

Re Weekes et al

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

David Weekes, Matthew Weekes and Ralph Weekes

2020 IIROC 02 R

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

Heard: June 29, August 5, 13, 14, 19 and 28, 2020 via videoconference
Decision: October 29, 2020

Hearing Panel:

John A. Campion (Chair), William Donegan and Cindy Tripp

Appearances:

Sylvia Samuel, Enforcement Counsel

Clarke Tedesco, for David Weekes, Matthew Weekes and Ralph Weekes

David Weekes, Matthew Weekes and Ralph Weekes (present)

DECISION ON REVIEW OF THE REGISTRATION SUBCOMMITTEE DECISION

Part 1 – Introduction

¶ 1 Ralph Weekes (“Ralph”) is an advisor, with a complex regulatory history. He is the father of two boys, David Weekes (“David”) and Matthew Weekes (“Matthew”), who themselves are advisors, with a shorter and less complex history, but a regulatory history nonetheless.

¶ 2 The three Applicants are currently registered through IIROC dealer member Mandeville Private Client Inc. (“Mandeville”). Prior to joining Mandeville in 2019 the three Applicants were registered through Investors Group Financial Services (“IGFS”), a Mutual Fund Dealers Association of Canada (“MFDA”) dealer member. They have applied pursuant to IIROC Consolidated Rules 9209 and 9304 to remove or vary Terms and Conditions placed on their registration by the Registration Subcommittee of the Ontario District Council, on their consent, on June 6, 2019.

¶ 3 IIROC, through their counsel, has stated they will not raise an issue regarding the limitation period of 30 days included in the Consolidated Rules regarding the commencement of this type of proceeding. Pursuant to the Consolidated Rules, this matter is a *de novo* hearing of the issues, with new evidence brought forth by the parties. The Hearing Panel has broad discretion to decide the matter.

¶ 4 The decision to remove or vary the Terms and Conditions is complicated by the fact that David and Matthew continue to work with their father, Ralph, as investment advisors, working as a team with their father and continue to have challenges regarding compliance with dealer and regulatory requirements, particularly with respect to leveraged accounts. Ralph apparently has considerable influence over their clients, having created the business in the first place over many years of work. David and Matthew have become

experienced in the business and, while they exercise some independent relationship with the client base developed by their father, they are not completely free of the influence of their father and operate as a team with Mandeville.

¶ 5 IIROC counsel takes the very strong position that the Terms and Conditions should be maintained for a number of reasons, including their consent to the Terms and Conditions, and other matters related to their past conduct at IGFS and Mandeville, and which conflate the actions of Ralph, David and Matthew as if they were one unit.

¶ 6 Counsel for the Weekes takes the position that his clients consented to the order for Strict Supervision because the Weekes were anxious to move their business from IGFS to Mandeville and were prepared to accept the Terms and Conditions in order to continue their business at Mandeville.. The Weekes take the position that the consent to the Strict Supervision order must be seen in the context of a need to move swiftly to maintain their client base in the move from IGFS to Mandeville. The history leading up to this consent will be reviewed.

¶ 7 The relevant history and events are set out below. Upon these events pivot the outcome of this hearing, whereby the Weekes have been partially successful in their application.

Part 2 – The Facts

¶ 8 In 1992, Ralph joined IGFS as an investment advisor. He built up a substantial business with IGFS and beginning in May 2011 received a number of internal and external regulatory reviews

¶ 9 In that Ralph was employed by IGFS, a mutual fund dealer, Ralph was an Approved Person regulated by the MFDA.

¶ 10 In 2005, as a result of an Acknowledgement and Undertaking with the MFDA, Ralph Weekes was placed under Close Supervision, which continued until his termination from IGFS in 2017.

¶ 11 David joined his father at IGFS in 2009. Matthew joined his father and brother at IGFS in 2011.

¶ 12 On May 17, 2011, Ralph received an MFDA warning letter related to a concern related to leverage on customer accounts, as follows:

- (a) "... Staff learned you personally made monthly loan payments for four of your leveraged clients ...";
- (b) "... given our review and assessment of your conduct in relation to XX account, Enforcement Staff is of the view that there is sufficient evidence to support a finding of a breach of MFDA rules ..."; and
- (c) "... we will maintain a copy of this letter in your file ...".

¶ 13 On January 8, 2012, Ralph received an MFDA warning letter. That letter dealt with a client complaint of unsuitable investment and leverage recommendations going back to 1998 and continuing to 2007, in breach of MFDA Rule 2.2.1.

¶ 14 On June 10, 2014, Ralph received a cautionary letter from MFDA regarding a failure to maintain notes of a DSC fee discussion, in breach of MFDA Rules 2.4.4 and 5.1.

¶ 15 On November 28, 2014, Ralph received an MFDA warning letter alleging a breach of MFDA Rules 2.5.1 and 1.1.2 and claiming that enforcement staff had identified sufficient evidence regarding the alleged breach. The breaches dealt with:

- (a) a violation related to a failure to follow firm policies and procedures regarding necessary advanced approval of leverage; investing \$36,000 without disclosing that the funds were borrowed; and without following the leverage approval procedure; and

(b) trades not being marked as leveraged, and leverage approval procedure not being followed.

¶ 16 Based in part on the compliance issues identified with Ralph's leverage applications, IGFS terminated Ralph without cause on June 26, 2017. IGFS directed that Ralph must depart by the end of the year (2017).

¶ 17 On July 4, 2017, Ralph received a letter from IGFS stating, in part, as follows:

(a) "as you are aware you have been on Close Supervision program since 2005. The Close Supervision status implemented as a result of MFDA agreement and Undertaking signed by you July 5th, 2005 that related to a number of leverage complaints that occurred at the time. Since then you have been subject to 4 MFDA Investigations resulting in warning letters in 2011, 2012, 2014 and a cautionary letter in 2014 as well as a reprimand from Investors Group in 2012 and a warning letter in 2014";

(b) "we conclude you have failed to conduct the necessary due diligence to know your clients, properly assess leverage suitability and you misrepresented client information to the Compliance Department. These misrepresentations of client financial position undermine our internal control processes which are intended to ensure that all leverage recommendations are suitable for clients"; and

(c) "this activity is viewed more seriously in light of fact you have been previously warned...".

¶ 18 On July 17, 2017, due to issues with leverage, IGFS issued a formal reprimand of Ralph and required that he consent to a letter of undertaking imposing a Strict Supervision program. The letter of reprimand outlined specific examples of leverage applications that contained misrepresentation of client financial position leading to inappropriate leverage suitability.

¶ 19 By mid-2018, Ralph's book of business had been fully transferred to David and Matthew at IGFS. The transition had taken the better part of the year due to the large number of clients. IGFS refused to remove the Strict Supervision over David and Mathew once the transfer was complete, despite their attempt to have it removed.

¶ 20 On July 4, 2017, IGFS issued a cautionary letter to David, stating in part as follows:

"after carefully reviewing the matter, we have concluded that you failed to conduct necessary due diligence to know your client, to properly assess leverage suitability and that you have misrepresented client information to Compliance Department ... misrepresentations of client financial position undermine our internal controls for clients".

¶ 21 On July 17, 2017, David and Matthew signed a letter of undertaking for Strict Supervision. David stated that the purpose of the undertaking was for the supervision of the transition of Ralph's book of business to David and Mathew, however this reason was not stated in the letter of undertaking. In an e-mail IG stated, regarding the end date for the strict supervision: "we discussed a time limit of no later than March 21, 2018". In spite of efforts by David and Matthew after March 2018 to end the Strict Supervision it remained in effect until David and Mathew were terminated in 2019.

¶ 22 On February 27, 2019, David and Matthew were terminated by IGFS for cause. The reasons given by IGFS in the Notice of Termination included alleged stealth advising, and the collection and use of pre-signed forms. The evidence of Matthew Weekes was that he and his brother requested that IGFS provide particulars of the allegations made in the Notice of Termination, and IGFS provided no response. There is no evidence on the record in this hearing regarding the particulars of the allegations of stealth advising.

¶ 23 On March 20, 2019, Ralph, Matthew and David applied for registration with IROC.

¶ 24 On April 11, 2019, Mandeville sent letters to the Weekes outlining Terms and Conditions of its sponsorship of Ralph, David and Matthew, which included strict supervision and restrictions on leveraging.

¶ 25 On consent of the Applicants, the matter of Term and Conditions on their registration came before the Registration Subcommittee, and on June 6, 2019, the decision was made to grant their registration request subject to the Terms and Conditions, summarized as follows. Having consented, the Applicants chose to forgo their opportunity to be heard pursuant to Rule 9203 of the Consolidated Rules. The Terms and Conditions imposed mirrored the sponsorship terms set by Mandeville as follows:

- (a) enhanced strict supervision,
- (b) the Applicants were required to work at Mandeville’s head office, keep files at head office,
- (c) no new leverage,
- (d) follow the Mandeville agency agreement,
- (e) Mandeville must file enhanced monthly Strict Supervision reports within ten days of month end, and,
- (f) the terms were to be in place for two years, noting that IIROC had a right to amend the terms.

¶ 26 On June 5, 2019, Ralph, David and Matthew signed an Acknowledgement and Consent agreeing to the Terms and Conditions imposed by the Registration Subcommittee.

¶ 27 The reasons given by the Registration Subcommittee for their decision were related to the Applicants past conduct at IGFS, including the Notice of Termination filed by IGFS.

¶ 28 Shortly after registration with IIROC, the MFDA launched an investigation into David and Matthew regarding allegations of stealth advising and pre-signed forms.

¶ 29 On October 9, 2019, the MFDA closed its investigation into David and Matthew with a cautionary letter. MFDA staff was of the view that sufficient evidence existed showing a breach of MFDA Rules 2.1.1, 2.5.1 and 1.1.2. The cautionary letters noted violations in relation to obtaining of pre-signed forms. But there was no finding respecting stealth advising. The MFDA subsequently confirmed by e-mail to David Weekes that they would not be conducting any further investigation or initiating formal or informal disciplinary action regarding stealth advising. The MFDA decided to not conduct formal disciplinary proceedings regarding the pre-signed forms, given the minor nature of the breaches. It was indicated by the MFDA that the cautionary letter may be considered in future formal disciplinary proceedings and copied the letter to the Ontario Securities Commission (“OSC”).

¶ 30 On December 10, 2019, Mandeville Compliance sent a letter to the Applicants regarding deficiencies in Leverage Review Worksheets they had submitted to Mandeville. In the letter and an attached appendix numerous deficiencies regarding the application of Mandeville’s leveraging policies and procedures were identified. The letter stated in part, as follows:

- (a) “we are sending this letter to you jointly as you operate your practice as a team and your accounts are held under a joint representative code”;
- (b) the IIROC Terms and Conditions were referenced: “as you know as a condition of your registration, terms and conditions were imposed ... which included ... enhanced Monthly Supervision Reports as prescribed by IIROC”;
- (c) with reference to April 16th and August 3rd training that specifically included training regarding Mandeville leverage policies and procedures, your supervisor and the Director of Compliance “spent significant time with you and your team in your Branch Office going over your team’s leverage submissions and providing guidance”, and further stating that “notwithstanding the above, Leverage Review Worksheets submitted by you to the Mandeville Compliance Department have contained inaccuracies and unsubstantiated information”. A chart in

Appendix “A” was attached providing numerous examples, and;

- (d) Mandeville went on to say, “we do note that in each case, the leverage was ultimately approved following verification of requisite information” and that the behavior did not appear to have been submitted for purpose of having leverage approved where it would not have been”.

¶ 31 On December 20, 2019, David e-mailed IIROC Staff seeking removal of the Terms and Conditions. David confirmed under cross-examination that Mandeville had not approved the sending of the e-mail, but David testified that it was within his personal rights to do so.

¶ 32 On October 11, 2019, the MFDA launched an investigation of Ralph related to a client complaint to IGFS. On January 21, 2020, the MFDA completed its investigation into Ralph regarding the IGFS client complaint, with the following: “we determined that we will not be taking any further action in respect of this matter and are closing our file”.

¶ 33 On June 2, 2020, Mandeville issued a warning memorandum to the Applicants regarding the failure to submit four mutual fund trades prior to the 4 p.m. deadline for submitting trade orders received earlier in the same day.

¶ 34 On June 2, 2020, Mandeville issued a second warning memorandum to the Applicants regarding unfunded debit balances relating to RRIF and SWP account payments.

¶ 35 On June 3, 2020, David signed his affidavit in this proceeding, stating in paragraph 36 as follows: the “Weekes Team has not received any client complaints or been the subject of any internal or external discipline since (registration)”. In cross-examination, David agreed that the statement was inaccurate.

¶ 36 On June 11, 2020, the COO of Mandeville sent a letter to IIROC supporting the Weekes’ application, stating as follows:

Reiterating that they had signed Weekes’ conduct letters in April 2019 “in part due to IG’s concerns relating to ...”. As a result, the UDP of Mandeville “... supports removal of terms and conditions ...” and “... will adjust terms and conditions imposed on Weeks [sic] to match any amended terms that IIROC ... determines appropriate”.

Part 3 – The Analysis

Introduction

¶ 37 There are two issues which arise and require analysis having regard to the application of Ralph, David and Matthew Weekes to IIROC. The first issue arises because IIROC counsel has raised an important issue of the binding effect of a consent to the existing Strict Supervision and resulting Terms and Conditions. The question is: Does the consent prohibit Ralph, David and Matthew from applying to amend the Terms and Conditions, including Strict Supervision? The second issue is what are the appropriate Terms and Conditions for Ralph, David and Matthew, either as a collective of three or individually.

¶ 38 The Panel has concluded that the consent in the circumstances of this case does not prohibit Ralph, David and Matthew from making this application. This will be discussed below under Section (a).

¶ 39 The Panel has concluded that Ralph, David and Matthew should be released from Strict Supervision on the basis that the more appropriate form of supervision on the facts of this case would be enhanced Close Supervision, which includes restrictions on leveraging. These issues will be discussed under Section (b) and under Part 4 where the Panel renders its decision.

Section (a) – Impact of the Consent to Strict Supervision

¶ 40 This application was brought pursuant to Rule 9304 as a review proceeding.

¶ 41 IIROC takes the position that the Applicants consented to the imposition of the Terms and Conditions on their registration, including Strict Supervision as set out above, and that in these circumstances the Panel should not review the consent decision of the Registration Subcommittee. The Panel wishes to support the concept that a consent to an order is a very serious matter that cannot be reviewed, except in exceptional circumstances. On the facts of this case, those exceptional circumstances apply here. Ralph, David and Matthew explained the rationale lying behind their consent to the Terms and Conditions on their registration. As a matter of business efficacy, the three Weekes did not believe that they had the luxury of time in obtaining registration and that without a consent they might lose a substantial portion of their client base. It is fair to say that this factor alone would not be sufficient to grant the application of the Weekes, but it is combined with other evidence indicating that the Terms and Conditions can be modified.

¶ 42 There is a second and important distinction to be made, namely that this review proceeding is a hearing *de novo* under Rule 9304. As a result, the Hearing Panel is entitled to receive new evidence and reconsider the original decision accordingly. Under Rule 9304, the Panel has broad discretion to hear the evidence, and make their decision anew. That does not vitiate the consent, but it does allow reconsideration.

¶ 43 Put differently, in the face of Rule 9304, the consent does not represent a prohibition preventing the Panel from reconsidering the earlier finding. In our view, the earlier finding deserves great respect and authority. On the other hand, it is not binding. We only permit a change in the terms of the original order because of the new evidence provided to us.

¶ 44 As a result of the above, the Panel holds that the consent does not operate to enjoin a full hearing and reconsideration of the imposition of the Terms and Conditions on the three Weekes.

Section (b) – The Appropriate Terms and Conditions

¶ 45 The Panel has reviewed decisions made under Rule 9204 by the Registration Subcommittee of the Ontario District Counsel where it considered terms and conditions that might be imposed on various applicants. The Panel finds that Terms and Conditions are imposed where they are “appropriate”. It is against this standard that the Panel has reviewed the evidence and deliberated whether it would affirm, quash or vary the Order of the Registration Subcommittee under review in this hearing.

¶ 46 The “notion of appropriate” requires that the Panel consider the evidence available to the Registration Subcommittee (and, in particular in this case, the consent) and the new evidence which may assist this Panel in reaching its conclusion on the new evidence having regard to the material presented in the prior hearing.

¶ 47 Having considered the consent and the new evidence, this Panel has made its decision.

¶ 48 The Panel has determined that there will be no distinction among Ralph, David and Matthew regarding the Terms and Conditions that this Panel directs shall remain extant. The Panel had considered whether the reduced role of Ralph in guiding the portfolio for his clients and those of his sons would lead to a different set of Terms and Conditions for Ralph than for David and Matthew. Indeed, there is evidence which would indicate that the three might be treated separately as to the appropriate Terms and Conditions to be imposed on them in their future business.

¶ 49 The Panel concluded that Ralph remains a significant force in the portfolio and among the clients that are served by Ralph, David and Matthew. The Panel reviewed the concerns about each of the three advisors, and concluded that the inter-relationship among the three Weekes was sufficiently strong with the client base to require that the Terms and Conditions for all three should remain identical.

¶ 50 In considering the nature of the Terms and Conditions that should be imposed upon all three Weekes, the Panel considered evidence or lack thereof of past conduct, including: (a) stealth-advising; (b) obtaining pre-signed forms; and (c) various issues with leveraging suitability.

¶ 51 The Panel considers stealth-advising a serious matter. In this case, there was no reliable evidence

produced by IIROC or any other person to support the allegation that the Weekes were involved with stealth-advising. Had such evidence been reliably produced, the result in this review hearing may well have been different.

¶ 52 The issue of pre-signed forms is more nuanced. This is an unacceptable practice in the industry, and rightly so. On the other hand, there are gradations of conduct regarding pre-signed forms. They may exist, but the question is “were they used?”. It is the latter question that gives rise to a more serious consideration. On the facts of this case, none of the pre-signed forms were used in any transaction.

¶ 53 Leveraging suitability is itself a very serious concern, both generally and on the facts of this case. It is the Panel’s view that leveraging suitability remains a challenge for the Applicants. The evidence indicates that the three Weekes have pushed the limits of leveraging suitability against the policy of the firms in which they were members and contrary to the best interests of their clients. Absent the monitoring by Mandeville of leveraging suitability, this issue could have prevented the Panel from coming to the conclusion which it has reached.

¶ 54 Leveraging suitability is rigorously monitored by the Weekes’ employer, Mandeville. Mandeville has a strict leveraging suitability policy and a mandatory pre-approval process. On the evidence led before the Panel, Mandeville gave testimony concerning the leveraging and decided that the leveraging incidents were not egregious but were careless. This is a subtle distinction. The concern leads to an aspect of the Panel’s decision, namely that the Weekes will continue to have restrictions on leveraging as hereinafter indicated.

¶ 55 The Panel considered the fact that Mandeville recently issued discipline memos to the Weekes regarding delayed trade submissions and account debit positions.

¶ 56 Counsel for the Weekes urged the Panel to conclude that none of the conduct referred to in the Mandeville discipline memoranda raised the type of concerns that require the continued imposition of Strict Supervision by this Panel. Counsel argued that Strict Supervision which requires pre-approval of all trades is necessarily protective in nature. He submitted that Strict Supervision ought only to be imposed where there is a concern that the future conduct of the registrants warrants a ‘second look’ at each trade before the trades themselves are executed.

¶ 57 The Panel accepts the submissions made on behalf of the Weekes regarding the imposition of Strict Supervision into the future, subject always to further concerns if the Weekes fail to live up appropriate industry standards regarding trades in other matters.

¶ 58 The Panel agrees that the Terms and Conditions imposed upon Ralph, David and Matthew should be appropriate having regard to the concerns raised in evidence. The Panel concludes that Strict Supervision was not shown to be appropriate under Rule 9204. It is simply too restrictive having regard to the evidence put before this Panel.

¶ 59 IIROC counsel presented a very forceful case. She submitted that past conduct raises integrity concerns that she submitted justified the Terms and Conditions including Strict Supervision. We acknowledge IIROC’s submission but do not find that the evidence put before us conclusively establishes appropriate evidence of misconduct or lack of integrity that justifies the continuance of Strict Supervision.

¶ 60 In conclusion, the Panel holds that on the evidence presented to it that the appropriate Terms and Conditions to be imposed upon the Applicants Ralph, David and Matthew are such that Strict Supervision is not necessary but Close Supervision should be imposed together with an important restriction regarding leveraging activity for at least one year.

¶ 61 The Panel believes that the decision made to release the Applicants from Strict Supervision in favour of a modified Close Supervision is appropriate.

¶ 62 The Panel now turns to the final order.

Part 4 – Order of the Panel

¶ 63 Taking into consideration all of the evidence, including evidence that was not on the record before the Registration Subcommittee, and the above analysis, the Hearing Panel is of the view that it is reasonable and appropriate at this time to vary the Terms and Conditions placed on the registration of the Applicants. We have considered the compliance issues experienced at IGFS, and, at Mandeville since 2019, particularly the issues related to leveraging, and, determined that the Applicants should remain under supervision, but, the more appropriate form of supervision would be enhanced Close Supervision, which includes restrictions on leveraging. We would like to emphasize that we have had the benefit of new evidence regarding the order that the Weekes be placed under Strict Supervision. This was the decision of the Registration Subcommittee, they did not have the benefit of the new evidence that came before this Panel.

¶ 64 Further to IIROC Consolidated Rules 9209 and 9304 this Hearing Panel orders that the three decisions of the Registration Subcommittee of the Ontario District Council dated June 6, 2019, relating to the three Applicants, be varied, effective as of the date of this decision, as follows:

- i. The Applicants are to be under Close Supervision with the following enhancement: the Applicants must not engage in any new leverage business for clients, including new leveraged accounts or additional leveraged investments in existing leveraged accounts;
- ii. Monthly Enhanced Close Supervision Reports in a form as prescribed by IIROC are to be submitted to the Registration Department of IIROC within ten business days after the end of each relevant reporting month; and
- iii. The above Terms and Conditions will remain in place for a period of at least one year from the date of this decision. After which, any of the Applicants may apply to IIROC to have the Terms and Conditions varied or removed. Upon receiving the request, the matter will be referred to the Registration Subcommittee for consideration.

¶ 65 This decision does not preclude IIROC Staff from making a recommendation in the future to amend or impose additional terms and conditions or recommend revocation or suspension of the individual's approval pursuant to IIROC Rule 9207, or to take any other action permitted under IIROC rules, should circumstances so warrant.

Dated at Toronto, Ontario this 29 day of October, 2020.

John A. Champion

William Donegan

Cindy Tripp

Copyright © 2020 Investment Industry Regulatory Organization of Canada. All Rights Reserved.