INVESTMENT DEALERS ASSOCIATION OF CANADA

bulletin

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

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Discipline

Charge against Julius Caesar Phillip Vitug Dismissed – Alleged Violation of By-law 29.1

Nature of the Proceedings

A Hearing Panel of the Investment Dealers Association of Canada (the "Association") appointed pursuant to IDA By-law 20 heard a disciplinary matter involving an allegation against Julius Caesar Phillip Vitug who was at all material times registered as a Trading Officer, Registered Representative and Branch Manager (RR) with the Toronto branch of Blackmont Capital Inc. (Blackmont), a Member Firm of the Association.

Decision of the Hearing Panel

By written decision (the "Decision") dated July 5, 2007, the Hearing Panel dismissed the charge against the Respondent.

Staff Allegations

The following contravention was alleged by the Association:

1. In or about April and July, 2006 the Respondent engaged in business conduct or practice which is unbecoming or detrimental to the public interest, in that he misled Staff of the Association on two occasions by failing to respond truthfully and/or completely to questions, posed in relation to two clients, at an Association interview conducted pursuant to Association By-law 19.5, in violation of Association By-law 29.1.

Summary of Findings

The Hearing Panel undertook a detailed review of the allegations, as follows. The Respondent attended at two IDA interviews. At the first interview Mr. Vitug was asked questions in relation to whether AD, an RR at SSCC, another Member Firm, was a principal behind any corporate accounts at Blackmont. Mr. Vitug's answer was that AD was

not. However at the second interview Mr. Vitug admitted that, contrary to his original answer, in fact AD was a 20% owner of and had trading authority on a corporate account. Mr. Vitug stated that he gave his original answer because he was trying to protect the identity of the corporate account.

The Hearing Panel also reviewed the allegations in relation to Mr. Vitug's client DT, who is also his father-in-law. Mr. Vitug stated that his involvement with DT's purchase of a debenture was limited to his referral of DT to AD. When advised that the IDA had evidence that he paid for DT's purchase from his personal brokerage account, Mr. Vitug stated that he had lent DT the $108,000 to purchase the debenture. This was contrary to Mr. Vitug's earlier position.

In regards to the opening of DT's account at SSCC, Mr. Vitug stated he would not have supplied the documentation to open the account. When advised that the IDA had evidence that a copy of the cheque originally used to open DT's account with Mr. Vitug was also used to open his account at SSCC, Mr. Vitug stated that he might have faxed it over to SSCC for DT. This was contrary to his initial response.

Having set out the allegations, the Hearing Panel noted that Mr. Vitug was advised by letter in 2005 that an investigation had been commenced into his conduct while an RR TD, the Member Firm where he was employed prior to Blackmont. Mr. Vitug's counsel also received the names of the clients about whose accounts he would be questioned; however AD and DT were not identified at this time.

In finding that this notice was insufficient, the Hearing Panel noted that while self governing bodies have the right to investigate they must follow their own procedures. In the case of the IDA this includes a duty to advise the person to be examined in writing of the matters under investigation. The Hearing Panel noted the reasons for not giving notice about the AD and DT accounts specifically, namely the concern on the part of the IDA to protect the integrity of the investigative process and to avoid any prejudice to the investigation. The Hearing Panel reviewed two cases. The *Re Union Securities Ltd*. decision pointed out that the "narrow purpose for which notice is required to be given implies that the information conveyed by it needs not be broad" but that is should be "as narrow as possible so that it does not give to an unscrupulous member information which could help it defeat or hinder the investigation." The Hearing Panel found however that notice must at least contain the minimum information which is necessary to enable the member to understand in what respect its co-operation with the investigation is required." The Hearing Panel decided that this did not happen in this case.

The Hearing Panel also reviewed the case of *NSSC v. Potter* (NSCA 2006) which considered the question of how to balance the respondent's need to know and the investigator's need to keep certain matters secret. The Hearing Panel held that the balance requires that notice should be

enough to let the person know in what respect his or her co-operation is required and no more, but that this did not happen in this case. In the result it was the view of the Hearing Panel that the complaint be dismissed.

Kenneth A. Nason
Association Secretary