

Re Debus

IN THE MATTER OF:

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

and

Joseph Debus

2018 IIROC 39

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

Heard: October 18, 2018 in Toronto, Ontario

Oral Decision: October 18, 2018

Written Decision: December 13, 2018

Hearing Panel:

Susan Lang, Chair, Nick Pallotta and Stuart Livingston

Appearance:

Kathryn Andrews and Sally Kwon, Enforcement Counsel

Frank Scali, IIROC Investigator

Eric Sabbah, for Joseph Debus

ORAL REASONS AS AMENDED ON A MOTION FOR PRODUCTION

¶ 1 This is, in effect, a motion, brought by the Respondent in the midst of the hearing, seeking further production from IIROC. IIROC has already made substantial production, including documentation relevant to the allegations at issue. Admittedly that production has been done in stages, as it became apparent that further material was needed that was not initially available.

¶ 2 The initial documentary production, including about 550 e-mails, was made in July 2017 to Mr. Debus' then counsel. In February 2018, those materials were produced to Mr. Sabbah, Mr. Debus' current representative.

¶ 3 After further motions and orders, in the summer of 2018, IIROC obtained from RGMP and produced approximately 5,500 further e-mails and other documents; and in October, 2018, IIROC obtained from RGMP and produced approximately 19,000 emails and other documents. These emails and documents were requested after examination and cross-examination of RGMP's IT and compliance staff as well as further software searches conducted by RGMP. Staff and the Respondent do not agree on whether the approximately 5,500 emails obtained in the summer of 2018 were subsumed within the approximately 19,000 emails obtained in October 2018.

¶ 4 Now Mr. Sabbah requests, essentially, IIROC's working file, including details about the conduct and manner of IIROC's investigation. He also requests all internal memos and e-mails as well as explanations for IIROC decisions not to interview certain personnel and explanations for why IIROC decided to proceed with the allegations against Mr. Debus.

¶ 5 The Hearing Panel has the responsibility of determining whether the allegations against Mr. Debus have been established. This case is about those allegations and it is not about the manner in which IIROC conducted its investigation leading up to those allegations. There is nothing about this case, at least that is evident at this point, that makes relevant the particulars of IIROC's investigative methodology or its decision-making path that led to the formulation of the allegations. See the authorities referenced by counsel: *ATI Technologies Inc., Kwok Yuen Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary De La Torre, Alan Rae and Sally Daub, 2004 ONSEC 18 (CanLII); IIROC v. Andrew Paul Rudensky, 2018 IIROC 28.*

¶ 6 In coming to this decision, we observe that the investigator will give evidence as a fact rather than as an expert witness. Mr. Sabbah may address certain of his concerns in his cross-examination of the investigator. It may be that relevant further documentation relating to the allegations may be identified in the course of such a cross-examination. If so, the Panel will deal with any further issues at that time. We also note that Mr. Sabbah has the ability to call other witnesses to give relevant information.

¶ 7 Finally, although not determinative, we observe that it is time to proceed with the hearing of this matter in an expeditious manner that does not compromise Mr. Debus' right to a fair hearing. For these reasons, the panel dismisses Mr. Debus' motion for further production.

Dated at Toronto, Ontario this 13th day of December, 2018.

Susan Lang

Nick Pallotta

Stuart Livingston

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