (“Ralph”) for an order quashing the decision of the Registration Subcommittee of the Ontario District Council (the “Registration Subcommittee”) dated November 26, 2021 and removing the terms and conditions imposed on Ralph’s registration and approval by decision dated October 29, 2020 was heard March 11, 2022, by video-conference.

ON READING the Review Record and the memorandum of fact and law of Ralph and of IIROC Staff and on hearing the submissions of counsel for Ralph and for IIROC Staff,

THIS HEARING PANEL ORDERS that:

1. The decision of the Registration Subcommittee dated November 26, 2021 is quashed; and
2. The terms and conditions on Ralph's registration and approval imposed on October 29, 2020 are removed.

DATED at Toronto, Ontario this 11th day of March 2022

"Christopher Bredt"

Christopher Bredt

"Colleen Wright"

Colleen Wright

"Shaine Pollock"

Shaine Pollock

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
AND
DAVID WEEKES**

ORDER

THIS APPLICATION made by David Weekes ("David") for an order quashing the decision of the Registration Subcommittee of the Ontario District Council (the "Registration Subcommittee") dated November 26, 2021 and removing the terms and conditions imposed on David's registration and approval by decision dated October 29, 2020 was heard March 11, 2022, by video-conference.

ON READING the Review Record and the memorandum of fact and law of David and of IIROC Staff and on hearing the submissions of counsel for David and for IIROC Staff,

THIS HEARING PANEL ORDERS that:

1. The decision of the Registration Subcommittee dated November 26, 2021 is quashed; and
2. The terms and conditions on David's registration and approval imposed on October 29, 2020 are removed.

DATED at Toronto, Ontario this 11th day of March 2022

"Christopher Bredt"

Christopher Bredt

"Colleen Wright"

Colleen Wright

"Shaine Pollock"

Shaine Pollock

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
AND
MATTHEW WEEKES**

ORDER

THIS APPLICATION made by Matthew Weekes (“Matthew”) for an order quashing the decision of the Registration Subcommittee of the Ontario District Council (the “Registration Subcommittee”) dated November 26, 2021 and removing the terms and conditions imposed on Matthew’s registration and approval by decision dated October 29, 2020 was heard March 11, 2022, by video-conference.

ON READING the Review Record and the memorandum of fact and law of Matthew and of IIROC Staff and on hearing the submissions of counsel for Matthew and for IIROC Staff,

THIS HEARING PANEL ORDERS that:

1. The decision of the Registration Subcommittee dated November 26, 2021 is quashed; and
2. The terms and conditions on Matthew’s registration and approval imposed on October 29, 2020 are removed.

DATED at Toronto, Ontario this 11th day of March 2022

“Christopher Bredt”

Christopher Bredt

“Colleen Wright”

Colleen Wright

“Shaine Pollock”

Shaine Pollock

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