

# Re Dirani

IN THE MATTER OF:

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

**and**

**Wasseem Dirani**

2016 IIROC 13

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

Heard: February 23, 2016, Toronto, Ontario

Decision: February 23, 2016

Written Reasons: March 23, 2016

**Hearing Panel:**

Frederick H. Webber, Chair, Leo Ciccone and Colleen Wright

**Appearances:**

Natalija Popovic, Enforcement Counsel

Wasseem Dirani, No Appearance

---

## DISCIPLINARY DECISION

---

### **A. REQUEST FOR ADJOURNMENT**

¶ 1 At the commencement of the hearing on February 23, 2016, counsel for the Investment Industry Regulatory Organization of Canada (“IIROC”) advised the Panel that Mr. Dirani (“Respondent”) had requested an adjournment of the hearing on the basis that he had a conflicting Superior Court of Justice appearance. This request was made by email from the Respondent on February 22 at 3:45 P.M. and received by IIROC on the morning of the hearing. IIROC responded to the Respondent’s request by email on February 23 at 8:04 A.M, advising him that it was not prepared to consent to the adjournment, but would present his request to the Panel, which it did. These emails were made Exhibit 1. At the hearing IIROC strenuously objected to the Respondent’s request, based upon the lateness of the request and, in particular, the Respondent’s history of prior requests and his failure to communicate with IIROC despite numerous attempts by IIROC. This history is outlined in the IIROC email of February 23, 2016 and in an affidavit of Katie Trotman, a litigation assistant on IIROC staff, dated February 17, 2016 which was made Exhibit 2.

¶ 2 These Exhibits confirm the following:

- a) the Respondent was aware of the hearing date since December 7, 2015, when he was served by email, registered mail and personal service with the Notice of Hearing dated December 7, 2015 (“NOH”) which commenced this proceeding;
- b) the Respondent also requested a last minute adjournment the day before a November 16, 2015 scheduled interview. IIROC agreed to that request, but the Respondent did not provide a further

date until the Respondent's email of December 22, 2015 to IIROC investigator, Sharon Lloyd-Gyurkovics. She was away and her email responded with an out-of-office reply. By email of January 5, 2016, immediately upon her return, the IIROC investigator advised the Respondent that IIROC would be available any time in January. There was no further communication from the Respondent until his adjournment request made on February 22, 2016;

- c) on January 29, 2016, the Respondent was served with a cover letter, information on a USB stick and an undertaking in relation to disclosure in this matter;
- d) on February 2, 2016, the Respondent was served with a cover letter, further disclosure and a witness statement;
- e) on February 17, 2016, the Respondent received further documentation in this matter from IIROC;
- f) the items referred to in paragraphs c), d) and e) were sent by Katie Trotman, but the Respondent did not make any reply to Ms. Trotman's communications;
- g) Ms. Lloyd-Gyurkovics sent a further communication to the Respondent on February 18, 2016;
- h) all of the foregoing is in addition to the events which give rise to Count 4 in the NOH. Those events are detailed in the NOH and need not be repeated here. Furthermore the Respondent has not filed a Response to the NOH.

¶ 3 It was the Panel's decision not to grant the Respondent's request for an adjournment for the following reasons. While not doubting that the Respondent had a conflicting court appointment, it is clear that he had known about the conflict in dates for some time, but did not advise IIROC of the conflict until late in the day before the hearing. This simply repeats a pattern of the Respondent's failure to communicate with IIROC in a timely manner or otherwise participate in the process, not only in relation to the hearing date as outlined above, but also in relation to the IIROC investigation, which is set out in detail in the NOH.

¶ 4 The Panel acknowledges that the law on procedural fairness requires that a person must know the case being made against him and be given an opportunity to answer it before the decision maker. It is also clear in law that the right to procedural fairness is flexible, depending on the circumstances of the particular case and that the rights of the individual must be balanced against the effective and expeditious performance of public duties. In "Hearings Before Administrative Tribunals", Macauley & Sprague, Third Edition, the authors state "... the essence of administrative law is the balancing of the rights to be accorded individuals in the protection of their rights with the need of society for efficiency in administrative decision-making..." The Panel agrees with IIROC's position that it is obliged to act in a timely and fair manner in the public interest, so that, if the allegations are proven, the Respondent would be penalized appropriately and the public would be protected, notice would be served on others in the industry not to engage in conduct of the type in the allegations, and clients of the Respondent could feel that justice was served in their particular cases.

¶ 5 It was the Panel's decision that the Respondent has been given every reasonable opportunity to participate in the proceedings, but has chosen not to do so, other than to make last-minute requests for adjournments. In the circumstances, the public interest in having the case proceed expeditiously must be served. Therefore the Respondent's request for an adjournment was denied and the case proceeded on the merits.

## **B. DECISION ON THE MERITS**

¶ 6 This matter was commenced by the NOH which contained four allegations against the Respondent, as follows:

- Count 1: From April 2014 to January 2015 the Respondent engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he

misappropriated funds from clients, contrary to IIROC Rule 29.1.

Count 2: From August to December 2014 the Respondent engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he executed unauthorized transactions in the accounts of clients, contrary to IIROC Rule 29.1.

Count 3: From July 2012 to May 2015 the Respondent engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that he engaged in personal financial dealings with clients, contrary to IIROC Rule 29.1.

Count 4: From October to November 2015 the Respondent failed to co-operate with an IIROC investigation by failing to attend at a compelled interview, contrary to IIROC Rule 19.5.

¶ 7 The Respondent did not file a Response to the NOH and did not appear at the hearing. In these circumstances, Rules 7.2 and 13.5 of the IIROC Rules of Practice and Procedure provide that the Panel may proceed in the absence of the Respondent and may accept as proven the facts and violations alleged by IIROC in the NOH. The Panel did not grant the adjournment requested by the Respondent and proceeded with the hearing in his absence. However, rather than simply accept as proven the facts and violations alleged, as it was entitled to do, the Panel decided to have IIROC counsel provide evidence of the facts and make submissions establishing the allegations. Accordingly IIROC counsel called the IIROC investigator as a witness and introduced into the record, Exhibit 3, a Compendium of relevant documents, Exhibit 4, an affidavit of the Respondent's client, SM and Exhibit 5, a New Client Application form for the Respondent's client, IS.

¶ 8 The Panel is satisfied that the testimony of the IIROC investigator and the documentary evidence presented establish the facts contained in the NOH. It is not necessary to repeat all those facts, but they may be summarized as follows:

- a) The Respondent misappropriated funds from his clients OL and AL, a married couple, when he asked for and cashed three cheques payable to his personal corporation totalling \$68,000. The funds had been provided on the understanding that they would be invested on OL and AL's behalf but the Respondent failed to do so.
- b) The Respondent executed unauthorized transactions in the accounts of these clients in order to deposit funds into the clients' bank account, when the clients understood the deposits to be dividends from the alleged investments.
- c) The Respondent engaged in personal financial dealings with his clients IS and FNS when he borrowed a total of \$50,000 from these clients and gave them three promissory notes for the loans. In the case of his client SM, the Respondent promised to compensate this client for account losses and executed five agreements to reflect that promise.
- d) The Respondent was compelled to attend an IIROC interview on three separate occasions; however he has to date failed to co-operate with IIROC by failing to attend an interview.
- e) The majority of the Respondent's misconduct occurred after he entered into a settlement agreement with IIROC Staff admitting to prior violations of IIROC's Rules.

¶ 9 The Panel then heard submissions from IIROC counsel that the facts established proved the violations alleged in the NOH by the Respondent. In addition to the power given to the Panel by Rules 7.2 and 13.5 to accept as proven the facts and violations alleged in the NOH, the Panel agreed with IIROC counsel that said violations alleged had all been proven against the Respondent by the evidence and submissions presented. The Panel then proceeded with the sanctions portion of the proceedings.

### **C. DECISION ON PENALTY**

¶ 10 After making its decision on the merits, the Panel considered whether to proceed immediately with the

hearing on penalty or to adjourn the penalty phase in order to allow service of its decision on the merits on the Respondent and give him an opportunity to participate in the penalty phase. For the same reasons that the Panel decided not to grant the Respondent's request for an adjournment, it decided to proceed immediately with the penalty phase of the hearing.

¶ 11 The sanctions requested by IIROC are as follows:

- (a) a permanent bar from approval with IIROC in any capacity;
- (b) a global fine in the aggregate amount of \$266,000, allocated as follows:
  - (i) for misappropriation of funds from clients, \$136,000, being double the benefit received by the Respondent;
  - (ii) for unauthorized transactions, \$30,000;
  - (iii) for financial dealings with clients, \$50,000; and
  - (iv) for failure to cooperate with IIROC, \$50,000;
- (c) costs of \$12,000.

¶ 12 Rules 7.2 and 13.5 allow the Panel to impose penalties and costs pursuant to Rules 20.33, 20.34 and 20.39 as requested in the NOH, but the Panel decided to hear submissions from IIROC counsel in support of the sanctions requested. IIROC counsel referred the Panel to the published IIROC Sanction Guidelines dated February 2, 2015. In particular, IIROC counsel referred the Panel to the following Sanction Principles:

- (a) #2, Disciplinary sanctions should be more severe for respondents with prior disciplinary records. As stated in the NOH, the majority of the Respondent's misconduct occurred after the Respondent had entered into a Settlement Agreement with IIROC admitting prior violations of IIROC Rules;
- (b) #3, For multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct. The evidence shows that the Respondent committed multiple violations; and
- (c) #6, a permanent bar should be considered where:
  - the contraventions involve significant harm to the investing public, the integrity of the market or securities industry;
  - the misconduct has an element of criminal or quasi-criminal activity; or
  - there is reason to believe that the Respondent cannot be trusted to act in an honest and fair manner in their dealings with the public, their clients, and the securities industry as a whole.

A fine and/or disgorgement should be considered even where a permanent bar is imposed in egregious cases involving significant harm to investors or to the integrity of the securities industry as a whole. The Panel agrees with the position of IIROC counsel that all of the facts referred to in guideline #6 are present in this case and supports IIROC's request for a permanent bar from approval and the fines requested.

¶ 13 IIROC counsel also referred the Panel to Key Factors in Determining Sanctions, set out in the Guidelines. In particular, IIROC counsel stated that the following factors were present in this case:

- The number, size and character of the transactions at issue. The Panel agrees with IIROC that there were a significant number of transactions which were of a dishonest character;
- Whether the respondent engaged in numerous acts and/or a pattern of misconduct. The evidence

is that there were numerous acts which formed a pattern of behaviour;

- Whether the misconduct was intentional, willfully blind, or reckless with respect to regulatory requirements. It is clear that the Respondent's actions were intentional and reckless regarding regulatory requirements;
- The respondent's relevant disciplinary history. As noted above, the Respondent's actions took place after entering a Settlement Agreement with IIROC;
- Extent to which the respondent obtained or attempted to obtain a financial benefit from the misconduct. As noted above, the Respondent sought to benefit, and did benefit financially from his misconduct;
- Whether the respondent made voluntary acts of compensation... and/or payment of restitution to clients. The Respondent repaid clients OL and AL \$55,000 of the \$68,000 which he had misappropriated from them, but only after they threatened to complain to IIROC. His repayment was not voluntary.
- Whether the respondent failed to heed regulatory guidance with respect to the misconduct at issue. It is clear that the Respondent did not learn from the prior IIROC proceeding against him.

The Panel agrees with IIROC counsel that the stated factors support the sanctions requested by IIROC.

¶ 14 The IIROC Book of Authorities contained a number of prior cases which are relevant to this case. Certain of these were reviewed with the Panel by IIROC counsel. While none of the cases contain fact situations which are identical with this case, all the cases involved misappropriation of funds, unauthorized trading, borrowing from clients and/or failure to cooperate. They are sufficiently similar to provide useful guidance to the Panel regarding the appropriate sanctions in this case. In all of the cases referred to (except where significant mitigating factors were present, in contrast to this case) the sanctions included a permanent bar on approval with IIROC. It is clear to this Panel that the cases referred to support a permanent bar from approval in this case.

¶ 15 Regarding the amount of the fines sought by IIROC, the cases show a wide variety of facts, involving more or less egregious misconduct than in this case, varying degrees of misappropriated funds, borrowing from clients, unauthorized trading and failure to cooperate. In each of the cases, the panel looked at the conduct in question and prior cases and determined the appropriateness of the fine. This Panel has done the same in this case and has determined that the fines sought by IIROC are appropriate in the circumstances of this case.

¶ 16 IIROC's Bill of Costs was made Exhibit 6 in these proceedings. It consisted of an affidavit of Katie Trotman dated February 10, 2016 together with supporting documentation. The Bill of Costs supports IIROC's request for costs in the amount of \$12,000.

¶ 17 It is the Panel's decision that the facts set forth the NOH and the evidence presented at the hearing support the following conclusions:

- the Respondent's conduct was a serious, egregious and intentional breach of IIROC Rules involving significant harm to the investing public, the integrity of the markets and the securities industry;
- the Respondent's misconduct involved an element of criminal or quasi-criminal activity;
- the Respondent has demonstrated a resistance to governance by IIROC and has shown that he could not be trusted to act in an honest and fair manner in dealing with clients and the securities industry;
- there are no significant mitigating factors which might otherwise reduce the severity of the sanctions merited in this case.

¶ 18 Therefore it is the Panel's decision that:

- (1) the Respondent shall be permanently barred from approval with IIROC in any capacity;
- (2) the Respondent shall pay a fine in the aggregate amount of \$266,000, allocated \$136,000 for the misappropriation of funds, \$30,000 for the unauthorized transactions, \$50,000 for dealings with clients and \$50,000 for the failure to cooperate; and
- (3) the Respondent shall pay costs of \$12,000 to IIROC.

Dated this 23<sup>rd</sup> day of March 2016.

Frederick H. Webber

Chair

Leo Ciccone

Member

Colleen Wright

Member

*Copyright © 2016 Investment Industry Regulatory Organization of Canada. All Rights Reserved.*