

Re Levine

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Michael Hiram Levine

2018 IIROC 01 R

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

Heard: February 26, 2018 in Toronto, Ontario

Decision: February 26, 2018

Written Decision: March 15, 2018

Hearing Panel:

Julia Dublin, Chair, Neil Murphy and F. Michael Walsh

Appearances:

Rob DelFrate, Senior Enforcement Counsel

April Engelberg, Enforcement Counsel

Michal Hiram Levine, present

REASONS FOR DECISION

¶ 1 Mr. Levine sought a review of a decision of the Registration Subcommittee of IIROC's Ontario District Council ("Registration Subcommittee") imposing special terms and conditions in approving a change of his IIROC registration category from Investment Representative to Registered Representative. The terms and conditions require that he pass the Wealth Management Essentials Course ("WME") within 12 months of the new registration. Mr. Levine requested a 30-month period.

Standard of Review

¶ 2 This was the first Regulatory Review Hearing under Rule 8430 "Regulatory Review Hearings" and Rule 8403 "General Principles" of the new consolidated IIROC Rules. Mr. Levine previously exercised his right to be heard by the Registration Subcommittee under IIROC Rule 9209 in respect of its decision to impose terms and conditions on his registration under IIROC Rule 9204 (3). He subsequently exercised his right to a review of that decision by a hearing panel under IIROC Rule 9304. This Panel is authorised to affirm, quash, vary or remake the original decision or remove terms and conditions.

Facts

¶ 3 Mr. Levine is a graduate of the University of Western Ontario. He passed the Canadian Securities Course in 2009 and the Conduct and Practices Handbook Course in 2010. In 2010 Mr. Levine was employed as a Registered Representative with IIROC member firm BMO Nesbit Burns. The Registered Representative category required him also to complete the Wealth Management Essentials course (WME) within 30 months of initial registration, i.e. by June 13, 2013. Despite a prep course at George Brown College, Mr. Levine struggled with the WME material. He enrolled in the WME on March 6, 2013, leaving himself three months to complete it.

¶ 4 On March 19, 2013, Mr. Levine was buried in an avalanche while skiing with friends in the Rockies. Unconscious, he suffered from several minutes of oxygen deprivation while being dug out of the snow and revived by his friends. He has been in the process of recovery and rehabilitation from the effects of this accident ever since, experiencing cognitive and memory complaints, fatigue and headaches. Mr Levine’s father confirmed this at the hearing. Mr. Levine has been diagnosed with anoxic brain injury. He provided written confirmation from various medical practitioners who have treated him since the accident that his ability to sustain attention, absorb information and respond in an exam situation has been impaired. For instance, he finds multiple-choice questions difficult. Dr. Paul Comper, a clinical psychologist specialising in rehabilitation and clinical neuropsychology who has treated Mr. Levine since 2014, confirmed in a letter dated February 17, 2018 that Mr. Levine has recovered considerably but still requires more time to complete demanding tasks requiring concentration than would have been the case before his injury.

¶ 5 After the accident, in June 2014, IIROC granted Mr. Levine a hardship exemption from the WME exam to June 13 2014. Despite Mr. Levine taking practice courses, his two attempts to pass the WME in 2014 were unsuccessful. As he was unable to pass the WME exam, IIROC suspended his registration in June 2104. He resigned from BMO Nesbit Burns who terminated his employment on August 28, 2014.

¶ 6 After 31 months out of the industry, on February 28, 2017 Mr. Levine started employment as an approved person with IIROC member firm Manulife Securities Inc. (“Manulife”) in the category of Investment Representative. On September 29, 2017, Manulife sought to upgrade Mr. Levine’s registration to the category of Registered Representative. Under IIROC Rule 2900, Part 1, A.3 (b) this would, as before, require passing the WME within 30 months of registration. IIROC staff recommended that terms and conditions be imposed reducing this period to 12 months. Mr. Levine exercised his right to be heard by the Registration Subcommittee of the Ontario District Counsel asking that the condition not be imposed. On November 2, 2017, the Registration Subcommittee denied the application and imposed the 12-month term. Mr. Levine sought a review by this Panel.

¶ 7 Mr. Levine provided the Panel with additional relevant information at the hearing. We learned that his branch engages exclusively in the sale of mutual funds. Under IIROC Rule 2900 Part 1 A. 3 (b), a Registered Representative whose activities are limited to the sale of mutual funds need not pass the WME at all. However, Mr. Levine’s employer insists that all the Registered Representatives be WME qualified. Mr. Levine will be working solely under the supervision of a senior broker in a Manulife branch office with about 30 other approved persons. He will not be preparing portfolios or financial plans for clients or making individual trading recommendations. Mr. Levine stated that he is actively working with a coach to retrain his brain prior to studying for the WME. He will be studying the WME material along with his immediate supervisor who is also upgrading his registration.

Analysis

¶ 8 The issue here was whether M. Levine should

- (a) be treated as coming in with a clean slate as a new Registered Representative, in which case he would be automatically afforded 30 months to pass the WME, or
- (b) have his past registration history applied to his current situation, recognising that he has previously been given a hardship extension for the WME course and was suspended for failing to meet that deadline.

¶ 9 There is no doubt that it is in the public interest to ensure that IIROC approved persons who deal with the public are competent¹. IIROC has designed the proficiency rules to capture and test the educational attainments necessary to undertake various levels of trading and advising activity. These should be respected by registrants. Exemptions should be rare, should not be granted lightly and should preserve the public interest in proficient registrants.

¹ See for example, *Michalik (Re)*, 2007 LNONOSC 538 at para 58.

¶ 10 The Manager of IIROC's Registration Department stated by affidavit that the WME is not a full 30-month program, but requires only 110-160 hours of study and two 3-hour multiple-choice exams. The WME must be completed within one year of formal enrolment. The standard 30-month period provided under IIROC rules to complete the WME is thus generous. The terms and conditions imposed by the Registration Subcommittee would be an incentive for Mr. Levine to enrol at once to avoid suspension because he had not passed the WME within 12 months.

¶ 11 However, Mr. Levine suffers from a disability that can be accommodated simply by treating him as a new registrant. Dr. Comper states in his February, 2018 letter:

“I am confident he will be able to complete the examination process; but he might not be able to meet the deadline of successful preparation and completion by November 2018, which is the present requirement.”

Further, Mr. Levine will not as a practical matter be engaging in activities that require the WME under IIROC rules.

Conclusion

¶ 12 We are satisfied that Mr. Levine will not be serving clients at Manulife beyond his demonstrated proficiency while studying for the WME. On balance, we have decided that Mr. Levine should be granted registration in the Registered Representative category without special terms and conditions that is, that he be allowed 30 months from November 2, 2017 to complete the WME.

Dated at Toronto, Ontario, this 15th day of _March, 2018.

Julia Dublin

Neil Murphy

F. Michael Walsh

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