



bulletin



Contact:

For distribution to relevant parties within your firm

Andrew Werbowski
Enforcement Counsel
(416) 943-5789
Awerbowski@ida.ca

Ricardo Codina
Enforcement Counsel
(416) 943-6981
Rcodina@ida.ca

BULLETIN #3571

September 5, 2006

Discipline

Motion by Stephen Taub Dismissed

Nature of
the Proceedings

A Hearing Panel of the Investment Dealers Association of Canada (IDA), appointed pursuant to IDA By-law 20, heard a motion by Stephen Taub (Taub), who was formerly an Approved Person with the Toronto office of Research Capital Corporation (Research) and Brant Securities Limited, both members of the IDA.

A Notice of Hearing and Particulars, containing certain allegations against Taub, was issued on October 21, 2005. Taub ceased to be an Approved Person in September 2004 when he resigned from his position at Research.

The Motion was for an order that the IDA does not have jurisdiction to proceed with the allegations against Taub contained in the Notice of Hearing and Particulars on the basis that he is no longer an Approved Person.

Decision of the
Hearing Panel

The Motion was heard on June 25, 2006. By a decision dated August 1, 2006, the Hearing Panel dismissed the Motion. The Hearing Panel accepted IDA Staff's position that the IDA continued to have jurisdiction over Taub pursuant to By-law 20.7, which gives the IDA jurisdiction over former Approved Persons for five years from the date on which they cease to be Approved Persons.

Summary of Findings

In presenting his request for the Motion to the Hearing Panel, Taub relied on the concept of recognition as a link to the statutory jurisdiction of the Ontario Securities Act. Since Section 21.1(3) of the Act refers to members rather than former members, Taub submitted that the IDA would no longer have jurisdiction over him. The Hearing Panel dismissed this argument and Taub's motion on the grounds that the IDA is not a statutory body which exercises a statutory power of decision, but rather an unincorporated entity which derives its authority from a contractual relationship with its members and approved persons. The Hearing Panel also found that the effect of recognition as a self-regulatory organization (SRO) by the Ontario Securities Commission does not confer jurisdiction on the IDA but merely imposes a duty on recognized SROs, like the IDA, to regulate the operations and the conduct of their members. In addition, the Hearing Panel determined that, as matter of contract, Taub should not be permitted to resile from his clear contractual agreement.

In addition to the Motion brought by Taub, the Hearing Panel granted a Preliminary Motion brought by IDA Staff. Staff's position was that the Hearing Panel did not have the jurisdiction to grant the relief requested by Taub on the basis that it could not refuse to apply IDA By-law 20.7 (which confers jurisdiction over former members and registrants). The Hearing Panel accepted Staff's submissions that a Hearing Panel is not a statutory body and any authority to refuse to apply its properly adopted by-laws could come only from those by-laws. The Hearing Panel concluded that there are no by-laws which expressly, or by implication, permit such refusal.

Two other motions brought by IDA Staff at the same time were adjourned. One motion was to compel Taub to deliver a Response to the Notice of Hearing and Particulars and the other motion was to add Taub's former registered assistant as a Respondent in the proceedings.

The Hearing Panel ordered that, subject to any appeal proceedings, the discipline hearing against Taub should continue at a time to be mutually agreed upon.

The Taub decision confirms the decisions recently made by Hearing Panels of the Pacific and Quebec District Councils in the Charles Kamal Dass and Sylvie Brunet matters. In those cases, similar jurisdictional challenges were rejected and Staff was permitted to proceed with its discipline process.

Kenneth A. Nason
Association Secretary