Re Sultani

IN THE MATTER OF:

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

and

Ali Reza Sultani

2017 IIROC 11

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

Heard: December 6th, 2016 in Montréal, Québec
Decision: February 7, 2017

Hearing Panel:
Claire Richer, Chair, Daniel Houle and Michel Duchesne
Appearances:
Me Francis Larin, Enforcement Counsel
Ali Reza Sultani (the ¨Respondent¨), not represented by counsel

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DECISION ON THE MERITS AND ON THE MOTION FOR DISMISSAL

¶ 1 This Hearing Panel (the ¨Panel¨) was constituted pursuant to Part 10 of Dealer Member Rule 20 of IIROC to determine whether the Respondent had committed the contraventions alleged in the Notice of Hearing dated April 29, 2016, a copy of which is attached hereto to form part hereof as Schedule A, namely:

Count 1: *From April 2013 to February 2014, the Respondent made misrepresentations to his employer, RBC Direct Investing Inc., about the reasons and timing for the termination of his previous employment with CIBC Securities Inc., contrary to IIROC Dealer Member Rule 29.1;*

Count 2: *On or about January 21, 2014, the Respondent falsified the physical copy of the* ***Notice of Termination of Registered Individuals and Permitted Individuals*** *(Form 33-109F1) given to him by CIBC Securities Inc., his previous employer, in order not to disclose to his new employer, RBC Direct Investing Inc., that he had been dismissed, contrary to IIROC Dealer Member Rule 29.1.*

EVENT PRIOR TO HEARING

¶ 2 The Panel held a preliminary hearing with the parties on July 21, 2016 to define the scope of the disciplinary hearing and fix a date therefor.

¶ 3 During the preliminary hearing, Respondent, who was not represented by counsel, advised that the disciplinary hearing should be dismissed as it should have been held under Part 7 rather than Part 10 of Dealer Member Rule 20 of IIROC and that a motion to this effect would be presented by him at the disciplinary hearing.

¶ 4 After consultation with the parties, it was agreed that the disciplinary hearing (the ¨Hearing¨) would be held on December 6, 2016 and that the motion for dismissal would be heard at such time.

¶ 5 The Chair advised the Respondent that it might be in his interest to be represented by counsel.

HEARING

¶ 6 The Hearing took place on December 6, 2016. Respondent was still not represented by counsel.

¶ 7 Before the Hearing, the members of the Panel had the opportunity to review both IIROC's book of documents and regulations prepared by Enforcement Counsel as well as Respondent's Motion for dismissal with accompanying documents.

Enforcement Counsel Presentation

¶ 8 Enforcement Counsel introduced two (2) witnesses, namely i) the investigator from IIROC'S Enforcement Division who had been in charge of the investigation in the present matter and ii) IIROC'S Manager of Registration for the Québec District.

¶ 9 The investigator testified that he had been instructed to carry out an investigation concerning the Respondent, whose application for reactivation of registration had recently been approved by the Registration Division of IIROC.

¶ 10 During his investigation, he discovered that the Respondent had made other misrepresentations (Count 1) in addition to the falsification of his Notice of Termination (Count 2), namely on his c.v. and on documents signed at the request of his new employer in connection with his application for reactivation of registration. These misrepresentations had not been known by the Registration Division during the period of Respondent's application for reactivation (as was later testified by the Manager of Registration – see # 14).

¶ 11 The investigator also testified that as part of his investigation, he had met with the Respondent who acknowledged having made the other misrepresentations in addition to the falsification of his Notice of Termination. Such acknowledgement is found in the stenographer's transcript of such interview, which was available to the Panel.

¶ 12 The Manager of Registration's testimony dealt with IIROC's registration process in general and, in particular, in the case of the Respondent; it was during this process that the alteration and falsification of Respondent's copy of his Notice of Termination came to light and was eventually corrected. Registration was granted, notwithstanding the falsification, on the basis of usual factors as well as the receipt of a favourable letter of assessment by Respondent's new employer.

¶ 13 The Manager of Registration also testified that shortly after registration of the Respondent on March 26, 2014, she requested an investigation by the Enforcement Division, resulting in due course in the Notice of Hearing under Part 10 of Dealer Member Rule 20 of IIROC.

¶ 14 She mentioned that these requests were not necessarily frequent but were made from time to time by IIROC. The witness also stated that instead of proceeding under Part 10, a review could, alternatively, have been initiated under Part 7 of Dealer Member Rule 20; however when dealing with a registered representative, it was more usual to proceed under Part 10. Such investigations, which cannot be done by the Registration Division, do not necessarily lead to prosecution, but because of the discovery of the contraventions during the investigation, a Notice of Hearing was issued. She confirmed that the contraventions referred to in Count 1 of the Notice of Hearing were not known or available to the Registration Division at the date of approval of Respondent's application.

¶ 15 Enforcement Counsel also underlined that Respondent had affirmed, among others, paragraph 1 of the Notice of Hearing in his response to the said Notice of Hearing, thereby confirming his guilt under both counts.

Respondent Presentation

¶ 16 Respondent admitted to the Panel that he had made false representations as stated in the Notice of Hearing and that he had falsified a copy of his Notice of Termination from a previous employer; he expressed regret for having done so.

¶ 17 He then dealt with the Motion for Dismissal. He alleged that IIROC should have acted under Part 7 of Dealer Member Rule 20 and not under Part 10, for the following reasons:

a) he had come clean to his new employer, without prompting, about the falsification of the Notice of Termination and before the approval of his application for renewal of registration;

b) the information which he had falsified was trivial in nature;

c) the correct information was already in the hands of many regulators, including IIROC, and IIROC was negligent in its approval process; and

d) this case is a matter of registration and not a matter of business conduct.

Enforcement Counsel Rebuttal

¶ 18 Enforcement Counsel responded to the arguments of Respondent by stating that, although IIROC could, as testified, been taken under Part 7 of Dealer Member Rule 20, IIROC was not precluded nor under any obligation to do so; and, as Respondent was registered, IIROC had full jurisdiction to proceed under Part 10, which provides that *«The Corporation may hold hearings, as set out in this Rule, in order to ensure compliance with and enforcement of the Rules and Rulings ….. »*

¶ 19 In addition, as the investigation revealed, Respondent had made additional misrepresentations not known or available to IIROC's Registration Division during the period, nor at the time, of approval of registration.

¶ 20 Respondent's admission of the falsification of the Notice of Termination from his previous employer could not have been initiated by Respondent, as alleged by him, as it came after at least three (3) attempts to correct his application, of which Respondent was fully aware.

¶ 21 Enforcement Counsel stated that Respondent's conduct was effectively unbecoming and contrary to Dealer Member Rule 29.1.

DECISION

¶ 22 After having heard the representations of both parties, examined the many documents as well as the jurisprudence submitted by both parties, and deliberated, the Panel:

a) rejects the Motion for dismissal of Respondent; and

b) declares the Respondent guilty of the contraventions alleged by IIROC in the Notice of Hearing dated April 29, 2016.

REASONS FOR DECISION

Motion for Dismissal

¶ 23 The Panel may have been perplexed both by the approval of Respondent's application for renewal of registration and by the choice made by IIROC to proceed in this matter under Part 10 of Dealer Member Rule 20, as opposed to Part 7 thereof, in the time frame in this matter, i.e. not long after the approval of Respondent's said application, however it is not the role of this Panel to order IIROC to apply its valid Rules and Regulations in one manner instead of another, when both options are available to it, which we are of the opinion was the case.

Contraventions to IIROC Dealer Member Rule 29.1

¶ 24 In addition to the fact that Respondent acknowledged before the Panel, as well as in his response to the Notice of Hearing, that he had committed the contraventions described in the said Notice of Hearing, the Panel agrees with Enforcement Counsel's arguments that Respondent's conduct was reprehensive and reiterates that the adherence by a registered representative or an employee of a member of IIROC of «high standards of ethics and conduct» set forth in Rule 29.1 is a fundamental requirement and cannot be qualified as trivial under any circumstances.

Dated at Montréal, Québec this 7th day of February, 2017.

Claire Richer, Chair

Daniel Houle

Michel Duchesne