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Discipline

Discipline Penalties Imposed on Vance Elder Violations of By-law 29.1 and Regulation 1300.1(a). One Charge Against Vance Elder Dismissed

Person Disciplined A Hearing Panel appointed pursuant to IDA By-law 20 has imposed discipline penalties on Vance Elder, at all material times an Approved Person with the Glenmore Landing and Esso Plaza branch offices of BMO Nesbitt Burns (Nesbitt) in Calgary, a Member of the Investment Dealers Association (IDA).

By-laws, Regulations, Policies Violated Following a disciplinary hearing held November 7 - 11, 2005; December 19 - 21, 2005; April 10 - 12, 17 and 18, 2006 and June 5 - 8, 2006, in Calgary, Alberta, a Hearing Panel found that Vance Elder (Elder), during the period November 1996 to June 2001, had violated Association By-law 29.1 and Regulation 1300.1(a).

The Hearing Panel concluded that Elder:

- (i) knew, or was willfully blind, to the conduct of his administrative assistant, Catherina Blaker (Blaker), of signing client signatures to his client account documentation, contrary to Bylaw 29.1;
- (ii) knew, or was willfully blind, to the conduct of his administrative assistant, Blaker, of signing his signature to his client account documentation, contrary to Bylaw 29.1; and
- (iii) knew that his administrative assistant, Blaker, was providing investment advice to his clients, contrary to Regulation 1300.1(a) and Bylaw 29.

The Hearing Panel found that the evidence did not support a fourth allegation that Elder engaged in the forgery of clients' signatures to account documentation.

A hearing to assess penalty was held on July 9, 2007.

Penalty Assessed The following penalties have been assessed:

- Fine - \$100,000;
- Twelve (12) month period of close supervision;
- Revocation of Senior Vice President designation for a two (2) year period;
- Rewrite of Conduct & Practices Handbook examination within six (6) months of penalty assessment; and
- Accumulation of an extra twenty-five (25) continuing education credits over a two (2) year period; and
- Costs - \$15,000.

Summary of Facts Mr. Elder was first registered as an investment advisor with a Member of the Association in October 1994. He commenced with Nesbitt in November 1996. The Respondent was interested in building a Group RSP business, acquiring 8 Group RSP clients during the period 1997 to 2001. As of June 2003, the Respondent's business had grown to 1800 client accounts. The Respondent's business type involved significant volumes of client account paperwork and client communications, including such things as monitoring of client accounts, monthly contributions, allocations of contributions for client accounts of various Group RSP accounts, investment decisions for contributed monies, new client accounts, changes to existing client accounts and soliciting new business.

At all material times, Blaker was Elder's administrative assistant. During the first approximately 4 years, Blaker worked primarily, although not exclusively, for Elder. At all material times, Blaker worked closely with Elder and was primarily responsible for managing the administrative (paperwork) of Elder's business. Blaker only became registered as an investment representative in January 2001.

Elder and Blaker engaged in a personal relationship during the period from mid-1999 to mid-June 2001. The personal relationship was

good for approximately the first 6 months but thereafter deteriorated.

In June 2001, Blaker was placed on leave with pay upon the advice of Nesbitt management and following a report by Blaker of harassment by Elder. Evidence of many instances of acrimony involving Elder and Blaker was placed before the Hearing Panel. Investigations were initiated by Nesbitt into the allegations and were concluded with a determination that both Elder and Blaker had engaged in inappropriate use of Nesbitt's email system and that Elder had told Blaker if she left the personal relationship she would have to find a new job. Nesbitt determined that both Elder and Blaker would receive a Discipline Letter and Elder would also attend Harassment Awareness Training. Blaker received and accepted the Discipline letter. Elder refused to accept the Discipline letter, but attended Harassment Awareness Training.

On September 7, 2001, the Association received a Uniform Termination Notice for Blaker, which set-out that Blaker had been terminated for cause due to a finding that she had forged two client signatures to account documentation. The suspected signature forgeries were brought to the attention of Nesbitt management by Elder and/or a temporary assistant during the period of Blaker's paid leave of absence.

In August 2001, at a meeting at Nesbitt's Esso Plaza offices, Blaker denied involvement with the forgeries. On September 5, 2001, Blaker was again summoned to Nesbitt's Esso Plaza offices, at which time she was terminated for the forgeries of the client signatures. During this meeting, Blaker indicated that Elder should also be looked at for the same conduct.

The Hearing Panel noted in its decision that the Association's case was "principally based" on the testimony of Blaker and that Blaker's credibility was thus "key to the determination of the Panel". The Hearing Panel was required to assess the credibility of both Elder and Blaker when determining whether the allegations had been made out against the Respondent. Blaker testified that Elder was at all times aware of her conduct.

In particular, Blaker testified that during the course of working as the administrative assistant to Elder, she had been directed by him to sign his signature and client signatures on client account documentation, in circumstances where it was convenient and necessary to have the client account documentation completed. Blaker testified she was led to believe that it was an accepted practice in the industry to sign clients' and Elder's signature in the circumstances as stated. Further, Blaker testified that she would speak with Elder's clients and provide investment advice, as directed from time-to-time by Elder.

The Respondent denied all allegations.

The Hearing Panel concluded:

“In the end the Panel found the evidence of Blaker to be over all more credible than the evidence of Elder. The inconsistencies in Blaker’s testimony were either not as relevant to the allegation... or could be more easily explained. The testimony of the other witnesses from Glenmore Landing overwhelming gave support to her testimony. Elder’s inconsistencies on the other hand went to the heart of the counts. In addition, the Panel found that many of the interpretations of the evidence it was being asked to make by Elder were not consistent with a common sense reading of the evidence.”

The Hearing Panel heard and accepted a joint recommendation for penalty from the parties. The Hearing Panel stated that a penalty decision should be based on “remedial rather than punitive objectives”. The Hearing Panel considered as relevant factors to the penalty assessment that: (1) no clients had complained or been harmed by the conduct of the Elder or Blaker; (2) Elder had no prior disciplinary history; and (3) Nesbitt confirmed there were no written client complaints against Elder resulting in client settlements. Finally, the Hearing Panel considered as relevant to its penalty decision the Affidavit evidence of the Respondent deposing to significant emotional and financial impact of the disciplinary proceedings.

For further details, please see the Decisions of the Hearing Panel, dated February 15, 2007 and July 9, 2007, also posted to the Association’s website at www.ida.ca

Kenneth A. Nason
Association Secretary