

Re Crandall

IN THE MATTER OF:

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

and

Robert Adrian Crandall

2015 IIROC 35

Investment Industry Regulatory Organization of Canada
Hearing Panel (New Brunswick District)

Heard: October 7, 2015
Decision: October 22, 2015

Hearing Panel:

Robert Monette, Chair, Elaine C. Phénix and Gilles Archambault

Appearances:

Melissa J. MacKewn, Enforcement Counsel for IIROC

Robert Adrian Crandall, appearing for himself

DECISION ON MOTIONS

¶ 1 On October 7, 2015 a hearing was held via conference call and the Hearing Panel was seized of two motions.

¶ 2 A first motion brought by Staff of the Investment Industry Regulatory Organization of Canada (IIROC) was for an order to permit the testimony of a witness at the disciplinary hearing by live video conference.

¶ 3 The second motion brought by Robert Adrian Crandall (the “Respondent”) is a request for the postponement of the disciplinary hearing scheduled on the 20, 21 and 22 of October 2015 in Fredericton, New Brunswick.

¶ 4 The Hearing Panel allowed both motions with reasons to follow. The following paragraphs contain the reasons.

¶ 5 Before the Hearing Panel addresses the discussion on these motions, a brief overview of the history of proceedings and factual findings may be useful.

Preamble

¶ 6 On April 23rd, 2015, IIROC issued a Notice of Hearing (the “Notice”), concerning the Respondent.

¶ 7 On May 22, 2015, with the consent of both parties, a hearing was held via conference call for the sole purpose of setting a date regarding the disciplinary hearing; the parties agreed that the disciplinary hearing would be held in New Brunswick on the 20, 21 and 22 of October 2015.

¶ 8 On July 14, 2015 a hearing was held via conference call at which preliminary motions were presented that included a motion by IIROC for directions from the Hearing Panel in regards to their duty of Disclosure.

¶ 9 On September 2, 2015 a decision was rendered and the motion for directives granted. The Hearing Panel concluded that IIROC should execute the Disclosure and that the Respondent will use the information in accordance with the directions issued.

¶ 10 On September 23, 2015 following the previous decision, IIROC sent a Disclosure Package to the Respondent¹.

¶ 11 At the present hearing, IIROC confirmed that a compendium of Documents which they intend to rely on at the disciplinary hearing has been delivered to the Respondent and that a list of witnesses and summary of testimony will be sent to him.²

Discussion

¶ 12 In the subsequent discussion, the Hearing Panel will decide pursuant to IIROC's Dealer Member Rule 20.2 and Rule 1.5 of IIROC's Rules of Procedure.

¶ 13 These rules define the authority and the procedural power of a Hearing Panel and provide measures to secure a fair hearing.

Motion for postponement

¶ 14 The Respondent informs the Hearing Panel that he did not have time to read or take cognizance of all the documents received. He is also limited as to the use of a computer.

¶ 15 The Respondent insists that he did not have enough time to prepare for the disciplinary hearing; he is not ready to proceed on the dates agreed and may need an additional period of 6 months.

¶ 16 IIROC opposes the motion for postponement but mainly insists that a schedule of commitments by both parties should be ordered.

¶ 17 The Hearing Panel concludes that the motion for postponement is well founded considering the fact that the Respondent is appearing for himself and that there is an inadequate period of time to prepare appropriately for the disciplinary hearing.

¶ 18 The Hearing Panel also determines that a schedule of commitments is appropriate as agreed by both parties.

¶ 19 The Respondent is presently in possession of full disclosure; he will have a period of thirty days (until November 6, 2015) to advise IIROC if supplementary relevant information is required.

¶ 20 The Respondent shall proceed with the filing of a Response as well as a list of documents and witnesses in the following 45 days (until December 21, 2015).

¶ 21 The disciplinary hearing will be scheduled to take place on February 1 and 2, 2016 in Fredericton. Both parties have declared that they are ready to proceed on those dates.

¶ 22 The Hearing Panel considers that this period of nearly four months is amply sufficient for both parties to assume full exercise of their respective rights to a fair disciplinary hearing.

Motion for testimony by video conference

¶ 23 IIROC submits that they intend to call D.R. as a witness for the determination of certain issues. D.R. is a former client of the Respondent.

¶ 24 D.R. lives in Montreal; she is 95 years old and the state of her health precludes her from traveling.³

¹ Affidavit of Mary Decaire and exhibits, sworn October 6, 2015

² In conformity with IIROC's Rules of Practice and Procedure

³ Affidavit of Yu Chen, sworn September 25th 2015

- ¶ 25 D.R. would be able to testify at the disciplinary hearing by video conference.
- ¶ 26 The Respondent objects to the motion arguing that he would rather proceed in the presence of D.R.
- ¶ 27 The Hearing Panel considers that this objection is ill-founded.
- ¶ 28 The Hearing Panel agrees that it would be excessive hardship for D.R. to travel considering her advanced age and state of health.
- ¶ 29 With the advanced technology available, the Hearing Panel considers there is no prejudice for the Respondent if the witness D.R. is heard by video conference.⁴
- ¶ 30 Both the parties and the Hearing Panel will be able to observe and watch live as the witness is called to testify under oath or affirmation; documents could also be introduced to the witness.
- ¶ 31 Save for the presence of the witness physically in the room, the process of testimony will be identical to any disciplinary hearing.

Conclusion

- ¶ 32 The Hearing Panel concludes that the motions presented are well founded.

Thus the Hearing Panel declares;

- A.** Postponement of the disciplinary hearing scheduled for October 20, 21 and 22 is granted and the parties will act according to the present schedule:
- a) The Respondent has thirty days (until November 6, 2015) to advise IIROC if supplementary relevant information is required.
 - b) The Respondent shall proceed with the filing of a Response as well as a list of documents and witnesses in the following 45 days (until December 21, 2015).
 - c) The disciplinary hearing will be scheduled to take place on February 1 and 2, 2016 in Fredericton.
- B.** Witness D.R will be permitted to testify by video conference at the disciplinary hearing.

Signed in Montreal, on the 22nd day of October, 2015.

Robert Monette

Elaine C. Phenix

Gilles Archambault

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⁴ Chandra v. CBC, 2015 ONSC 5385