# Re Tassone

**IN THE MATTER OF:**

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

**and**

**Alberto Tassone**

2018 IIROC 46

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

Heard: Written Submissions of Counsel for IIROC received August 28, 2018
No submissions received on behalf of Mr. Tassone
Decision and Reasons: November 1, 2018

**Hearing Panel:**
Leon Getz, Q.C., Chair, Barbara Fraser and David Pearson
**Appearance:**
Stacey Robertson, Enforcement Counsel, on behalf of IIROC
No appearance by or on behalf of Alberto Tassone

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# DECISION AND REASONS

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## A BACKGROUND

¶ 1 In a decision dated February 23, 2017 (the "Liability Decision" – 2017 IIROC 14), we gave our reasons with respect to a number of allegations of misconduct by Mr. Tassone between 2003 and 2014. Among them it was alleged (the "Unauthorized Business Activity Allegation") that Mr. Tassone had "participated in and managed an investment in oil and gas wells in the United States (the JED Energy Investment) without the knowledge or approval of his Dealer Member firm and thereby: (i) acted contrary to Dealer Member Rules 18.14 and 29.1 . . . by conducting an unauthorised outside business activity . . . ."

¶ 2 We concluded that although certain allegations of misconduct against Mr. Tassone had been made out, IIROC had not substantiated the Unauthorized Business Activity Allegation. Accordingly, in a decision dated December 26, 2017 (the "Penalty Decision" – 2017 IIROC 53), we did not consider the imposition of sanctions for the alleged Unauthorized Business Activity.

¶ 3 Each of IIROC and Mr. Tassone applied to the British Columbia Securities Commission (the "Commission") for a hearing and review of both the Liability Decision and the Penalty Decision, and on July 3, 2018, the Commission issued its decision and reasons (the "Commission Decision"), reported at 2018 BCSECCOM 212.

¶ 4 The Commission concluded (Commission Decision paragraph [73]) that "Tassone was engaged in an outside business activity for the purposes of IIROC's Dealer Member Rules", and that this panel had made an error of law in dismissing the Unauthorized Business Activity Allegation. In paragraph [97 (c)] of the Commission Decision, the Commission said: "we grant IIROC's application to overturn the IIROC panel's dismissal of the allegation that Tassone carried out undisclosed and unapproved outside business activity

contrary to IIROC Dealer Member Rules 18.14 and 29.1; we find that Tassone conducted outside business activity; and we return this matter to the IIROC panel for its determination whether Tassone's outside business activity was unauthorized.

¶ 5 In paragraph [75] of the Commission Decision, the Commission said:

> The IIROC panel never made a finding whether Tassone disclosed to his employer and obtained its approval for the JED Energy Investment as the IIROC panel determined that Tassone was not an engaged in an outside business activity. A review of the record suggests that there was evidence before the panel that Tassone's employer was aware of his involvement in the JED Energy Investment. That evidence must be considered, along with all of the other evidence adduced during the hearing, to make a factual determination whether Tassone's conduct was "unauthorized". It is appropriate that the IIROC panel, as the body which heard all of the evidence in first instance, make that finding. We find that this matter should be returned to the IIROC panel for it to make that determination and, in the event that they determine that Tassone was in contravention, to determine any appropriate penalties.

¶ 6 In the light of these observations we proceed on the basis that Mr. Tassone was engaged in an outside business activity and consider whether his activity was "unauthorized".

¶ 7 We invited the parties to make any submissions on this subject additional to those that they had made at the original hearing leading to the Liability Decision. Counsel for IIROC took up this invitation but we did not hear further from or on behalf of Mr. Tassone.

## B. A BRIEF SUMMARY OF MR. TASSONE'S EMPLOYMENT HISTORY AND HIS INVOLVEMENT IN THE INVESTMENT

### *(i) Employment history*

¶ 8 Mr. Tassone was initially employed for a number of years as an investment advisor in the Delta branch office of Global Securities Corporation ("Global"). In September 2004, the entire Global branch became part of Raymond James Ltd. Mr. Tassone continued to work for Raymond James until February 2013, when his employment was terminated.

### *(ii) The Investment and Mr. Tassone's roles in it*

¶ 9 As pointed out in the Liability Decision (see paragraph 80), the JED Energy Investment (the "Investment") consisted of an Alberta trust, JED Energy Holdings Trust (the "Trust") created pursuant to a Deed of Trust dated February 1, 2005, which owned the sole limited partnership interest in a Nevada limited partnership JED Energy Ventures LP (the "LP"), the general partner (the "GP") of which was a Nevada corporation, JED Energy Ventures GP, Inc. The evidence suggests that the preliminaries to the formal creation of the Investment began as early as 2003 while Mr. Tassone and his partner, Mr. Semple, were still employed by Global.

¶ 10 In the Liability Decision (at paragraph 39), we described Mr. Tassone's actual activities in relation to the Investment as being "essentially clerical" in nature.

### *(iii) Requirements for disclosure and approval of outside business activities*

¶ 11 At least since 2001, IIROC and its predecessor, the Investment Dealers Association of Canada, have had in place policies requiring that outside business activities be disclosed and member approval be obtained for them. On November 17, 2006, for example, IIROC issued Notice MR0434 which, among other things, stated:

> "Outside employment must be compatible with IDA By-law 29.1, i.e., it must adhere to high standards of ethical conduct, not be unbecoming or detrimental to the public interest, and be of a character and business repute consistent with the foregoing.
>
> For Members to ensure that the above standards will be compatible, they must be aware of all other business activities engaged in by their approved persons. Therefore, firms must have in

place policies and procedures requiring that all other business activities are disclosed to and approved by them."

¶ 12 At all material times, Mr. Tassone's employer had in place policies consistent with the applicable regulatory requirements, calling for disclosure of and approval for outside business activities.

## C. DID MR. TASSONE DISCLOSE HIS INVOLVEMENT IN THE INVESTMENT AND SECURE THE REQUIRED APPROVAL FOR IT

¶ 13 In his Response to the Notice of Hearing, Mr. Tassone acknowledged that at no stage did he make any written disclosure of his involvement in the Investment to his branch manager or to anyone else in the Compliance Department at either Global Securities or Raymond James. His position, as we understood it, was that both Global and Raymond James were otherwise aware of the Investment and his involvement in it.

¶ 14 We must accordingly consider:

(i) whether Global and/or Raymond James was aware of the Investment and his involvement in it and, if so, to what extent; and

(ii) if either Global or Raymond James was aware of these matters, did the knowledge of either of them satisfy Mr. Tassone's disclosure obligation and can they be said in the circumstances to have "approved" his involvement.

### *(a) Global*

¶ 15 So far as concerns the knowledge of Global, Mr. Tassone acknowledged that he never told anyone at that firm of his involvement in the Investment. He "assumed" that Global knew about it and in this connection relied upon a discussion that he claimed had taken place some time in 2003 between Mr. Semple and JB, a senior compliance officer of Global. Mr. Tassone did not participate in this discussion so his knowledge of it rests on what he says he was told by Mr. Semple, who was not a witness in these proceedings.

¶ 16 Mr. Tassone claimed that he had understood from Mr. Semple that when the investment was set up, JB had advised that the investment did not need to be formally disclosed and approved as an outside business activity, apparently on the ground that Investment was an investment, not a business.

¶ 17 Contacted by telephone by an IIROC investigator in 2014, JB said that he had no recollection of the alleged conversation with Mr. Semple and said that he thought it highly unlikely that, if there had been such a discussion, he would have expressed the view attributed to him about the distinction between an investment and a business.

¶ 18 In our view, this evidence falls some distance short of establishing that Global knew of the Investment or was aware of the nature and extent of Mr. Tassone's involvement in it. It follows that we are unable to conclude that, so far as Global was concerned, Mr. Tassone made the disclosure required of him in the circumstances or that Global gave its approval to that involvement.

### *(b) Raymond James*

¶ 19 Mr. Tassone acknowledged that when the Global office in Delta was taken over by Raymond James in September 2004, he did not have any particular discussions with the branch manager of the latter firm, or anyone in its compliance department nor, so far as he was aware, did Mr. Semple. The reason for this, he explained, was that he (they?) considered the Investment to be a passive investment that did not require disclosure.

¶ 20 Mr. Tassone's claimed, however, that the Raymond James branch manager, who had also been the branch manager of the predecessor Global office was aware of the Investment and of Mr. Tassone's involvement in it. He also relies on the evidence of a secretary/office assistant in the Global and, subsequently, the Raymond James offices. Both were interviewed by an IIROC investigator. We were provided with transcripts of their interviews.

¶ 21 The Branch Manager's evidence was that he first became aware of the Investment while employed at

Global, apparently because the office received mail and telephone calls relating to it and this provoked him to query Mr. Semple and Mr. Tassone about it. While he did not indicate exactly what he was told, he said that he had concluded that no approval was required because "it was a one-off". It is quite unclear what meant by this and he offered no explanation.

¶ 22 The Branch Manager gave no evidence, however, that would suggest that he knew anything of substance about the Investment. There is no evidence that he knew anything about, for example, its structure; or whether any of the participants were clients of Raymond James.

¶ 23 It is possible that there may be circumstances in which the knowledge of an employer might be considered equivalent to the formal written disclosure required by the applicable policies and of the necessary approval. In the present circumstances, however, we do not think it is reasonable to conclude from his evidence that the fact that the Branch Manager may have known something, however little, about the Investment, can be considered to be the functional equivalent of the required disclosure and knowing approval. In any event, as we have pointed out, the applicable policies, both of IIROC and the employer, required a written disclosure.

¶ 24 The evidence of the secretary/office assistant adds little of substance. She knew that Messrs. Semple and Tassone had some involvement in the Investment from the fact that she received mail and occasional telephone calls about it. There is no evidence that she was aware of the nature and extent of their involvement.

¶ 25 We conclude, therefore, that although it is possible that in some general sense Mr. Tassone's employers were "aware" or "knew" of his involvement in the Investment, there is little evidence to suggest that their knowledge extended beyond the fact that he was an investor. In particular, there is no persuasive evidence that they were aware of or knew anything of substance about it.

¶ 26 There is one other point in this connection. Raymond James' policies required Mr. Tassone to make an annual written disclosure in the form of answers to specific questions on various matters relating to outside business activities.

¶ 27 From 2004 to 2009, the disclosure form included the following question:

> Do you have any financial interest in, or control or direction over, an offshore entity? For purposes of this certification, "offshore entity" means any type of account, corporation, trust, partnership, investment club, nominee arrangement, or any other entity, structure, arrangement or organization which is incorporated, located, domiciled, registered or resident outside of Canada.

¶ 28 In each of these years, Mr. Tassone answered "no" to this question. As noted in paragraph 12 of the Liability Decision, however, Mr. Tassone was the President of the GP, a Nevada corporation, during at least some of this period and though he purportedly resigned that position in May 2005, there is other evidence to suggest the he continued in that role until at least 2012.

¶ 29 From 2010 onwards, the annual disclosure form also included the following question to which, in each relevant year, Mr. Tassone answered "no":

> Are you currently engaged in, or do you intend to engage in, any outside business activities (OBA) (any activity where you receive compensation, where employment is affected or where services are expected from a source other than RJL)?

¶ 30 Mr. Tassone's explanation for this, of course, is that he considered the Investment an investment, not a business activity.

## D. CONCLUSION

¶ 31 In the light of the facts and evidence that we have outlined, and for the reasons we have given, we have reached the conclusion that it cannot be said that the knowledge, such as it was, of either of Mr. Tassone's employers, and the circumstances in which it was acquired, can sensibly be considered to satisfy his disclosure obligations or the requirement that his involvement be approved.

¶ 32 We conclude, therefore, that Mr. Tassone's failure to disclose his involvement in the Investment and to

obtain the approval of his employers to it, was a breach of Dealer Member Rule 29.1.

¶ 33 The parties are invited to make submissions to us in writing on or before November 14, 2018, as to the appropriate sanctions to be imposed, if any, in addition to those provided for in our December 26, 2017 Penalty Decision (2017 IIROC 53).

Dated at Vancouver, British Columbia as of this 1st day of November, 2018.

Leon Getz

Barbara Fraser

David Pearson

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