

Re Smith

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Kenneth Edward Smith

2018 IIROC 10

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

Heard: February 23, 2018 in Vancouver, BC
Written Decision: April 6, 2018

Hearing Panel:

The Honourable Thomas R. Braidwood, Q.C. Chair, Richard Thomas and Nigel Potts

Appearances:

Lorne Herlin, Enforcement Counsel

REASONS FOR DECISION

¶ 1 This hearing was commenced pursuant to a Notice of Hearing dated November 23, 2017, wherein the Enforcement Staff of the Investment Industry Regulatory Organization of Canada ("IIROC Staff") made the following allegations:

A. CONTRAVENTIONS ALLEGED

Count 1

Between May 2014 and August 2016, Kenneth Edward Smith (the "Respondent"), engaged in an outside business activity without obtaining the approval of his Dealer Member, contrary to Dealer Member Rules 18.14 and 29.1.

Count 2

In or about February 2016, the Respondent engaged in personal financial dealings with his client, RF, contrary to Dealer Member Rule 43.1.

Count 3

Between June 2013 and November 2014, the Respondent placed off-book investments for his client, RF, without the knowledge or consent of his Dealer Member, contrary to Dealer Member Rule 29.1.

Count 4

In or around June 2015, the Respondent took \$10,000 from a former client CB in order to invest the funds on her behalf, without the knowledge or consent of his Dealer Member, contrary to Dealer Member Rule 29.1.

Count 5

On May 3, 2017, the Respondent failed to cooperate with IIROC Staff who were conducting an investigation, contrary to Rule 8100, section 8104 of the Consolidated Rules.

¶ 2 Mr. Smith refused to be interviewed by IIROC Staff and further despite being properly notified, he has not appeared at these proceedings alleging that he lives in Nanaimo and he cannot afford to attend the hearing which would be for approximately one day here in Vancouver.

¶ 3 Accordingly by unanimous consent, the Hearing Panel decided to proceed with the hearing by reason of it being properly served and Mr. Smith's refusal to attend.

¶ 4 Despite the above-mentioned refusal, Mr. Smith did file a Reply to the allegations. In this Reply, Mr. Smith essentially admitted all of the allegations except for some minor details.

B. FINDING OF FACTS

Overview

¶ 5 In 2014, the Respondent opened a chrome finishing business with others. In 2016, he obtained a \$7,500 loan for the business from his client RF.

¶ 6 In addition, between 2013 and 2014 he placed orders for RF's account at another Dealer Member and in 2015 he took \$10,000 from CB to purportedly invest on her behalf.

¶ 7 The Respondent's Dealer Member was not aware of any of these activities.

¶ 8 In 2017, he failed to attend his IIROC investigatory interview.

Respondent's Registration History

¶ 9 The Respondent first began working in the securities industry in 1999.

¶ 10 From July 2003 to July 2011, he worked as a Registered Representative with First Financial Securities Inc. (First Financial).

¶ 11 From July 2011 to September 2016, he worked as a Registered Representative (Retail) at the Nanaimo, British Columbia business location of Queensbury Securities Inc. (Queensbury).

¶ 12 The Respondent was the only person who worked at the business location.

Unapproved Outside Business Activity

¶ 13 In May 2014, Shine-On Chrome & Graphic Finishes Inc. (Shine-On) was incorporated pursuant to the laws of British Columbia.

¶ 14 At all material times, the Respondent was a director of Shine-On and owned a portion of the company.

¶ 15 TC was also a director of Shine-On and she owned a portion of the company. At all material times, the Respondent was the Registered Representative responsible for TC's investment accounts at Queensbury.

¶ 16 Shine-On purported to be in the business of applying chrome and graphic finishes on automobiles, motorcycles, and other surfaces.

¶ 17 Shine-On was located in the same building as the Respondent's Queensbury business location.

¶ 18 At all material times, the Respondent did not inform Queensbury of his ownership interest in and involvement with Shine-On.

¶ 19 In fact, in his 2014 and 2015 Annual Advisor Updates he indicated that:

- (a) he was not involved in any investment or business partnership with one of his clients; and
- (b) he was not engaged in any business activity other than for which he was licensed through Queensbury.

Undisclosed Personal Financial Dealings - RF

¶ 20 RF is a business manager who lives in Nanaimo. He has known the Respondent since they were both children.

¶ 21 In or around July 2011, RF transferred his investment accounts from First Financial to Queensbury.

¶ 22 The New Client Document for Individual Accounts form which RF completed in order to transfer his investment accounts to Queensbury indicated that he was 64 years old and his:

- (a) annual income was \$90,000;
- (b) estimated net liquid assets were \$400,000; and
- (c) estimated net fixed assets were \$700,000.

¶ 23 At all material times, the Respondent was the Registered Representative responsible for RF's accounts at Queensbury.

¶ 24 The Respondent asked RF if he would be interested in loaning Shine-On money in order to purchase equipment and that in return Shine-On would pay him interest on the loan.

¶ 25 As a result, in February 2016 Shine-On entered into a written agreement with RF (the "Agreement").

¶ 26 Pursuant to the Agreement, RF gave Shine-On \$7,500 and in return Shine-On agreed to pay RF \$1,750 per month for six months (\$10,500 in total). The first payment of \$1,750 was due on April 2, 2016.

¶ 27 The Respondent and another individual signed the Agreement on behalf of Shine-On.

¶ 28 In total, Shine-On paid RF:

- (a) \$1,500 in April 2016; and
- (b) \$1,000 in May 2016.

¶ 29 Shine-On then stopped making payments pursuant to the Agreement. As a result, RF made several attempts to collect the outstanding payments.

¶ 30 To date, Shine-On has not made any additional payments.

¶ 31 In late August 2016, RF informed Queensbury about the Respondent's involvement with Shine-On and the fact that RF had loaned money to Shine-On.

¶ 32 In September 2016, Queensbury terminated the Respondent for cause.

Offbook Transactions - RF

¶ 33 The Respondent and RF agreed that RF would provide the Respondent with funds in order to primarily buy and sell futures on behalf of RF. In return, RF agreed to pay the Respondent a portion of any profits which the trading generated.

¶ 34 The Respondent was not registered to trade futures.

¶ 35 As a result in or around June 2013, the Respondent opened an order execution-only investment account at another Dealer Member in the name of RF (the "RF Account").

¶ 36 Between June 2013 and May 2014, RF deposited \$36,100 into the RF Account as follows:

- (a) \$50 on June 21, 2013;
- (b) \$50 on June 25, 2013;
- (c) \$15,000 on June 27, 2013;
- (d) \$14,000 on January 30, 2014; and
- (e) \$7,000 on May 29, 2014.

¶ 37 Unbeknownst to Queensbury, between June 2013 and November 2014, the Respondent placed orders

for the RF Account. The Respondent did not consult with RF before placing any of these orders.

¶ 38 No funds were withdrawn from the RF Account until RF closed the RF Account in November 2015. By that time, the value of the holdings in the account had diminished to approximately \$1,074.

CB Gives the Respondent \$10,000 to Invest on Her Behalf

¶ 39 At times, the Respondent was also licensed to sell insurance products.

¶ 40 CB had been one of the Respondent's insurance clients.

¶ 41 The Respondent approached CB about day trading on her behalf. He informed CB that he could make her \$10 a day by trading futures.

¶ 42 CB assumed that her funds would be invested in an account at Queensbury.

¶ 43 In June 2015, CB agreed and she gave the Respondent \$10,000 to invest on her behalf.

¶ 44 Pursuant to the Respondent's instructions, CB made her cheque for \$10,000 payable to BC1009062.

¶ 45 10090662 B.C. LTD. (Incorporation Number: BC1009062) is a company that was incorporated pursuant to the laws of British Columbia. The Respondent is the sole director of 10090662 B.C. LTD.

¶ 46 The Respondent provided CB with account statements dated March 31, 2016, June 2016, August 19, 2016, December 1, 2016, January 31, 2017, and March 1, 2017 which each indicated that CB's investment had increased in value.

¶ 47 In particular, the March 1, 2017 statement indicated that her investment was worth \$13,764.

¶ 48 In January 2017, CB asked the Respondent to return her funds, but he claimed that in December 2016 he had invested the funds in a one year locked-in investment.

¶ 49 In May 2017, CB contacted Queensbury to complain about the Respondent's conduct and she learned that she did not have an account with Queensbury.

Failure To Attend IIROC Interview

¶ 50 By way of a January 6, 2017 letter which was delivered to the Respondent on January 13, 2017, IIROC Staff advised the Respondent that it had begun an investigation into his conduct (the "Investigation").

¶ 51 By way of a February 16, 2017 voice mail message and email, IIROC Staff asked the Respondent to contact IIROC Staff to discuss the January 6, 2017 letter.

¶ 52 By way of a February 23, 2017 voice mail message, IIROC Staff asked the Respondent to contact IIROC Staff.

¶ 53 Later on February 23, 2017, IIROC Staff and the Respondent spoke by telephone. During the telephone conversation, IIROC Staff informed the Respondent that IIROC Staff wished to interview him. In response, the Respondent stated "that's not going to happen".

¶ 54 By way of a March 7, 2017 letter, IIROC Staff asked the Respondent to contact IIROC Staff by March 20, 2017 in order to arrange a mutually convenient time for the interview.

¶ 55 The Respondent did not respond to the March 7, 2017 letter.

¶ 56 On April 15, 2017, the Respondent was personally served with a letter dated March 29, 2017 which indicated that he was required to attend an interview on May 3, 2017 in order to answer questions regarding the Investigation.

¶ 57 The Respondent did not respond to the March 29, 2017 letter and he failed to attend the interview on May 3, 2017.

¶ 58 By failing to attend the interview, the Respondent failed to cooperate with IIROC Staff's Investigation.

C. CONCLUSION

¶ 59 Based on these findings, the Hearing Panel is of the unanimous view that Counts 1 to 5 inclusive have been proved.

¶ 60 The Hearing Panel is of the unanimous view that this matter should now be adjourned for a date to be set in order to give Mr. Smith an opportunity to make submissions as he may see fit concerning the penalty that should flow from these findings.

Dated at Vancouver, British Columbia, this 6th day of April, 2018.

Thomas R. Braidwood

Richard Thomas

Nigel Potts

Copyright © 2018 Investment Industry Regulatory Organization of Canada. All Rights Reserved.