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# bulletin



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**BULLETIN # 3443**  
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## Discipline

### Discipline Penalties Imposed on John William Stewart; Violations of By-law 19.5

**Person Disciplined** A Hearing Panel appointed pursuant to IDA By-law 20 has imposed discipline penalties on John William Stewart, at all material times a Registered Representative with an Edmonton Branch office of Union Securities Ltd., a Member of the IDA.

**By-laws, Regulations, Policies Violated** Following a disciplinary hearing held on March 2, 2005, in Calgary, Alberta, a Hearing Panel found that John William Stewart violated By-law 19.5, by failing to cooperate with an Association investigation. Mr. Stewart did not file a Response and did not appear at the hearing. The hearing proceeded pursuant to Rule 7.2 and Rule 13.5 of the Association Rules of Practice and Procedure.

**Penalty Assessed** The Hearing Panel imposed the following penalties on Mr. Stewart:

1. A fine of \$50,000.00;
2. A permanent ban on registration in any capacity with the Association; and
3. Costs in the amount of \$11,165.00

**Summary of Facts** The Hearing Panel found that the Respondent had failed to respond or communicate with Association Staff and exercised its discretion to proceed pursuant to Association Rules 7.2 and 13.5, and accept as proven the facts and violations alleged in the filed Notice of Hearing.

The facts relevant to the allegation of contravention of Association By-law 19.5 (failure to cooperate), as set out in the Notice of Hearing and adopted by the Hearing Panel, are summarized below.

#### **Regulatory Complaints**

The Association received a Uniform Termination Notice (“UTN”) for the Respondent, from Union on December 11, 2002. The UTN indicated that the Respondent had “quit” his position with Union, effective December 9, 2002, and that his resignation was unsolicited.

On or about March 2, 2003, L.M., submitted a written complaint to the Association. L.M. alleging that during the period April 2001 to October 2001, she gave the Respondent \$60,000.00 to make investments on her behalf. L.M. further advised that according to her agreement with the Respondent she received several payments, representing a 10% monthly return on the principal investment. However, for a period in excess of six (6) months, L.M. did not receive the 10% monthly return on her investment and, despite repeated demands, never received the return of her principal investment of \$60,000. L.M. was not a client of Union.

The Association also discovered that the Respondent had failed to clear debit positions in client cash accounts, at the time of his termination from Union.

Further, Association Staff became aware that Union received eleven (11) verbal complaints from Union clients (the "eleven complainants") regarding the Respondent's conduct. Most of these eleven complaints were received after the Respondent's departure from Union. The majority of the eleven complainants alleged that they had loaned funds to the Respondent and had not been repaid. Union provided Association Staff with the names of the eleven complainants.

None of the eleven complainants submitted a formal written complaint to the Association.

#### **Association Investigation**

On February 24, 2004, the Association sent two letters, via registered mail, to the Respondent's last address recorded on his Association registration file. These letters compelled the Respondent's attendance for an interview on April 15, 2004, and required the production of specified documentation.

The Respondent failed to attend for an interview at the Association's offices on April 15, 2004, and failed to provide the documentation as requested.

Association Staff were unsuccessful on two subsequent occasions in contacting and soliciting the cooperation of the Respondent.

On April 16, 2004, Association Staff sent the Respondent a letter to the Respondent advising him that his file would be transferred to Enforcement Counsel for consideration of disciplinary action, due to his failure to cooperate with the Association's investigation in the matter.

At no time did the Respondent reply to Association Staff's attempted communications or otherwise contact Association Staff in relation to this matter. The Respondent's failure to provide the information and documentation and failure to attend an interview, as requested, resulted in the Association not being able to proceed further in the investigation of the Respondent's activities.

## Decision

The Hearing Panel reviewed the relevant case law precedents and Association Disciplinary Guidelines and identified five (5) factors for consideration in failure to cooperate cases. Those factors are:

1. The disciplinary history of the Respondent;
2. Was the contravention intentional or inadvertent;
3. Was there complete or only partial non-compliance;
4. The impact that the non-compliance had on the investigation; and
5. Whether the Respondent can demonstrate that his or her refusal to cooperate was based on reasonable reliance on competent legal advice.

The Hearing Panel found that the Respondent did not have a previous disciplinary history and thus factor 1 mitigated the circumstances of the case. However, the Hearing Panel found that factors 2- 5 were aggravating in the circumstances of this case. Specifically, it was found that the Respondent's actions were intentional, his non-compliance was complete, the Association investigation was halted, and no evidence the Respondent had relied upon legal advice.

The Hearing Panel added a sixth factor for consideration in failure to cooperate cases. Relying in part on the decision of *IDA v. Aubrey Harvey Katz* (Bulletin # 2985), the Hearing Panel stated the sixth factor as:

“...the **seriousness of the alleged impropriety** that forms the basis of the investigation which may have been frustrated, in whole or in part, by the Respondent's failure to cooperate with the Association's investigative procedures.” (emphasis added)

The Hearing Panel concluded that, as the circumstances of this case were such that the details of the underlying allegations were largely unknown, it was not appropriate to consider the sixth factor as mitigating or aggravating. However, it was determined that the presence of the four (4) identified aggravating factors in the circumstances of a failure to cooperate contravention were sufficient to support the imposition of severe sanctions.

(See the Reasons for Decision, also posted to the IDA website, for further details).

Kenneth A. Nason  
*Association Secretary*