Re Tassone

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada

and

Alberto Tassone

2017 IIROC 14

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

Heard: October 3 to 7, 2016 in Vancouver, British Columbia
Decision: February 23, 2017
Reasons: February 23, 2017

Hearing Panel:
Leon Getz, Q.C., Chair, Barbara Fraser and David Pearson
Appearances:
Stacey Robertson, Enforcement Counsel
Owais Ahmed, for Alberto Tassone

DECISION AND REASONS

A. INTRODUCTION – THE ALLEGED CONTRAVENTIONS

¶ 1 IIROC's Enforcement Staff has alleged in a Notice of Hearing dated April 4, 2016, that Mr. Tassone contravened IIROC's Dealer Member Rules in two respects:

Count 1

From 2003 to the present, the Respondent participated in and managed an investment in oil and gas wells in the United States (the "JED Energy Investment") without the prior knowledge or approval of his Dealer Member firm and thereby:

(i) acted contrary to Dealer Member Rules 18.14 and 29.1 (IDA bylaw 29.1 prior to June 1, 2008) by conducting an unauthorized outside business activity; and

(ii) acted contrary to Dealer Member Rule 18.15 by accepting remuneration directly from someone other than his Dealer Member firm or its affiliates or related companies.

Count 2

In October of 2014 the Respondent misled IIROC Staff by:

(i) providing misleading information concerning the extent of his personal financial interest in the JED Energy Investment;

(ii) providing misleading information concerning his status as an officer and Director of one of the constituent corporate entities of the JED Energy Investment; and

(iii) providing misleading information concerning the existence of bank accounts in the name of JED Energy Ventures

and thereby acted contrary to Dealer Member Rules 19.6 and 29.1 (IDA bylaw 29.1 prior to June 1, 2008).

B. MR. TASSONE

¶ 2 Mr. Tassone first became registered in British Columbia in September 1994. Following his registration he obtained employment with Global Securities for whom he worked in its branch office in Delta, B.C. until September 2004 when the entire Global branch, consisting of some 6 or 7 people, moved to Tsawwassen and became part of Raymond James Ltd. Mr. Tassone continued to work for Raymond James until February 2013 when his employment was terminated, apparently on grounds of his involvement in the JED Energy Investment. Following his departure from Raymond James Mr. Tassone secured employment with Mackie Research Capital Corporation in Vancouver, by whom he continues to be employed.

¶ 3 At the outset of his employment with Global Mr. Tassone worked as a sales assistant to a colleague, Robert Semple. Subsequently, though it is unclear just when, their relationship changed and they became "partners", sharing clients and commissions equally and operating under a joint broker code. This partnership continued until Mr. Semple retired in 2008.

C. THE ALLEGED OUTSIDE BUSINESS ACTIVITY AND MR. TASSONE'S INVOLVEMENT IN IT

¶ 4 The outside business activity that Mr. Tassone is alleged to have participated in and managed was named "JED Energy Investment". For convenience, we shall refer to it as "the Investment". The underlying assets of the Investment are interests in certain third-party owned oil and gas wells.

The origin of the Investment

¶ 5 It seems that in or around 2003 a Mr. Murray Duncan, described in evidence before us as the "promoter" of Sovereign Chief Ventures Ltd, a publicly traded company, approached Mr. Semple with the idea of acquiring interests in certain oil and gas wells in Texas owned at the time by Sovereign (the "Sovereign Assets"). It is unclear whether Mr. Duncan was, at the time, a client of Mr. Semple.

¶ 6 Mr. Semple evidently decided to pursue the idea and, for the purpose, to organize what came to be known as the "JED Energy Investment". He was, it seems clear, the driving force in the organization of the Investment and in negotiating the acquisition of the Sovereign Assets. Indeed, in September 2012 interviews with a representative of Raymond James, Mr. Semple described himself as having "managed" the operation, and Mr. Tassone referred to himself as merely an investor, with Mr. Semple having been "more the organizer".

¶ 7 For reasons that are not explained in the evidence and in any event are irrelevant to these proceedings, the Sovereign Assets transaction did not proceed (or, rather, proceeded but was subsequently unwound) and in due course was replaced with the acquisition of interests in three different wells (the "Bonanza Assets"), from Bonanza Resources Corporation, at a cost of US$560,000. This transaction completed in April 2005. There is no evidence that Mr. Tassone had any role in the negotiations resulting in the Sovereign Assets transaction, or its unwinding and replacement by the Bonanza Assets transaction.

The formal structure of the Investment

¶ 8 In exchange for the funds that they invested, the investors in the Investment acquired beneficial interests in an Alberta trust, JED Energy Holdings Trust (the "Trust") created pursuant to a Deed of Trust dated February 1, 2005. These funds were used by the Trust to acquire the sole limited partnership interest in a Nevada limited partnership JED Energy Ventures LP (the "LP"), the general partner (the "GP") of which was a Nevada corporation, JED Energy Ventures GP, Inc. The LP in turn, used the funds to acquire, ultimately, the Bonanza Assets. The LP apparently continues to hold that investment.

¶ 9 Revenues generated by the Bonanza Assets were paid to the LP and, ultimately, to the investors in proportion to their interests in the Trust. The Trust's interest in the LP continues to be its only asset and we

understand that the LP's interest in the Bonanza Assets is its only asset. We have no evidence to suggest that aside from the Sovereign Assets, either the Trust or the LP ever acquired any assets other than those they now hold or, indeed, that they ever negotiated or considered negotiating to do so.

¶ 10 Simply put, the Investment was, and is, a single passive investment in a revenue-producing asset that continues to generate revenues but in amounts that are now insignificant.

The formal positions occupied by Mr. Tassone in the structure

¶ 11 The initial trustees of the Trust on its set-up in February 2005 were Mr. Semple and Mr. Tassone. The latter apparently believed at the time of his appointment that it was intended to be temporary, pending the selection of a professional trustee. In fact both he and Mr. Semple resigned in May 2005 and were replaced by someone, apparently a lawyer in Alberta, who continued in that role until January 2010 when he resigned, seemingly without being replaced.

¶ 12 The evidence does not reveal the identities of the directors and officers of the LP, the actual owner of the Bonanza Assets. In particular, we do not know whether Mr. Tassone held any position in that entity. He was, however, the President of the GP from at least November 2004, with Mr. Semple being its Secretary. There is some uncertainty as to how long Mr. Tassone continued as President. According to subsequent filings with the Nevada authorities he was still the President in November 2007 and there is other evidence that in September 2012 he still held that position. On the other hand, there is also in evidence a letter from Mr. Tassone dated May 1, 2005 in which he ostensibly resigned as President and a Director of the GP and declared that he would have no further involvement in its operation. This resignation was purportedly "confirmed" in a letter of December 14, 2012 addressed to the lawyers for the GP. In the confirmation letter Mr. Tassone asserts that "I have had no involvement in the operation of JED Energy Ventures GP since May 1, 2005 and continue to have no control or direction as of that date". We do not think it is necessary for any present purpose to try and resolve this uncertainty since Mr. Tassone agreed that the essential nature of his activities did not change as a result of his purported resignations.

What Mr. Tassone did and did not do in connection with the Investment

(a) Structuring the JED Investment

¶ 13 Mr. Tassone did not give evidence before us. We did, however, receive in evidence the transcripts of two interviews of him conducted on October 1 and October 9, 2014 by IIROC Enforcement Staff.[1] It is clear from his answers to the questions asked of him in those interviews that he did not play any role - certainly not a significant one - in formulating the setup of the Investment or obtaining any legal, accounting or tax advice related to it. That was Mr. Semple's responsibility. Mr. Tassone acknowledged that beyond believing the structure had been designed to minimise adverse tax consequences for the investors, his understanding of it was at best rudimentary.

(b) Acquiring the assets

¶ 14 There is no evidence that Mr. Tassone was involved in any significant way in evaluating the Sovereign Assets or, later, the Bonanza Assets, or that he played any role in negotiating any of these transactions. That, again, seems to have been almost exclusively in the hands of Mr. Semple. Although it was suggested in argument by counsel for IIROC that Mr. Tassone "researched the financial viability of the wells that were purchased and reviewed well data" we think that the evidence on this point – consisting of some somewhat vague answers he gave in his interviews - is far from compelling.

(c) Financing the Investment

¶ 15 Mr. Semple also seems to have been the person primarily responsible for, and instrumental in, finding investors to participate in the venture. He approached members of his family, his friends and some associates,

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[1] We also had the opportunity to review excerpts from the video recordings made of both interviews.

including Mr. Tassone. Ultimately, some US$497,000 was raised in varying amounts from 11 purported investors between November 2003 and June 2004. Mr. Tassone himself was at best only peripherally involved in the fundraising. There is some evidence that he may have discussed the possibility of an investment with two of those who ended up putting money in, but there is no evidence that he was instrumental in securing the investment of anyone.

¶ 16 As we understand the evidence none of the investors was, at the time they invested, a client of either Mr. Semple or Mr. Tassone.

(d) Mr. Tassone as an investor in the Investment

¶ 17 The Trust Deed contains a list of the beneficiaries of the Trust together with the percentage interests assigned to each. It includes the names of Mr. Semple and Mr. Tassone. There is evidence that both of them contributed funds to the Investment though, as we explain below, the percentage interests assigned to them were greater - significantly greater - than their pro rata contributions to the total funds invested. There is no evidence as to whether this was disclosed to the other participants. The evidence also establishes that Mr. Tassone received, directly or indirectly, the revenues of his putative investment.

(e) Opening and operating bank accounts

¶ 18 Between May 2005 and August 2010, the Bonanza Assets were operated by Western Oil and Gas Development Corp. ("Western") which distributed revenues to the investors, including the LP. The revenue cheques were made out to the LP and mailed to it at the address of the Raymond James office at which Mr. Tassone worked - #3 – 1359 56 St., Delta B.C. V4L 2P3. Mr. Tassone deposited them in the bank, and used the funds to distribute to the Trust beneficiaries in accordance with their respective interests as specified in the deed of Trust, and to pay various third party charges such as the fees of the Alberta lawyer who replaced him as the trustee of the Trust, charges of the accountants to the Trust and National Registered Agents, Inc., which provided corporate filings services. In doing this, it seems, he enclosed the cheques in a brief covering letter typed on a "home-made" letterhead of the LP or, sometimes, "JED Energy Ventures", in either case showing the address referred to above. There is evidence that in connection with these activities Mr. Tassone sometimes made use of the facilities and personnel in the Raymond James office. The details of this use are not material.

¶ 19 One might have thought that the Western cheques would have been deposited in an account in the name of the LP or, perhaps, of the GP - of which, as we have noted, Mr. Tassone was the President - or even, possibly, of the Trust, of which he was one of the initial trustees. In fact, however, this is not what happened. In November 2003 – apparently at Mr. Semple's request – Mr. Tassone opened two accounts with TD Canada Trust branch in Delta, B.C., one in US and the other in Canadian dollars, both in the name of "Bob Tassone DBA JED Energy Ventures". He was quite unclear about why he opened the bank accounts in the form that he did except to say that he was advised, apparently by an employee of the bank, that this was the best way to proceed. Concurrently with their opening Mr. Semple was given a power of attorney over them and while he did from time to time effect some transactions through them, the overwhelming majority of those transactions were effected by Mr. Tassone.

¶ 20 There has been no suggestion that Mr. Tassone misused any of the funds.

(f) Mr. Tassone's understanding of his role(s)

¶ 21 Mr. Tassone seems to have had no clear idea as to the functions or relevance of the various entities comprising the Investment, or the duties and responsibilities of any of the positions he occupied in them. On the contrary, he seemed to have considered them, as a practical matter, largely irrelevant. This is evident from certain answers that he gave in his interview with IIROC staff on October 1, 2014. In response to questions as to what duties he actually performed in his role as director and president of the GP, Mr. Tassone said: "Nothing, I didn't do any . . . I don't think the GP did anything . . . there was nothing to do for the GP or in the GP". Later, asked whether he had any role or performed any duties for the LP, he replied "I don't think so, no." As to his position as trustee of the Trust, Mr. Tassone said that he had had no discussions with anyone as to his duties in that capacity.

¶ 22 Based on Mr. Tassone's answers to these and other questions put to him, it seems to us a fair distillation of his position that he agreed to his various roles, whatever their content, as a convenience and a favour to his colleague and partner, Mr. Semple. He explained that Mr. Semple "needed somebody . . . to have this structure operational" and that "he was my partner . . . and I just trusted that . . . this was all on the up and up".[2]

¶ 23 In September 2012, following a complaint from Mr. Duncan about his investment, a representative of Raymond James interviewed both Mr. Semple and Mr. Tassone about their involvement in the matter. According to notes of those interviews that are in evidence, Mr. Semple explained that he "'managed' the operation but wasn't a principal of the company" and "Bob Tassone was signing cheques and correspondence as he was usually in the office, and Semple was not. This was more of "a favor to" Mr. Semple". Mr. Tassone, for his part, explained that he had been "simply involved . . . as an investor", that "Semple was more the organizer" and that he, Mr. Tassone, had signed cheques and other documents "as he was always in the office, and Semple was out on the road building business".

D. COUNT 1 (i) DEALER MEMBER RULES 29.1 and 18.14 - DISCUSSION

Introduction

¶ 24 IIROC - and its predecessor, the Investment Dealers Association of Canada (the "IDA") - have had a long-standing concern about the "outside business activities" of employees of member firms and the potential of such activities to prejudice the interests of clients of those firms. The concern is reflected in obligations imposed on registrants to disclose, inter alia to their employers, whether they are engaged in such activities and, if they are, to disclose details about their nature and extent and whether they have any impact on the service provided to clients of the firm. Member firms themselves were required to establish and maintain policies and procedures requiring employees to make such disclosure and obtain approval for such activities. At all material times, the member firms by which Mr. Tassone was employed had in force internal policies designed to respond to the regulatory requirements of disclosure and approval of outside business activities.

¶ 25 As a matter of history, both IIROC and the IDA have relied on Dealer Member Rule 29.1 as the principal disciplinary instrument to re-enforce the concerns referred to. The Rule provides:

> Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their 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 and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board.

¶ 26 In *Re Bortolin*, 2012 IIROC 13 the panel explained:

> ¶ 34 Disclosure and approval are necessary in such circumstances in order to allow the Member to supervise and control a Registered Representative's activities. Not to do so can create conflicts of interest for the Registered Representative and lead to the type of improper activity found in this case. The policy also helps protect the integrity of the securities market as well as the reputation of the Member.
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> ¶ 35 The policy against such outside business activities without knowledge and approval of the Member firm can be found in the *Conduct and Practices Handbook*, a handbook used widely within the industry that provides guidance on various ethical and conduct issues. It can also be found in such guidance documents as Member Regulation Notice 0434, issued in November 2006, which provides that Dealer

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[2] It is perhaps worth noting that according to Mr. Tassone Mr. Semple asked "another broker in the office", a Mr. Curt Hillier, to be the Settlor of the Trust because "he needed somebody. So it was just we were in the office".

> Members must be aware of all other business activities engaged in by their approved persons and must have in place policies and procedures requiring approved persons to disclose all other business activities to the Dealer Member and obtain the Dealer Member's approval. The Notice also provides that Dealers, "by virtue of their membership in the Association, are bound to conduct *all* securities-related activity on their books – *except where expressly permitted* by the Association to do otherwise." (Member Regulation Notice 0434 was specifically adopted by IIROC.) A number of IIROC hearing panels have held that such engagement in outside business activities without the Member's knowledge and approval is a breach of Rule 29.1: see *Deck* [2007] I.D.A.C.D. No. 19 and *Rail* [2008] IIROC No. 4.
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> . . . .
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> ¶ 40 At the present time it is necessary for IIROC staff to use Rule 29.1 in disciplinary cases involving failure to disclose outside business activities because there are no specific IIROC Rules dealing directly with the issue. However, proposed IIROC amendments to the Dealer Member Rules (Rule 18.14), that are now before the Canadian Securities Administrators ("CSA") for approval, will specifically cover "outside business activities". (See IIROC Rules Notice 10-0155 and Rules Notice 11-0150.)
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> ¶ 41 The proposed amendments – the 2011 Notice states – "codify IIROC expectations that Registered Representatives and Investment Representatives must disclose all outside business activities to their Dealer Member and obtain the approval of the Dealer Member before engaging in any outside business activities." This statement that the amendments codify IIROC expectations supports IIROC's contention at this hearing that there is a clear policy against engaging in outside activities without first disclosing the activity and seeking the Member's approval. Disclosure and approval is necessary in order for a Member Firm to monitor compliance with Rule 29.1.

¶ 27 Dealer Member Rule 18.14 reads, so far as material:

> (1) A Registered Representative or Investment Representative may have, and continue in, any business activity outside of the Dealer Member, including another gainful occupation if:
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> . . . .
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> (b) The Dealer Member establishes and maintains procedures acceptable to the Corporation to ensure continuous service to clients and to address potential conflicts of interest;
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> …
>
> (e) The outside business activity is not:
>
> (i) one which would bring the securities industry into disrepute;

¶ 28 We are not persuaded that Dealer Member Rule 18.14 adds much of substance to what is already contemplated by Dealer Member Rule 29.1 and accordingly we will concentrate our attention on the implications of the latter provision.

¶ 29 Member Regulation Notice MR 0434, referred to in ˆ*Re Bortolin*, was issued "to provide updated guidance on the issue of business activities engaged by approved persons that are not on behalf of the Member, sometimes referred to as 'outside business activities'", and explained that that "[f]or the purpose of this Notice,

a "business activity" (or "employment") is "one for which direct or indirect payment/compensation (i.e. "remuneration) [is] received ... or expected". In June 2013 IIROC issued Notice 13-0163 to replace MR0434. Notice 13-0163 to a large extent repeats, though in some respects in different words and with some elaboration, the major themes of its predecessor. For example, it offers a somewhat more fulsome definition of "outside business activities" to include "any activities . . . for which direct or indirect payment, compensation, consideration or other benefit is received or expected".

¶ 30 This "definition" is not free of difficulty. It seems broad enough to embrace, for example, the purchase of a Canada Savings Bond or the deposit of funds in an interest bearing account at a financial institution. Yet on their face neither of these activities seems, at least without more, to engage IIROC's concerns so as to require disclosure and approval.

¶ 31 A number of IIROC/IDA cases considered the issue of outside business activities:

i. In *Re Bortolin*, the Respondent maintained numerous personal and corporate accounts in the Bahamas in his own name, as well as an account in his wife's name over which he had power of attorney. He also executed orders and directed the movement of funds for client accounts in the Bahamas, and received fees for at least one of these accounts.

ii. In *Re Deck* [2007] I.D.A.C.D. No. 19, a settlement approval case, at least a majority of the investors in an investment club the business purpose of which was to access investments not available through his member firm, were clients of the Respondent and had been introduced to the club by him. He provided investment recommendations and dealt with administrative matters for the club, including preparing valuations of its portfolio and periodic investor newsletters. Some of the club's investments was made in the names of a companies owned by the respondent's wife. Separately, the Respondent failed to disclose that he was a director, president, secretary and controlling mind of a company created for the purpose of having multiple hedge-fund managers available to both his cash and registered account holders. A secretarial employee of the Respondent's member firm devoted 90% of her time to work related to the company.

iii. In *Re Rail* 2008 IIROC 4 the Respondent contacted one client on behalf of another client seeking a substantial loan (which the member firm had previously declined to make) to be secured by the securities held in the latter's account, prepared relevant documents relating to the loan transaction and arranged the transfer of the funds and the collateral securities.

iv. In *Re Lavoie 2013* IIROC 51, while employed by a member firm, the Respondent incorporated a private company to carry on a computer services business, became its initial shareholder and its secretary and president. The Respondent devoted between 10 and 30 hours a week to the company's affairs and solicited three of his friends, one of whom was a client, to invest in it. A "large part" of the funds invested was used to remunerate him.

v. In *Re Dennis 2011 IIROC 3* the Respondent initiated an arrangement with a mutual fund advisor under which for an annual fee of $35,000 paid to the advisor, the Respondent referred clients to him in exchange for commissions that, in the period between June 2007 and August 2008, amounted to more than $300,000.

vi. In *Re White,* 2010 IIROC 25, also a settlement approval case, the Respondent was the President of two private corporations and had trading authority over their accounts. Those corporations, together with some of the Respondent's clients, participated in a number of "off-book" private placements effected through an independent private banking firm that compensated the Respondent.

¶ 32 The common theme that characterises the underlying facts of all of these decisions is that the Respondent played some active and influential role – or "participated" - in the initiation, design and implementation of the business activity involved.

¶ 33 Against this background we turn to the language of Count 1 (i). It is helpful to break it down into its component parts. This involves two distinct factual propositions:

(a) Mr. Tassone participated in the Investment;

(b) Mr. Tassone managed the Investment;

If the evidence establishes these propositions then, according to Count 1 (i) as we understand it, it follows that Mr. Tassone "conducted an unauthorized outside activity."

¶ 34 The evidence referred to in paragraph 17 above establishes that Mr. Tassone was an investor in the Investment and received, directly or indirectly, the fruits of his investment and in that sense was a participant in it. Mr. Tassone does not dispute this, though it is far from clear why it is relevant to whether he conducted the business by managing it. Mr. Tassone says that he did not.

¶ 35 The nub of IIROC's position on this aspect of the matter, as set out in its written submission, is that Mr. Tassone "had control over the JED Energy Accounts and by virtue of the fact that the JED Energy Accounts were the only bank accounts for the JED Energy Investment, the Respondent had control over the JED Energy Entities" including the GP and the LP. "[B]y controlling the JED Energy Accounts Mr. Tassone controlled the JED Energy Entities. The JED Energy Entities only operated through the JED Energy Accounts. . . The Respondent was aware that he was operating the JED Energy Accounts for the beneficiaries of the Trust and by acting for the Trust he is acting for the Limited Partnership . . . which operates through its General Partner, JED Energy Ventures GP". In this connection, IIROC derives some support for its position from a letter dated September 14, 2012 from the U.S. law firm that represented the LP, the GP and the Trust. The author of that letter explained that as a matter of partnership law (in the United States):

> [T]he affairs of a limited partnership are administered by its General Partner. Robert Tassone is currently the President of the General Partner and therefore administers the business and affairs of the Limited Partnership . . . .
>
> Under the Limited Partnership's Agreement of Limited Partnership[3], specifically Section 14.7 by unanimous vote the limited partners may remove the General Partner. The sole limited partner of the Limited Partnership is the Trust. The Trust is managed by the Trustee . . . who directs its assets for the beneficiaries . . .

¶ 36 There are a number of difficulties with IIROC's analysis. In the first place, Count 1 alleges not that Mr. Tassone "controlled" the JED Energy Entities but that he "managed" the business of those entities. But this seems to conflate control in principle and management in practice. A person who has the power to control a business or an activity in a legal sense is not necessarily engaged in the management of that business or activity. While that person may manage the business – a question of fact - management is not a necessary incident of control. The letter from the lawyer quoted above, while doubtless accurate as a statement of legal principle, is not helpful in the present context as a description of what Mr. Tassone actually did.

¶ 37 So in our view even if it be accepted that it is an accurate description of Mr. Tassone's relationship to the bank accounts to say that he "controlled" them, we do not think that it follows that what he actually did amounted to "management" of the business of the Investment.

¶ 38 Mr. Tassone does not dispute that he had signing authority over the bank accounts or that he exercised that authority over an extended period to make deposits, distribute revenue cheques to the investors and pay proper third party claims. He says, however, that that is all that he did, that he had no discretion to do anything with the money in the account that was inconsistent with the Trust Deed and that the payments that he made from the account were "generally consistent" with the relative proportionate interests of the beneficiaries of the Trust. This being the case, he says, he cannot be said to have "managed" the Investment. In this connection he

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[3] This Agreement is not in evidence but we have no reason to question this description of the provision referred to.

relies upon the definition of the word "manager" in the *Dictionary of Canadian Law (4th ed. 2011)* as "A person who has significant administrative responsibilities and exercises powers of independent action, autonomy and discretion."

¶ 39 We have come to the conclusion, therefore, that Mr. Tassone did not commit a breach of Dealer Member Rule 29.1 by "managing" (or participating in) the Investment. As we have earlier pointed out, "the Investment was, and is, a single passive investment in a revenue-producing asset". There was, as a matter of fact, nothing to be managed. His activities were essentially clerical, not managerial, in nature and such discretion as he may have had, and possibly even exercised – for example, perhaps, whether to pay third party bills immediately on receipt or to wait, say, 30 or 60 days to do so - was trivial and insignificant. To elevate what he did to the status of "management" is to deprive that term of any useful meaning.

¶ 40 It follows from this conclusion that in our opinion while Mr. Tassone undoubtedly participated in the Investment, his involvement in it did not rise to the level of managing it and, accordingly, he did not conduct the business and was not required to disclose it to his member firm(s) or to obtain their approval for it.

E. COUNT 1 (ii) - DEALER MEMBER RULE 18.15 - DISCUSSION

¶ 41 The only allegation in Count 1 (ii) is that Mr. Tassone accepted remuneration directly from someone other than his Dealer Member firm or its affiliates or related companies in breach of Dealer Member Rule 18.15.

¶ 42 In our view this allegation fails for the simple reason that Dealer Member Rule 18.15 prohibits such conduct only in the case where the remuneration is in respect of "securities-related activities . . . [conducted] on behalf of the Dealer Member or its affiliates or its related companies" and there is no such allegation here nor, in our opinion, is there any evidence to support such a claim had it been made.

F. SUMMARY WITH RESPECT TO COUNT 1

¶ 43 In summary, then, it is our view that Count 1 fails in its entirety.

G. DISCUSSION OF COUNT 2 – MISLEADING IIROC

(a) Introduction

¶ 44 Count 2 alleges that Mr. Tassone misled IIROC staff about:

(i) the extent of his personal financial interest in the JED Energy Investment;

(ii) his status as an officer and Director of one of the constituent corporate entities of the JED Energy Investment; and

(iii) the existence of bank accounts in the name of JED Energy Ventures

and, as a result, violated Rules of the Dealer Member Rules 19.6 and 29.1.

¶ 45 The text of Rule 29.1 is set out in paragraph 25, above. Dealer Member Rule 19.6 declares that "for the purpose of any examination or investigation pursuant to this Rule 19, [IIROC] shall be entitled to free access to, and to make and retain copies of, all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person concerned, and no such person shall withhold, destroy or conceal any information, documents or thing reasonably required for the purpose of such examination or investigation."

(b) The case law

¶ 46 There is a regrettable abundance of decisions concerning the importance of being forthright and honest in responding to the inquiries of securities industry regulators, whether they be IIROC or securities commissions. The underlying point of these decisions is succinctly stated in *Re Lohrisch*, 2010 IIROC 31, at paragraph 47, where such conduct was described as "serious misconduct because it subverts the corporation's ability to perform its regulatory function". Similar language has been used in other cases.

(c) The facts – misleading IIROC about the extent of his financial interest in the JED Energy Investment

Mr. Tassone's evidence at his initial interview on October 1, 2014

¶ 47 At his initial interview on October 1, 2014, Mr. Tassone:

(i) while agreeing that as a general proposition there was a direct relationship between the amount a participant invested and that participant's proportionate interest in the Trust, also acknowledged that his own declared (in the Trust Deed) proportionate interest (5.796%) was significantly greater than that of other participants who had invested roughly the same amount and that other investors had been assigned a smaller percentage interest than their investments entitled them to;

(ii) was unable to explain the disparity beyond saying that "Bob set this up" and that he, Mr. Tassone, "just got my percentage from my interest from the money that I put in";

(iii) said that he had received no compensation, whether in cash or shares, for the duties that he performed in connection with the Investment;

(iv) agreed that he and Mr. Semple had each invested the same amount of money, but beyond saying "he {Mr. Semple] was in charge of it", offered no explanation for the fact that according to the list in the Trust Deed, Mr. Semple had been assigned a 25.796% interest and he, Mr. Tassone, had received a 5.796% interest beyond saying that he believed that Mr. Semple "took a percentage for setting it up";

(v) claimed that he alone had solicited and recommended the investment to his sister, who is shown on the list of Trust beneficiaries as holding a 20% interest, that he did not discuss with her the amount she should invest, leaving that to her to decide, but thought that she had told him that she had paid US$25,000 through Mr. Semple;

(vi) acknowledged that his beneficial interest, when combined with that of his sister, equalled Mr. Semple's 25.796% interest but was unable to offer any explanation for the size of his sister's interest relative to the size of her investment; and

(vii) was unable to explain why the banking records evidenced the contributions of all of the investors except his sister, denied any suggestion that she had paid nothing for her purported investment, and that her "interest" represented a means of compensating him for his participation and the work that he did.

Mr. Tassone's evidence at his subsequent interview on October 9, 2014

¶ 48 Mr. Tassone was interviewed a second time on October 9, 2014.

¶ 49 At the outset of this interview he explained, through his counsel, that he wished "to clarify" certain of the information that he had provided in response to questions asked of him at the first interview.

¶ 50 The material parts of this clarification were that:

(i) Mr. Semple received his share in exchange for his work in setting up the investment and then later administering it;

(iii) because he and Mr. Semple were business partners, Mr. Semple shared his interest with Mr. Tassone; and

(iv) Mr. Tassone "allotted" 20% of his interest to his sister as a nominee on his behalf but she did not in fact pay anything for her interest and his earlier statement (see paragraph 46 (v)) that she did was "mistaken";

(v) while he could not recall exactly why he had chosen to put the 20% interest in the name of his sister it could have been done "because I was going through a divorce at the time"; and

(vi) initially the share of revenues attributable to her 20% interest was distributed to Mr. Tassone's

sister but subsequently refunded to him in full but commencing in January 2007 that share was distributed to him; he could not recall what had precipitated this change.

¶ 51 The need for this clarification arose, Mr. Tassone claimed, because the matters upon which he had been examined on October 1 related at least in part to events that had occurred 10 years earlier at the time the Investment was set up and that he had "had some trouble remembering things". He had since had the opportunity to speak to both Mr. Semple and his sister and now wished "to clarify things".

¶ 52 In our view this claim of faulty recollection is simply unbelievable. The clarifications did not relate merely to relatively minor points of detail that one could be forgiven for forgetting– for example, whether his sister paid $20,000 or $25,000 for her interest. But the fact that his sister paid nothing, particularly in the light of the fact that he went to the length of concealing his interest by having a significant part of it put in her name, perhaps because he was going through a divorce at the time, is a point of substance and not, we think, the sort of thing that one would have difficulty in remembering.

¶ 53 The utter implausibility of Mr. Tassone's contention about his faulty memory is nowhere more tellingly illustrated than in his explanation of how he acquired his interest in the Investment. On October 1 he said, in substance, that he paid for that interest. On October 9 he explained that that was incorrect and in fact a substantial part of his interest (including what was allotted to his sister) represented his share of the partnership with Mr. Semple. It is impossible to reconcile these statements – they are as different as chalk and cheese. To explain the difference on the basis that the first of them was attributable to difficulty in remembering requires us to believe that Mr. Tassone had simply forgotten about the partnership that, it is clear from his evidence, was central to his relationship to Mr. Semple and of considerable importance to him. We find that incredible and conclude, therefore, that he knowingly gave false information to IIROC at the October 1 interview.

¶ 54 Counsel for IIROC suggested a possible motive for the deception but we do not think it is necessary or useful to explore that suggestion here.

¶ 55 We are satisfied that IIROC's allegation has been made out that on October 1, 2014 Mr. Tassone misled it – in our view deliberately - about the extent of his financial interest in the Investment, at least in the respects discussed above and in so doing engaged in unbecoming business conduct within the meaning of Dealer Member Rule 29.1.

¶ 56 This conclusion is unaffected by either the fact that on October 9, 2014, a little more than a week after having engaged in this deception, Mr. Tassone thought better of it or that there is no evidence that IIROC took any action based on the falsehoods.

(d) Misleading IIROC about his status as an officer and Director of one of the constituent corporate entities of the Investment

¶ 57 Paragraph 44 of the Particulars to the Notice of Hearing set out the substance of this allegation as follows:

> The Respondent had re-applied for re-registration with IIROC in March 2013. As part of the materials that he submitted for re-approval the Respondent indicated that he had resigned as the President of JED Energy Ventures GP, Inc. on May 1, 2005. However, the Respondent signed a corporate filing document dated September 25, 2007 with the Secretary of State for the State of Nevada certifying under penalty of perjury that he was the President and Director of JED Energy Ventures GP, Inc. He therefore misled IIROC Registrations Staff on this point.

¶ 58 The background is this. As noted in paragraph 2 above, Raymond James terminated Mr. Tassone's employment early in 2013 and in the Notice of Termination filed with IIROC referred to his involvement in the Investment as being a ground for his termination. This reference provoked further inquiries from IIROC in response to which, in a letter of March 8, 2013, Mr. Tassone wrote, among other things:

> In 2003 when at Global Securities my former partner set up a Limited Partnership owned by a trust. The sole limited partner of the Limited Partnership was the Trust. The Trust was

> managed by a Trustee who directed its assets for the beneficiaries – I was one of the beneficiaries of the Trust. . . I was the President of the General Partner until I resigned on May 1, 2005. The partnership failed to update its filings with the Nevada Secretary of State to note my resignation in 2005. I have since submitted a second notice of resignation dated December 14, 2012 to re-affirm my original resignation in 2005.

¶ 59 In view of the fact that Mr. Tassone himself signed the corporate filing in 2007 certifying that he was an officer of the GP, the statement in his letter of March 13, 2013 to IIROC that "the partnership failed to update its filings . . . to note my resignation in 2005" is, to put it at its lowest, difficult to understand.

¶ 60 As we understand it, Mr. Tassone included with his letter copies of both his 2005 and 2012 resignations. In the latter, as noted in paragraph 12 above, he said "*I have had no involvement* (our emphasis) in the operation of JED Energy Ventures GP since May 1, 2005 and continue to have no control or direction as of that date". He also included a copy of a somewhat curious letter dated March 8, 2013 addressed to him from the law firm that acted as outside counsel to the GP purporting to "confirm you have not and do not have any control whatsoever over JED Energy or its related entities".

¶ 61 In a related filing in connection with his application for registration with Mackie Research Capital Mr. Tassone wrote, in response to a requirement to disclose details of "employment":

> The applicant was a President and Director [of the GP]. He has resigned effectively May 1, 2005 and *has had no* control *or involvement* (our emphasis) in the operations of the company since that time. Resignation was acknowledged by George E. Bonini, counsel to [the GP].

He added that the reason why he left the GP was "to focus on his full time employment."

¶ 62 IIROC's position is that:

> this statement to IIROC Registration Staff is completely misleading. The Respondent had control over all of the financial assets of all of the JED Energy Entities (which consisted entirely of the JED Energy Accounts) and stated in his interview that whatever tasks he was performing before he resigned from [the GP] he was performing afterwards and in essence nothing changed. He stated that he never knew what the duties and role of the JED Energy Entities were in any event.

¶ 63 In our view, the real point here is not whether Mr. Tassone did or did not resign as of May 1, 2005 as a director and officer of the GP. It is whether his repeated claim and declaration that he had "no involvement" in the affairs of the Investment after May 1, 2005, was true. The evidence that we have reviewed makes clear beyond doubt that it was not.

¶ 64 In our view, therefore, Mr. Tassone did mislead IIROC about his role in the Investment and Count 2 (ii) is made out.

(e) Misleading IIROC about the existence of bank accounts in the name of JED Energy Ventures

¶ 65 At his interview on October 1, 2014, Mr. Tassone was asked whether there were any bank accounts related to the Investment other than the two to which we have referred. He replied that there were not.

¶ 66 It seems that between October 1 and October 9, 2014, when Mr. Tassone's second interview took place, IIROC staff had identified a number of transfers of funds from one of the two bank accounts that we have referred to (the "Old Accounts"), to two other accounts (the "New Accounts") – one in Canadian and the other in United States funds, apparently at the same Delta branch of TD Canada Trust. Mr. Tassone was asked about the New Accounts at the second interview but said that he had no recollection of them.

¶ 67 Following the second interview IIROC sought further information about the New Accounts and it ultimately emerged that both had been opened on May 30, 2005; both were in the name of "Bob Tassone DBA JED Energy Ventures"; and, in respect of both, as with the Old Accounts, Mr. Semple had a power of attorney. We were provided with evidence showing details of deposits made to and cheques drawn on the New Accounts;

and of transactions between the Old and New Accounts.

¶ 68 Mr. Tassone's explanation for the New Accounts is that they related to another quite different investment in which he and several others, including Mr. Semple, were involved, quite separate from the Trust. IIROC has not challenged this explanation and we are not aware of any evidence that contradicts it.

¶ 69 In substance, therefore, Mr. Tassone says that when, on October 1, 2014, he asserted that there were no bank accounts related to the Investment other than the Old Accounts, he told the truth and did not mislead anyone.

¶ 70 In our view it is quite clear that the question asked of Mr. Tassone at his initial interview sought information about other bank accounts related to the Investment, not whether there were other bank accounts that had the same name as those related to the Investment. That being the case, it follows in our opinion that this aspect of Count 2 fails.

H. SUMMARY

¶ 71 In summary, we find that:

(a) Count 1 fails completely;

(b) Mr. Tassone did mislead IIROC about the extent of his personal financial interest in the Investment and Count 2 (i) is therefore made out;

(c) Mr. Tassone did mislead IIROC about his involvement in the affairs of the Investment and Count 2 (ii) is made out; and

(d) Mr. Tassone did not mislead IIROC about the existence of bank accounts in the name of JED Energy Ventures and Count 2(iii) accordingly fails.

Dated at Vancouver, British Columbia this 23rd day of February, 2017.

Leon Getz

Barbara Fraser

David Pearson