

Re Octagon Capital

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada**

and

Octagon Capital Corporation

2020 IIROC 38

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

Heard: October 21, 2020 in Toronto, Ontario by videoconference
Decision: October 26, 2020

Hearing Panel:

Susan Lang, Chair, Daniel Iggers and Julie Badurina

Appearance:

April Engelberg, Enforcement Counsel

No one appearing for the Trustee of the Estate of Octagon Capital Corporation

DECISION ON THE MOTION FOR EXPULSION

¶ 1 IIROC's Amended Notice of Motion seeks to expel Octagon Capital Corporation (Octagon), the Respondent, from IIROC and to terminate its rights and privileges of IIROC membership. The Motion comes with the Consent of Ernst & Young Inc. in its capacity as Trustee of the Estate of Octagon. For the reasons that follow, the relief requested is granted.

PROCEDURE

¶ 2 We begin with a comment on the procedure followed. This Motion was framed as one that would proceed in writing. When the Panel reviewed and considered the materials filed, including written submissions, it requested the presence of Counsel to answer certain questions, including concerning the content of the draft Order, the sufficiency of the material relied upon, and the application of the Rules from a procedural perspective. Enforcement Counsel, Ms. Engelberg joined the Panel by videoconference and made submissions responding to the Panel's questions. Counsel for the Trustee had apparently already indicated that they would not attend. Ms. Engelberg agreed to send the Trustee's counsel a copy of a new proposed draft order to ensure ongoing consent.

¶ 3 In the end, this motion proceeded by way of oral submissions and not as a motion in writing. A motion

in writing may have been appropriate under rule 8409(2)(iii). However, it is unnecessary to decide this point. It is also unnecessary to decide whether the matter should have proceeded by way of motion as opposed to application under rule 8212 since the material filed would have been substantially the same under either form of proceeding. See *Re All Group Financial Services Inc.* 2018 IIROC 30.

¶ 4 Octagon's membership with IIROC was suspended by a differently constituted panel by Order dated December 3, 2015. The 2015 Order also provided, upon being satisfied with the determination of all client claims, that IIROC could move for termination of Octagon's membership in IIROC. The following day, Octagon was adjudged bankrupt and Ernst & Young Inc. was appointed as Trustee of the Estate of Octagon.

¶ 5 The 2015 Order required Octagon to cease dealing with the public and to comply with certain requirements and restrictions, including the preservation of records. The Affidavit of Ciro Mirabella, Director of Financial and Operations Compliance with IIROC in support of the requested relief attests to the fact that Octagon has complied with the terms of the 2015 Order to the satisfaction of Staff. Mr. Mirabella also attests that IIROC has received no client complaints and that Octagon did not then and does not now hold any client assets. In light of those facts, the Consent of the Trustee of the Estate of Octagon filed and the posting of the Enforcement Notice Hearing on IIROC's website on October 8, 2020, the Panel is prepared to accept for the purposes only of this case that Rule 8203(5) (requiring a hearing to be open to the public) does not pose a bar to the requested relief.

¶ 6 On the merits, Octagon should be expelled from IIROC and its membership in IIROC terminated in accordance with the new draft Order.

CONCLUSION

¶ 7 In accordance with these reasons, an Order will issue in the terms of the draft Order submitted as amended expelling Octagon from IIROC and terminating its rights and privileges of IIROC membership.

Dated at Toronto, Ontario this 26 day of October 2020.

Susan Lang

Daniel Iggers

Julie Badurina

ORDER

THIS MOTION, made by Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") for an Order expelling Octagon Capital Corporation from IIROC and terminating its rights and privileges of membership was heard by videoconference on October 21, 2020 at Toronto, Ontario, pursuant to Sections 8212, 8409, 8426 and 8413 of the Consolidated Enforcement, Examination and Approval Rules of IIROC (the "Consolidated Rules").

ON HEARING the submissions of Enforcement Counsel, including about posting of the Enforcement Notice of Hearing, and on reading the Amended Motion record, including the affidavit of Ciro Mirabella; the Bankruptcy Orders of December 4 and 11, 2015; the Consent of the Trustee of the Estate of Octagon Capital Corporation; and the written submissions of Enforcement Counsel,

THIS HEARING PANEL ORDERS that:

1. Pursuant to Section 8212(4)(v) of the Consolidated Rules, Octagon Capital Corporation shall be and hereby is expelled from IIROC effective immediately.
2. Pursuant to Section 8212(4)(v) of the Consolidated Rules, Octagon Capital Corporation's rights and privileges of IIROC membership shall be and hereby are terminated effective immediately.

DATED at Toronto, Ontario, this 26 day of O, 2020.

Original Executed by:

"Susan Lang"

Chair

"Julie Badurina"

Panel Member

"Daniel Iggers"

Panel Member

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