

Re Schoer

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Roger Carl Schoer

[2011] IIROC No. 33

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

Hearing: May 16, 17 and 18, 2011

Decision: May 26, 2011

(47 paras.)

Hearing Panel:

Terrance Sweeney, Chair, D. W. (Sandy) Grant, Ronald Smith

Appearances:

Susan Kushneryk, Senior Enforcement Counsel, IIROC

Milton Chan, Enforcement Counsel, IIROC

Roger Carl Schoer (Respondent), Self-represented

DECISION OF THE ONTARIO DISTRICT COUNCIL

¶ 1 By Notice of Hearing, dated January 6, 2011, the Investment Industry Regulatory Organization of Canada (“IIROC”) alleged that, between 2002 and 2007, Roger Carl Schoer (“Mr. Schoer”) fraudulently induced clients and others to provide funds to pay off other clients and individuals, and misrepresented such payments as genuine investments, thereby engaging in business conduct that is unbecoming and detrimental to the public interest, contrary to IDA By-law 29.1.

¶ 2 IIROC, in the Notice of Hearing, gave detailed particulars of the allegations against Mr. Schoer.

¶ 3 IIROC further alleged that after Mr. Schoer ceased to be a Registered Representative (“RR”) in July 2007, he continued to hold himself out as being employed in the securities industry, and approached former clients and other individuals with fictitious investment opportunities.

THE CASE FOR IIROC

¶ 4 Counsel for IIROC filed three volumes of documents¹ and called six witnesses. The Hearing Panel has

¹ Exhibit 2, Volume II; Exhibit 3, Volume III; Exhibit 4, Volume I

anonymized the names of the alleged victims of Mr. Schoer to protect their privacy.

Ms. Sharon Lloyd-Gyurkovics (“Ms. Lloyd-Gyurkovics”)

¶ 5 She is an investigator in the Enforcement Department of IIROC.

¶ 6 Ms. Lloyd-Gyurkovics interviewed Mr. Schoer on March 16, 2008 and DM on February 1, 2008.

Mr. Schoer

¶ 7 The key points arising from her interview with Mr. Schoer are as follows:

1. Mr. Schoer admitted that DM wrote nine cheques to him, e.g. "Mr. Schoer, in trust" which ended up in his bank account.
2. He conceded that he read his firm's compliance manual but did not get the authorization from his employer to engage in "off book" activities with his clients.
3. During the interview he made numerous undertakings to Ms. Lloyd-Gyurkovics, none of which he honoured.

DM

¶ 8 Counsel called her as a witness. Her testimony is summarized below and will not be repeated here.

Michael Bignell (“Mr. Bignell”)

¶ 9 He was an executive Vice President and Chief Compliance Officer for Standard Securities Capital Corporation ("Standard") when Mr. Schoer was there as a RR in 2006 and 2007 until he resigned in July 2007.

¶ 10 He testified that he was responsible for the overall supervision of the RRs and was the “Ultimate Designated Person” at Standard. He confirmed that RRs were to disclose outside business activities and that getting clients to invest in private companies was the sort of thing covered. He said that Mr. Schoer had no authority from him or anyone else at Standard to solicit business "off book". Mr. Schoer never advised him of his outside business activities.

¶ 11 He became aware in October 2007 of Mr. Schoer’s activities when DM, AC and others complained to Standard.

¶ 12 Standard had considered financing Magnet Innovations (“Magnet”) but, ultimately, did not do so as Magnet could not satisfy Standard as to its financial situation.

¶ 13 Mr. Schoer did not cross-examine Mr. Bignell.

DM

¶ 14 She was born in 1929. She is a retired school secretary. Her husband died in 2000. She has known Mr. Schoer since the early 1990s. She trusted him.

¶ 15 Counsel asked her about her statements at Standard and previous employers of Mr. Schoer.² She became concerned over time as the value of her investments continued to decline and the investments which Mr. Schoer was making for her did not appear in her statements. He consoled her by telling her that her "off book" investments were "still there". Mr. Schoer would come to her home and induce her to write cheques to him or other people whom she did not know. She never received any certificates or other evidence of ownership for any of these "investments".

² Exhibit 2, Tab 12

¶ 16 She kept a diary³ of her dealings with Mr. Schoer and as she became more suspicious the diary entries were more fulsome. She testified that Mr. Schoer would say, "You know that you can depend on me."

¶ 17 She swore that Mr. Schoer had defrauded her of \$158,000.00.

¶ 18 Mr. Schoer did not cross-examine DM.

GF

¶ 19 He is a retired mathematics teacher. He first met Mr. Schoer about 13 years ago. He opened an account with Mr. Schoer at his then firm in the mid to late 1990s and followed him to his subsequent employers including Standard.

¶ 20 His testimony was eerily similar to that of DM. Mr. Schoer would obtain cheques from him or induce him to write cheques to other individuals whom he did not know. He could never get any documentation evidencing these "investments" but Mr. Schoer would give him the "run around" saying things like "so much was happening" and "I have to get to a meeting." None of the "investments" showed up in his broker accounts. He was told by Mr. Schoer that he would look after him and a cheque would arrive from a person whom he did not know. Those cheques were all returned "NSF".

¶ 21 He swore that he had lost \$30,000.00 to \$35,000.00 from his dealings with Mr. Schoer.

¶ 22 Mr. Schoer asked one innocuous question of GF in cross-examination. He did not dispute the loss claimed by GF.

PE

¶ 23 He was a neighbour of Mr. Schoer. He had an account with him since about 1999. He trusted Mr. Schoer and his testimony was similar to the previous witnesses. Mr. Schoer would tell him, "You are getting into the private company early so that when it goes public that is when you get your money." PE was confident that Mr. Schoer knew what he was doing but he became suspicious when he could never get any evidence of his "off book" investments. He said all he "ever got was a lot of stories". He, too, received a cheque in the amount of \$30,000.00 from a person unknown to him. That cheque was returned by the bank "NSF".

¶ 24 He continued to pressure Mr. Schoer who continued to lie to him. Finally, PE went to the Durham Regional Police and Mr. Schoer was arrested.

¶ 25 PE swore that he lost \$17,500.00 through dealing with Mr. Schoer.

¶ 26 Mr. Schoer did not cross-examine PE.

Ms. Carolyn Bean ("Ms. Bean")

¶ 27 She is a senior investigator with IIROC. She followed up on complaints about Mr. Schoer. She interviewed nine witnesses.

AC

¶ 28 AC told Ms. Bean that he had been a client of Mr. Schoer for many years. He filed a formal complaint with IIROC in June 2008. He said that Mr. Schoer induced him to invest \$18,000.00 in a company called Magnet. He kept after Mr. Schoer for the documents to support his investment. He only received promises from Mr. Schoer which were not fulfilled. He also wrote a cheque to Mr. Schoer, on May 30, 2007, for \$5,000.00. This was supposed to be for more shares in Magnet but he never received anything. He also was induced by Mr. Schoer to issue a cheque, dated August 3, 2007, to one VB, a man whom he did not know, for \$6,000.00. He kept pursuing Mr. Schoer and Magnet. He finally settled with Magnet for a promissory note for \$18,000.00 which remains unpaid. He received a cheque from one RD, dated June 17, 2008, in the amount of \$6,000.00. He did not know RD either.

³ Exhibit 2, Tab 14

¶ 29 He met with VB in April 2008. VB told him that the \$6,000.00 was for a debt that Mr. Schoer owed him and that therefore VB had no obligation to assign any assets from him to AC for the \$6,000.00 that AC gave him.

¶ 30 Notwithstanding the foregoing, and the fact that AC has probably lost \$23,000.00, he did not come forward as a witness against Mr. Schoer. He did not feel that Mr. Schoer had defrauded him. Rather, AC thought that Mr. Schoer was a "bad broker".

GF and PE

¶ 31 Their testimony is detailed above.

¶ 32 None of the other victims came forward to testify so the Hearing Panel does not outline their statements given to Ms. Bean here. They mirrored the same experience of the witnesses who gave direct testimony.

THE CASE FOR MR. SCHOER

¶ 33 He filed no documents nor did he call any independent witnesses. The Hearing Panel agreed to hear his testimony in camera and he was cross-examined by counsel for IIROC. The Hearing Panel will not reveal any of his testimony so as not to breach the confidential nature of his testimony.

DECISION

¶ 34 The Supreme Court of Canada has held that, in civil cases, there is only one standard of proof. Those seeking to establish a case must do so on a balance of probabilities.⁴ There, Rothstein J. said, in part, as follows:

I think it is time to say, once and for all in Canada, there is only one civil standard of proof at common law and that is proof on a balance of probabilities In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

¶ 35 Here, IIROC has filed numerous documents and called six witnesses who attested, under oath, to the actions of Mr. Schoer. He, on the other hand, advanced no defence to the allegations against him.

¶ 36 The Hearing Panel was impressed with the evidence of DM, GF and PE. Each gave his or her testimony in a clear and calm way. The Hearing Panel was particularly impressed by the evidence of DM. Mr. Schoer egregiously breached her trust and probably caused her great pain. Yet she comported herself in an exemplary way on the witness stand. She is a resilient person indeed.

¶ 37 The Hearing Panel draws a negative inference against Mr. Schoer from his failure to cross-examine DM and PE and his failure seriously to challenge the evidence of GF.

¶ 38 The Hearing Panel notes that each of Ms. Lloyd-Gyurkovics and Ms. Bean testified as to the fraud of Mr. Schoer against other clients of Mr. Schoer including AC. The Hearing Panel understands that it is not always possible to persuade potential witnesses to come forward to testify at a hearing. The Hearing Panel also knows that it may accept hearsay evidence.⁵

¶ 39 In this case and because the evidence against Mr. Schoer from the three witnesses who gave direct testimony against him is so overwhelming, it was not necessary for the Hearing Panel to give much weight to the testimony of Ms. Lloyd-Gyurkovics and Ms. Bean.

¶ 40 IIROC has proven, on a balance of probabilities, that Mr. Schoer breached Rule 29.1 in that he:

1. Defrauded his clients of at least \$190,000.00.

⁴ *F.H. v. McDougall*, 2008 SCC 53

⁵ IIROC Dealer Member Rule 20.2(2)

2. By his own admission⁶ engaged in his "off book" activities without the approval of his employer. He, thus, made it impossible for his employer to supervise him and endangered the public.

PENALTY

¶ 41 IIROC Disciplinary Sanction Guidelines 4.3 provides that a permanent ban from approval of an individual is a severe economic penalty and should generally be reserved for cases where:

1. the public itself has been abused;
2. where it is clear that a respondent's conduct is indicative of a resistance to governance;
3. the misconduct has an element of criminal or quasi-criminal activity; or
4. there is a reason to believe that the respondent could not be trusted to act in an honest and fair manner in all dealings with the public, their clients and the securities industry as a whole.

¶ 42 The Hearing Panel has concluded, on a balance of probabilities, that Mr. Schoer is in violation of all the above criteria.

¶ 43 Mr. Schoer's activities, between 2002 and 2007, resulted in significant financial harm to numerous clients as well as emotional stress to his victims. His targets were often the more vulnerable; particularly, in the case of DM, an 82 year old widow with limited resources, who trusted Mr. Schoer to the point of believing that many of her investments, although never recorded, were secure and performing well.

¶ 44 During the extensive investigation of Mr. Schoer's activities by IIROC enforcement staff, he repeatedly promised to get back with further clarification, documents, etc. - none of these promises were ever fulfilled.

¶ 45 Mr. Schoer's violations were intentional and pre-meditated. His schemes included unrecorded transactions, promissory notes and fraudulent promises with numerous cheques directed to individuals as well as himself. In a Ponzi-like fashion, cheques were induced from new clients to pay off pending obligations to other existing clients - others written by Mr. Schoer himself were usually NSF.

¶ 46 Mr. Schoer is a contemptible individual who preyed on gullible and vulnerable people who trusted him. He deserves the harshest punishment which this Hearing Panel can assess. The members of the Hearing Panel trust that by imposing the appropriate penalty in this case, public confidence in the securities industry will be maintained. Moreover, they hope that the penalty will deter others in the securities industry from engaging in such discreditable conduct.

¶ 47 The Hearing Panel orders that:

1. Mr. Roger Carl Schoer be permanently barred for life from registration by IIROC or any successor entity;
2. Mr. Roger Carl Schoer shall pay a fine of \$200,000; and
3. Mr. Roger Carl Schoer shall pay costs in the amount of \$100,000.

Dated at Toronto, Ontario, this 27th day of May 2011.

Terrance Sweeney, Chair
D.W. (Sandy) Grant
Ronald Smith

⁶ Exhibit 4, Volume 1, Tab 2, pp. 41, 71 and 72.