

Re Sultani

IN THE MATTER OF:

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

and

Ali Reza Sultani

2017 IIROC 44

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

Heard: May 30th in Montréal, Québec
Decision: August 29, 2017

Hearing Panel:

Claire Richer, Chair, and Daniel Houle

Appearances:

Me Francis Larin, Enforcement Counsel

Ali Reza Sultani, Respondent, not represented by counsel

PENALTY DECISION

PREAMBULE

¶ 1 This hearing was called pursuant to the unanimous decision dated February 7th, 2017 rendered following the Hearing on the Merits and Motion for Dismissal held in December 2016, a copy of which decision is attached as a schedule to this Penalty Decision.

¶ 2 In summary, the February 7th, 2017 decision dismissed Respondent's Motion for Dismissal and found that Respondent had violated IIROC Dealer Member Rule 29.1, by making misrepresentations to his employer and falsifying a Notice of Termination (Form 33-109F1), the whole as Respondent had admitted to IIROC during the investigation as well as to the hearing panel during the said hearing on the merits held in December 2016.

¶ 3 One of the December 2016 hearing panel members, Michel Duchesne, could not be present at this hearing due to illness. The Chair reviewed former IIROC Rule 1.8 (which is applicable in this matter) with counsel for IIROC and the Respondent. After discussion, it was agreed by both parties to proceed with only two members of the hearing panel in the following manner:

- a) counsel for IIROC to present its arguments immediately as to the penalties sought;
- b) Respondent to submit its response and arguments in writing to IIROC by July 6th, 2017;
- c) The Hearing Panel to render its decision after having taken cognizance of Respondent's document and having deliberated.

SUBMISSION BY IIROC

¶ 4 IIROC submitted the following sanctions be imposed to Respondent:

- a) a fine of \$30,000;
- b) a 6 month suspension from registration in any capacity with IIROC;
- c) to rewrite the Conduct and Practices Handbook («CPH»); and
- d) payment of costs of \$10,000.

¶ 5 IIROC Counsel argued that certain key factors had been taken into account to set the recommended penalty, including general deterrence and the perceived harm to market regulation in that the high standard expected by the public from registered representatives was absent. In support of its recommendation, several decisions were presented to the Hearing Panel.

¶ 6 IIROC Counsel argued that the sanctions were reasonable. Among others, IIROC Counsel referred to Re Eley (2014 IIROC 52) wherein the penalty for serious misrepresentations including falsely endorsing signatures of clients, was, among others, a fine of \$50,000.

« ...Mr. Eley's misconduct was nevertheless very serious as it undercut, as we have said, the ethical foundation of the investment industry. »

¶ 7 IIROC Counsel also referred to the case of Re Lohrisch (2010 IIROC 31) in which a fine of \$40,000 was imposed for various infractions including submitting a misleading Change of Information form, forging a document and obstructing Staff investigation, as well as the case of Re Suleiman in which a fine of \$30,000 was imposed for the alteration of a transcript that the respondent had passed a certain examination.

¶ 8 On the other hand, IIROC Counsel noted that certain mitigating factors were present in the present situation, including Respondent's lack of experience and the fact that there was no client losses nor monetary benefits to the Respondent.

¶ 9 IIROC concluded by reminding the Hearing Panel that the key factor was the deceptive actions of the Respondent.

SUBMISSION BY THE RESPONDENT

¶ 10 As agreed by the parties at the hearing on May 30, 2017, Respondent submitted his response and arguments and related jurisprudence in writing on July 6th, 2017.

¶ 11 Respondent underlined the following points:

- a) several of the decisions on sanctions referred to by IIROC Counsel were taken following settlement agreements and not hearing settlements, therefore the comparatives are not necessarily applicable;
- b) although the violation was «condemnable» and «deceptive», the falsification would fall under the lower spectrum of egregiousness (See Re Lamontagne 2009 IIROC 6). Several decisions differentiate between fraud and misrepresentations, the latter being less egregious, although contrary to the proper conduct required by the Rules of IIROC.
- c) IIROC's registration department approved his application for registration **after** having become aware of the falsification;
- d) Respondent has been deregistered for approximately 3 years, has not been able to find a job because of the investigation and subsequent deregistration, both of which have severely tainted his reputation;
- e) the amount of the requested fine is disproportional to the severity of the contravention when compared to other decisions where either fraud, losses to clients and duration of violation were in

play;

- f) notwithstanding that IIROC has not requested the reimbursement of all costs (more than \$50,000), the amount of \$10,000 is exorbitant in view of Respondent's incapability of paying; furthermore, such costs could possibly have been avoided entirely had IIROC chosen to refuse registration in view of their knowledge of the misrepresentation, instead of registering and shortly thereafter requiring an investigation.

¶ 12 Respondent added that there were other mitigating factors which applied to his case, namely the absence of financial gain or prior disciplinary record, his collaboration during the investigation and the reputational damage incurred by him.

¶ 13 In conclusion, Respondent proposed the following base sanctions:

- a) 6 month minimum delay before applying for registration;
- b) no monetary fine; and
- c) no costs.

Respondent also agreed that the registration delay could be longer, that retaking CSI courses could be part of the sanctions and that the Hearing Panel could issue a reprimand. He again expressed that he was sorry for his violations but suggested that he had already been severely punished.

HEARING PANEL DECISION AND REASONS

¶ 14 After reviewing both parties' submissions as well as the decisions referred to by each of them, and after deliberation, the Hearing Panel is of the view that the following sanctions should be imposed on the Respondent:

- i) a suspension of 6 months from registration in any capacity with IIROC;
- ii) to rewrite the Conduct and Practices Handbook (CPH) before any new registration;
- iii) a fine of \$2,000; and
- iv) no payment of costs.

¶ 15 Although the violations committed by the Respondent were not of a trivial nature and demonstrated a failure by him to adhere to the highest standard of conduct, the Hearing Panel *is concerned* about the decision of IIROC granting registration with knowledge of the violations and shortly thereafter ordering an investigation, instead of satisfying itself before registration that all angles had been covered.

¶ 16 In fact, such early investigations after registration are rarely initiated, as was declared by IIROC's Manager of Registration at the hearing on the merits held on December 6th, 2016.

¶ 17 The Hearing Panel also notes that no clients were ever involved, therefore the actions of Respondent did not lead to any client losses nor result in any financial gain to the Respondent; in addition, no evidence was put before it of any prior disciplinary record against the Respondent.

¶ 18 The Hearing Panel believes that the \$30,000 fine proposed by IIROC is unreasonably high given the nature of the violation and several lesser fines imposed by hearing panels in more serious cases. In addition, Respondent's submission regarding costs are relevant and his capacity to pay is marginal; the Hearing Panel is also surprised at the scope of costs.

¶ 19 The Hearing Panel considers the \$2,000 fine to be appropriate in the circumstances, at the same time serving as a general deterrent to inexperienced applicants.

¶ 20 A key component in the Hearing Panel's decision is the fact that Respondent has already paid a heavy price for his actions.

¶ 21 In closing, the following quote from Re Nott et al, 2011 IRROC 26, is applicable, we believe, in this case:

« 211. ... They have paid an extremely heavy price for their errors in judgement. The panel is satisfied there is no risk of them repeating their conduct. »

DATED at Montréal, Province of Québec, this 29th day of August, 2017

Claire Richer

Chair

Daniel Houle

Member

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