Re Sadeghi

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

The Universal Market Integrity Rules

and

Aidin Sadeghi

2018 IIROC 31

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

Hearing: March 5, 2018
Sanction Decision and Reasons: August 7, 2018

Hearing Panel:
Thomas J. Lockwood, Q.C., Chair, Colleen Wright & Edward Jackson
Appearances:
Andrew P. Werbowski – Counsel for IIROC
Sally Kwon – Counsel for IIROC
Aidin Sadeghi - In Person

SANCTION DECISION AND REASONS

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A. HISTORY OF PROCEEDINGS

¶ 1 By Notice of Hearing, dated the 22nd day of August, 2016, the Investment Industry Regulatory Organization of Canada ("IIROC") made the following allegations against Aidin Sadeghi ("Respondent"):

Count 1:

> Between December 2012 and January 2013 (the "Relevant Period"), the Respondent, while employed as a proprietary trader at W.D. Latimer Co. Ltd., entered orders that he knew, or ought reasonably to have known, would create, or could reasonably be expected to create, a false or misleading appearance of trading activity in or interest in the purchase or sale of the securities contrary to Universal Market Integrity Rule ("UMIR") 2.2(2) and UMIR Policy 2.2, for which he is liable under UMIR 10.4(1).

¶ 2 The Hearing Panel received extensive oral and documentary evidence over the course of 12 days of Hearing. The matter was then put over to provide the parties with an opportunity to each make Written Submissions. After extensive Written Submissions were received from the parties, they were then provided with an opportunity to make Oral Submissions.

¶ 3 After receiving the Oral Submissions, the Hearing Panel reserved its Decision.

¶ 4 On January 4, 2018, the Hearing Panel released its Decision and Reasons. We unanimously concluded that the allegations set out in Count 1 of the Notice of Hearing had been established.

¶ 5 The Hearing Panel then provided the parties with an opportunity to make Written Submissions with respect to what, if any, sanctions should be imposed in light of our findings with respect to Count 1.

¶ 6 On March 5, 2018, the parties each made Oral Submissions with respect to sanctions, after which we reserved our Decision.

B. POSITION OF THE PARTIES

¶ 7 IIROC Staff ("Staff") submitted that the following sanctions were appropriate:

(a) A five year suspension of access to all IIROC-regulated marketplaces;

(b) A fine in the amount of $6,074.50 representing disgorgement of the net profits made by the Respondent for the impugned trading activity as set out in Schedule B of the Statement of Allegations;

(c) An additional fine in the amount of $25,000; and

(d) Costs in the amount of $25,000.

¶ 8 The Respondent submitted that the following sanctions were appropriate:

(a) A period of suspension not exceeding 3 months, to be entirely set off by mitigating factors such as his inability to pay, his self-representation and its negative effect on his ability to perform at his job, in addition to attending a month long hearing without pay;

(b) A fine in the amount of $5,000;

(c) A fine in the amount of $5,000 (costs);

(d) A 2 year period of close supervision; and

(e) Re-completion of the Conduct and Practices Handbook Course.

C. APPLICABLE PRINCIPLES

¶ 9 There was not a significant difference between the parties as to the principles which the Hearing Panel should apply in determining the appropriate sanction. There was, however, a sharp difference between them as to how these principles should be applied in the particular circumstances of the matter before us.

¶ 10 IIROC publishes Sanction Guidelines, which both outline general sanction principles but also key factors which should be considered by Hearing Panels.

¶ 11 These Guidelines are not binding on the Hearing Panel. Indeed they state that "the determination of the appropriate sanction in any given case is discretionary and a fact specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. Hearing panels retain the discretion to impose the sanctions they consider appropriate."

(IIROC Sanction Guidelines – page 2)

¶ 12 The overarching principle is that the primary purpose of a sanction is prevention rather than punishment. Sanctions should be designed to protect the investing public, strengthen market integrity and improve overall business standards and practices.

¶ 13 A sanction should achieve both specific and general deterrence. As was stated by the Supreme Court of Canada in *Re: Cartaway Resources Corp.* [2004] 1 S.C.R. 672 at para. 61:

> "A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction . . . The respective importance of general deterrence as a . . . factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act."

¶ 14 Applying the principles to the case before us, we sought to impose a sanction on the Respondent which would prevent and discourage future misconduct by him but would also deter others from engaging in similar misconduct.

¶ 15 A principle concerning which we received considerable differing oral and written submissions from the parties is that sanctions should be more severe for Respondents with prior disciplinary records.

¶ 16 The disagreement was not with respect to the principle but rather what is the significance of the Respondent's previous interaction with an IIROC Disciplinary Panel.

¶ 17 The principle is simple – a prior disciplinary record is an aggravating factor. If this record is of a relatively recent nature and for a similar or identical contravention, it suggests that the prior sanction was not a sufficient deterrent. However, even where the conduct is different, the prior record may demonstrate a respondent's general disregard for compliance with regulatory requirements.

¶ 18 A further principle from the IIROC Sanctions Guidelines is that, for multiple violations, the total or cumulative sanction should appropriately reflect the totality of the conduct. We have found that the Respondent's misconduct was daily. We concluded, however, that it would not be practical or appropriate to apply a sanction for each contravention established but rather impose a global sanction, although the number of infractions was certainly an aggravating factor.

¶ 19 It was argued by Staff that the Respondent should not financially benefit as a result of his misconduct, although Staff conceded that the amount of the net profit was a little over $6,000. The Respondent disputed this figure, submitting that he works on a fully commissioned basis and only receives 50% of his profits less costs.

¶ 20 Throughout, Staff conducted the case on the basis that the main issue at stake was the damage to market integrity caused by the actions of the Respondent and not his profitability.

¶ 21 The Guidelines also set out the circumstances where a suspension should be considered. These include:

(a) there has been one or more serious contraventions;

(b) there has been a pattern of misconduct;

(c) the Respondent has a prior disciplinary history;

(d) the contraventions involved fraudulent, willful and/or reckless misconduct; or

(e) the misconduct in question has caused some measure of harm to investors, the integrity of a marketplace or the securities industry as a whole.

¶ 22 It is to be noted that there were elements of each of the sub-headings present in the case before us.

¶ 23 When raised by the Respondent, inability to pay is a factor for the Hearing Panel to consider when considering the imposition of a monetary penalty. The Guidelines make it clear, however, that inability to pay, while a relevant factor, should not be considered a predominant or determining factor.

¶ 24 It is clear that the Respondent, both orally and in writing, raised the issue of his ability to pay, although a lot of the submissions were anecdotal and not documentary.

D. FINDINGS RELEVANT TO SANCTIONS

¶ 25 Our major finding was that the allegations in Count 1 of the Notice of Hearing had been established by credible admissible evidence and that, consequently, between December of 2012 and January of 2013, the Respondent had entered orders that he knew, or ought reasonably to have known, would create, or could reasonably be expected to create, a false or misleading appearance of trading activity in or interest in the purchase or sale of the securities. This in and of itself is very serious misconduct.

¶ 26 The trading by the Respondent occurred in the Pre-Opening Session. One of the main purposes of the Pre-Opening is to allow for price discovery. In our Decision and Reasons, we found that orders that are entered in the Pre-Opening Session are to be entered with the intent to execute, whether they be Market Orders or Limit Orders.

¶ 27 The Respondent repeatedly deliberately entered Orders which he did not intend to execute. The other participants in the marketplace had no way of knowing that the Respondent's order entry activity was motivated by his intention to re-evaluate his orders. He had no *bona fide* investment intention.

¶ 28 As we stated in our Decision, and re-iterate here, market participants have a right to a fair, open and transparent marketplace in the Pre-Opening Session. Activity, such as we found was engaged in by the Respondent, must be strictly curtailed.

¶ 29 We found that the Respondent breached Universal Market Integrity Rule ("UMIR") 2.2(2). This Rule prohibits a range of manipulative and deceptive activities that harm market integrity and undermine market confidence.

¶ 30 The actions of the Respondent were planned and deliberate. They occurred on virtually a daily basis over the two month period canvassed.

¶ 31 We found that the Respondent's general pattern was to enter multiple Market Orders within a few seconds of each other to either buy or short sell a security and then cancel some or all of these orders just prior to the market opening at 9:30 a.m.

¶ 32 As these were Market Orders, they, generally, had an effect on the Calculated Opening Price ("COP"). The COP indicates the price at which trading in a security will commence at the Opening based on orders entered to that point. It is the price where the most shares can trade.

¶ 33 We found that the other Market Participants would reasonably conclude that when a Market Order was entered, it showed an intent to buy or sell that security at the opening of the market. The changes in the COP reflected the Market's perception of that intent.

¶ 34 We found that the Respondent could size the market by seeing how the other Market Participants reacted to his expression of interest. Only the Respondent knew of his intention to re-evaluate and not execute some or

all of the Market Orders.

¶ 35 The Respondent's cancellations shortly before the market opened at 9:30 a.m. usually had an effect on the COP. His actions left the market little or no time to react. He, alone, was in a position to take advantage of any market movement caused by his cancellations.

¶ 36 His actions harmed the integrity of the Market.

¶ 37 The sanction which we impose must indicate to the Respondent and the investment community that this type of conduct will not be tolerated.

E. IS THE RESPONDENT A RECIDIVIST?

¶ 38 In both the written and oral arguments, Staff and the Respondent spent a considerable amount of time arguing over what weight, if any, the Hearing Panel should give to a Decision of an IIROC Hearing Panel in the case of Re: Nott et al. The Respondent before us was one of the respondents referred to in that Decision.

¶ 39 Reasons and Decision were originally released by the Hearing Panel on November 30, 2010. Those Reasons and Decision were replaced by the Revised Reasons and Decisions released on April 30, 2011, 2010 IIROC 55, concurrently with the Sanctions Reasons and Decision, 2011 IIROC 26.

¶ 40 In the *Nott* Decision, the Respondent, largely as a result of his own "open and frank admission" was found to have violated UMIR 2.2 by entering three artificial closing bids. He was fined $5,000 and given 2 years to pay. There was no order of suspension.

¶ 41 The parties before us then proceeded to quote from portions of the lengthy Decision to buttress the submissions they were seeking to make.

¶ 42 The Respondent emphasized that the Hearing Panel dismissed the allegations of entering 50 artificial closing bids with respect to ACU as it found that he had acted "in good faith and appropriately." The Hearing Panel found him to be a credible witness who did not gain any profit or advantage from any of the artificial closing bids. The Panel found no evidence of actual harm to the marketplace.

¶ 43 The Hearing Panel found that the Respondent had suffered "disproportionate consequences" as a result of unfair publicity caused by an IIROC News Release.

¶ 44 The Respondent quoted from paragraph 194 of the Sanction Reasons and Decision as follows:

> "The Panel is satisfied that Sadeghi regrets his error in judgment and that there is no risk of future violations."

¶ 45 In its submissions, Staff referred the Hearing Panel to the remainder of paragraph 194 which stated:

> "Sadeghi testified:
>
> But the question is do I regret putting those three bids in there? Sure I do. Would I do it again if I had to? Of course I won't. Would I pay extra attention to any activity that I would make in the market place in the future? Yes, of course. That goes without saying."

¶ 46 The Respondent repeatedly and expansively, in his written and oral submissions, emphasized the extensive harm done to him personally, professionally and economically by the proceedings before the IIROC Hearing Panel in 2009, 2010 and 2011. One would have thought that he would never, knowingly, put himself in such a position again.

¶ 47 It is clear that the previous Hearing Panel took all of the surrounding circumstances into consideration when imposing the penalty which it did. It concluded at paragraph 196:

> "However, notwithstanding this unfair publicity, deterrent sanctions must be imposed for breach of UMIR 2.2(2) and UMIR Policy 2.2 in accordance with the Sanction Guidelines and the facts and circumstances applicable to the offence and the offender."

¶ 48 To us, the use of the word "recidivist" to describe the Respondent is pejorative and inappropriate. It is a word usually seen in a criminal context.

¶ 49 However, it is clear that the Respondent has been previously disciplined by IIROC for violating UMIR 2.2. This was an aggravating factor in our consideration of the appropriate sanction.

F. ORDER OF MARCH 6, 2017

¶ 50 At the commencement of the Hearing on the Merits, on March 6, 2017, the Respondent requested that the Hearing Panel make an Order granting him leave to audio record the Hearing on an electronic device. The Order was granted.

¶ 51 Before the Order was issued, a draft of the proposed Order was approved by the Respondent.

¶ 52 The Order provided, *inter alia*, as follows:

> "6. Mr. Sadeghi shall not take photographs or video with the electronic device unless the Hearing Panel has granted permission to do so." No such permission was ever sought or granted.
>
> "7. For greater certainty: (d) If a witness exclusion order is made in this proceeding, Mr. Sadeghi shall not disclose the contents of the Audio Recording, in whole or in part, to any prospective witness who has not given evidence." A witness exclusion order was made by the Hearing Panel.

¶ 53 During the course of the testimony of Glen Van Renesse, a witness called by the Respondent at the Hearing on the Merits, the witness testified concerning a number of text messages which had passed between himself and the Respondent prior to his testimony. The Respondent did not dispute this fact.

¶ 54 Copies were made of the text messages, one of which contained a photograph made in the Hearing Room which was, apparently, disseminated both to the witness before he testified and to personnel at the Respondent's firm. The texts made reference to evidence provided by Staff at the Hearing on the Merits.

¶ 55 In our Decision and Reasons, we requested submissions from the parties as to how, procedurally, this matter should be dealt with.

¶ 56 The position of Staff is that it does not intend to initiate separate proceedings in respect of this conduct, but that it should be considered by the Hearing Panel as an aggravating factor.

¶ 57 It submitted that the conduct was neither inadvertent nor accidental and that "any procedural order made by a Hearing Panel in the context of a disciplinary proceeding (particularly one that was requested by and inures to the benefit of the Respondent) should be observed. [The Respondent's] failure to do so is a further indication of his inability to comply with IIROC regulatory requirements."

¶ 58 In response, the Respondent conceded that he understood the content of the Order and was grateful and appreciative of the accommodation made by both Staff and the Hearing Panel regarding the Order. He stated that he was sorry about the incident.

¶ 59 The Respondent stated that this "was a novice and honest error" made by a non-professional who had no choice but to represent himself to the best of his ability. He stated that had he "enjoyed the privilege of a professional counsel, there would not be a breach of the order." He asked the Hearing Panel to "consider the mitigating elements of Self-representation."

¶ 60 The March 6, 2017 Order of the Hearing Panel, particularly with respect to the taking of photographs, was clear. It was understood by the Respondent. It was breached by the Respondent. The fact of self-representation does not provide any excuse for the Respondent's conduct.

¶ 61 However, the Respondent has admitted his error and has apologized. In all of the circumstances we are prepared to accept his apology and will not view this conduct as an aggravating factor as requested by Staff.

G. DECISION

(a) Suspension of Access

¶ 62 We have carefully, and at length, considered the oral and written submissions of the parties, the findings we made at the Hearing on the Merits, as well as the relevant authorities and have, unanimously, concluded that the appropriate sanction is to impose on the Respondent a 5 year suspension of access to all IIROC related marketplaces.

¶ 63 We do not do so lightly as we are fully aware of the impact this Decision will have on the Respondent.

¶ 64 However, as detailed in the Decision and Reasons, the Respondent, over a significant period of time, has engaged in a pattern of serious misconduct. His actions were intentional and deliberate. The impugned trades were daily and numerous.

¶ 65 As we stated in our Decision and Reasons and re-iterated above, "Market Participants have a right to a fair, open and transparent marketplace in the Pre-Opening Session." The actions of the Respondent prevented that from happening.

¶ 66 In our view, it is critical that we send a strong message to both the Respondent and the marketplace participants that the actions such as those engaged in by the Respondent, will not be tolerated.

¶ 67 In 2011, the Respondent was fined $5,000 for a violation of UMIR 2.2, partly on the stated basis that the Hearing Panel was convinced that there was no risk of future violations as the Respondent told the Panel that he would pay extra attention to any marketplace activity in the future.

¶ 68 The Respondent knew, or should have known, that any future breach of UMIR 2.2 would have significant consequences.

¶ 69 The Respondent's conduct was willful. It was not an error in judgment. He deliberately set out to gain an advantage over other market participants. He knew his actions were affecting the COP. He alone knew of his intention to cancel Market Orders at the last minute.

¶ 70 His conduct deleteriously affected the integrity of the marketplace and caused harm or potential harm to investors.

¶ 71 It is trite to say but important to note that IIROC registration is not a right but a privilege. The Respondent, by his actions, has abused that privilege.

¶ 72 In exercising our discretion to determine the appropriate length of the suspension of access, we carefully considered all of the cases referred to us by both Staff and the Respondent. These included the following:

(a) *(Re) T.D. Securities, Kenneth Nott, Aidin Sadeghi, Christopher Kaplan, Robert Nemy and Jake Poulstrup*, 2011 IIROC 26;

(b) *(Re) Lucy Marie Pariak-Lukic*, 2015 ONSEC 18;

(c) *(Re) Vitug*, 2009 IIROC 31;

(d) *(Re) Toban*, [2007] I.D.A.C.D. No. 9;

(e) *(Re) Gareth*, [2001] I.D.A.C.D. No. 29;

(f) *(Re) Dennis*, 2012 ONSEC 24;

(g) *(Re) Li*, 2015 IIROC 26;

(h) *(Re) Zhang*, 2013 IIROC 35;

(i) *(Re) Nguyen-Qui*, 2012 IIROC 53;

(j) *(Re) Sole*, 2016 IIROC 30; and

(k) *(Re) Michael Bond and Sesto DeLuca*, RS DN No. 2007-001, Liability Decision dated March 7, 2007 and RS DN No. 2007-003, Penalty Decision dated May 29, 2007.

¶ 73 The majority of these cases were contested, some were as the result of settlement agreements. The sanctions ranged from no suspension to a life-time ban. Staff conceded that there were few comparable cases available but submitted that the *Vitug, Toban* and *Gareth* cases were the closest to the case at bar. In each of these cases, a permanent ban was imposed.

¶ 74 After careful consideration, we have determined that a permanent ban is not appropriate but that a significant ban is. We have decided that that ban will extend for a period of 5 years from the date of the release of these Decision and Reasons.

(b) Disgorgement

¶ 75 The IIROC Sanctions Guidelines provide that: "sanctions should ensure that a respondent does not financially benefit as a result of the misconduct." The Guidelines suggest that "the sanction, where possible, should include a disgorgement of the amount of any such financial benefit."

¶ 76 There was disagreement between the parties as to the amount of the financial benefit received by the Respondent as a result of his misconduct.

¶ 77 Staff calculated the Respondent's net profits as $6,074.50 and requested an Order in that amount.

¶ 78 The position of the Respondent was that Staff neither emphasized nor proved his profitability. In any event, he submitted that he was the recipient of less than 50% of the profit generated.

¶ 79 With respect to the issue of disgorgement, the Respondent submitted that while the Sanction Guidelines "clearly leave room" for the disgorgement of profits, Staff did not provide any relevant precedent where disgorgement had been ordered.

¶ 80 Therefore the Respondent submitted that there should be no order for disgorgement.

¶ 81 With respect, these submissions make no logical sense. The Guidelines state the applicable principles – the lack of a specific precedent is irrelevant.

¶ 82 In our view, there should be disgorgement. The issue is quantum.

¶ 83 The Respondent submitted that an appropriate fine would be 3 times 50% of the generated profit of $6,074.50 (i.e. 3 x $3,037.25 or $9,111.75). In our view, $9,111.75 would be an appropriate amount for disgorgement taking into account profits and other compensation received directly or indirectly by the Respondent as a result of his misconduct. In addition, in our view, it would not be appropriate to simply return the Respondent to the position he would have been in absent the misconduct.

(c) Fine

¶ 84 In addition to disgorgement, this is a case where a fine should be imposed to act as a deterrent to others who might consider acting in a manner similar to that of the Respondent. It will also act as a specific deterrent to the Respondent.

¶ 85 The precedent cases provided to us by Staff involving UMIR 2.2 violations resulted in fines ranging from $10,000 to $75,000.

¶ 86 Taking into account all of the relevant circumstances we agree that a fine, in the amount of $25,000, as suggested by Staff, is appropriate and we so order.

(d) Costs

¶ 87 UMIR 10.7 provides for an Assessment of Expenses incurred by IIROC in investigating and prosecuting the matter against the Respondent.

¶ 88 In this regard, Staff presented an Affidavit sworn by Ricki Ann Newmarch, the Enforcement Litigation National Coordinator in the Enforcement Department of IIROC. The Affidavit sets out the hourly rates of both the IIROC Senior Enforcement Counsel and Senior Investigator. The rates are reasonable.

¶ 89 The hours spent by both individuals were detailed and totaled and the hourly rates were then applied. The total of the Bill of Costs was $79,330.00, which was reduced to a request for $25,000.

¶ 90 The Bill of Costs did not include the time spent by a number of identified Staff members, nor the time spent in preparing for and attending the Sanction Hearing nor a list of specified disbursements.

¶ 91 We find that the request for $25,000 in costs was entirely reasonable and we order payment of same by the Respondent.

H. FINANCIAL CIRCUMSTANCES OF THE RESPONDENT

¶ 92 Throughout the written and oral submissions of the Respondent, there was a considerable amount of emphasis placed on the financial circumstances of the Respondent.

¶ 93 Some, but certainly not all, of the submissions were accompanied by documentation. Staff questioned the completeness of the documentary proof. The Respondent offered to provide further proof of his financial circumstances.

¶ 94 The monetary provisions of our Sanction Order will be immediately in force.

¶ 95 Should the Respondent provide Staff with satisfactory details of his current financial situation, we would have no difficulty with Staff providing him with time to pay. The only limiting factor is that all monetary provisions of our Order must be complied with before the Respondent is re-registered.

I. SANCTIONS IMPOSED

¶ 96 The following sanctions are imposed on the Respondent:

(a) a suspension of access to all IIROC-regulated marketplaces for a period of 5 years beginning on the date of the release of these Decision and Reasons;

(b) a fine in the amount of $9,111.75, payable to IIROC, representing disgorgement of the financial benefit received by the Respondent as a result of his improper trading activity;

(c) a fine in the additional amount of $25,000, payable to IIROC; and

(d) costs in the amount of $25,000, payable to IIROC.

DATED at Toronto this 7th day of August, 2018.

Thomas J. Lockwood

Colleen Wright

Edward Jackson

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