

Re Henderson

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Gordon Murray Henderson

2018 IIROC 02 R

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

Heard: July 4, 2018 in Toronto, Ontario

Decision: July 12, 2018

District Council Panel:

William Donegan, Chair, Frank Laferriere, Bryan Moffitt

Appearances:

Sherry Tabesh-Ndreka, Senior Counsel, Registration

Sindy Jagger, Agent for the Applicant

Gordon Murray Henderson, the Applicant

REASONS FOR DECISION

¶ 1 The Applicant, Gordon Murray Henderson, seeks a review of the decision of the Registration Subcommittee of the Ontario District Council (the Registration Subcommittee) dated June 4, 2018 (the Decision). The request is for an exemption from writing the Canadian Securities Course (“CSC”), Investment Management Techniques (“IMT”) course, and Portfolio Management Techniques (“PMT”) course (the Exemption) in conjunction with an application seeking registration and approval as Portfolio Manager/Registered Representative.

¶ 2 Pursuant to Consolidated Rule 9209, the District Council Panel has reached the following decision in respect to the exemption request:

1. The Decision is Quashed.
2. The Exemption request is approved.

¶ 3 The District Council Panel’s reasons are the following:

Introduction

¶ 4 The Applicant, Gordon Murray Henderson, sought a review of the decision of the Registration Subcommittee of the Ontario District Council (the Registration Subcommittee) dated June 4, 2018 (the Decision). The Decision denied Mr. Henderson’s request for an exemption from writing the Canadian Securities Course (CSC), Investment Management Technique course (IMT) and Portfolio Management Technique course (PMT).

¶ 5 IIROC Registration Staff (Registration Staff) had recommended approving the exemption request (Registration Staff Recommendation).

Background

¶ 6 The Applicant was registered as an Advising Representative from March 22, 2004 to April 4, 2017 with Tailwind Capital Inc., a firm registered as an Investment Fund Manager, as well as an Exempt Market Dealer and Portfolio Manager pursuant to National Instrument 301-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103). The Applicant was seeking registration and approval as Registered Representative providing discretionary portfolio management for managed accounts (RR/PM) with K.J. Harrison & Partners Inc. (KJH).

¶ 7 Absent an exemption, the Applicant would be required to complete the education component of the proficiency requirements set out in IIROC Dealer Member Rule 2900 Part I, A.6, 6.1, applicable to RR/PM:

(a) *Successful completion of*

(i) *The Conduct and Practices Handbook and*

(ii) *Either*

A. *The courses necessary to attain the Canadian Investment Manager Designation, or*

B. *The three levels of the Chartered Financial Analyst programme administered by the CSA Institute;*

¶ 8 The Applicant completed the Conduct and Practices Handbook course on September 15, 2017. The Applicant has not successfully completed either of the education requirements set out in (ii) of IIROC Dealer Member Rule 2900 Part I, A. 6, 6.1(a), as cited above.

¶ 9 The Applicant was approved as an Advising Representative with the Ontario Securities Commission (OSC) from 2004 to 2017, and, during that time managed on a discretionary basis for more than three years aggregate assets exceeding \$5,000,000. As a result, the Applicant met the following experience component of the proficiency requirements set out in IIROC Dealer Member Rule 2900 Part I, A.6, 6.1(b) applicable to RR/PM:

(ii) *Of at least two years ending not more than three years prior to the date of application as a registered advisor under Canadian securities legislation managing on a discretionary basis at least \$5,000,000 in aggregate assets.*

¶ 10 The Applicant sought an exemption, from writing the CSC, IMT, and PMT, a stream of courses required for the CIM designation, in conjunction with his pending application for registration and approval as a RR/PM.

Application to the Registration Subcommittee

¶ 11 On May 4, 2018, Registration Staff recommended to the Registration Subcommittee that it approve the exemption on the basis that Registration Staff found the Applicant's extensive experience to be an acceptable alternative to the required proficiency.

¶ 12 On May 7, 2018, the Registration Subcommittee emailed Registration Staff and KJH for clarification:

"Mr. Henderson has not been registered in the capacity of PM with any of the firms that he has worked for and has also not completed the requisite course exams to qualify. We would like to understand how his experience and training would translate into the courses (areas covered within the courses) that are considered to be essential proficiencies as we do not feel that the submission we received reflects this. We would like to see a comparison of the subjects and materials to his actual experience in order to gauge this request. We request that the applicant please provide further information if this is not already contained in the IIROC files."

¶ 13 On May 8, 2018 IIROC Staff replied to the Registration Subcommittee as follows:

"Mr. Henderson was a Portfolio Manager (individual CSA registration category of Advising Representative (AR)) with Tailwind Capital Inc. from March 2004 to April 2017. This is noted in page 2 of the Staff Submission (heading: Work/Industry experience) as well as in paragraphs 7 and 13 of the Staff Submission (heading: Details of recommendation).

As noted in the submission, the general rule is that a Registered Representative providing discretionary portfolio management for managed accounts (PM activity) must meet the applicable education and experience requirements set out in IIROC Dealer Member Rule 2900 A 6.1. Mr. Henderson has over 13 years of experience registered as an AR and meets the experience requirements. He has requested a proficiency exemption from part of the education requirement (IMT, PMT, CSC being the required courses to attain CIM); he has completed the CPH.

When considering an application for exemption from an education requirement, we look at the individuals' experience (Relevant Investment Management Experience) and education in totality. In accordance with our normal practice, applicants who were registered as an AR migrating to the IIROC platform are presumed to have met RIME as long as the applicant has been actively using the registration. Here Mr. Henderson has been actively using his registration.

Considering the totality of Mr. Henderson's experience as an AR and the fact that he was previously exempted by the OSC from the applicable CSA education component (which is also CIM designation), Staff recommended in Paragraph 19 of the submission that the exemption from writing the CSC, IMT and PMT be approved. As a matter of practice, for PM activity related exemptions, we do not conduct a comparative analysis of the courses."

¶ 14 On June 4, 2018, the Registration Subcommittee denied the Applicant's exemption from writing the CSC, IMT, and PMT. The reason for the Decision was that the details of his experience did not demonstrate how he gained knowledge and experience in each topic of the relevant courses.

Analysis

¶ 15 The Panel is satisfied that it has the authority to, where appropriate, substitute its own decision for that of the Registration Subcommittee.

¶ 16 The Panel also notes that there was a joint submission in this matter.

¶ 17 The Panel is satisfied that the relevant and applicable test involves consideration of all the Applicant's Relevant Investment Management Experience (RIME) and education. We understand the concerns of the Registration Subcommittee respecting relationship of the Applicant's experience and education to the specific content of the courses from which exemptions were sought. However, we are satisfied that the Applicant's RIME and past education are sufficient to support the exemption request. The Panel specifically relies on the evidence, as outlined in detail in the IIROC Staff Submission to the Registration Subcommittee (Exhibit 1, pp. 12-34), and, in particular:

- The applicant's extensive educational qualifications
- The Applicant's past registration with the OSC and particularly his registration in the capacity, most recently, as an Advising Representative
- The Applicant's experience from 2003 to 2017 as the sole Advising Representative at Tailwind Capital Inc., with responsibility for all investment decisions related to the Tailwind Fund L.P.

Dated at Toronto, Ontario, this 12 day of July, 2018.

William Donegan

Frank Laferriere

Bryan Moffitt