

Re Brodie

IN THE MATTER OF:

**The By-Laws and Regulations of the Investment Dealers Association
of Canada**

and

**The Dealer Member Rules of the
Investment Industry Regulatory Organization of Canada (IIROC)**

and

John Edward Brodie

2013 IIROC 39

Investment Industry Regulatory Organization of Canada
Hearing Panel (Nova Scotia District)

Heard: June 18, 2013
Decision: July 5, 2013

Hearing Panel:

Richard Bird, Q.C.(Chair), Mr. Bruce Walker and Mr. John Chappell

Appearances:

Ms. Kathryn Andrews, Enforcement Counsel, Investment Industry Regulatory Organization of Canada
Mr. Brian Awad, Counsel for the Respondent

PENALTY DECISION

THE ALLEGATIONS

¶ 1 IIROC alleged that the Respondent committed the following contraventions:

- (1) Between 2005 and 2009, the Respondent made investment recommendations that were unsuitable for two clients, contrary to IIROC Dealer Member Rule 1300.1(q) (IDA Regulations 1300.1(q) prior to June 1, 2008).
- (2) Between 2005 and 2009, the Respondent made discretionary trades in the accounts of two clients without first having the accounts approved and accepted as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4 (IDA Regulation 1300.4 prior to June 1, 2008).
- (3) Between May 2008 and June 2009, the Respondent personally compensated two clients for losses in their accounts without the knowledge or approval of his Member firm, contrary to IIROC Dealer Member Rule 29.1 (IDA By-Law 29.1 prior to June 1, 2008).

FINDING OF FACTS

¶ 2 In its decision dated March 22, 2013 the Panel found that IIROC had proven all three contraventions.

SANCTIONS PROPOSED

- ¶ 3 IIROC submitted that the following penalties should be imposed on the Respondent:
- i. an 8 month suspension from registration in any capacity with IIROC;
 - ii. a fine of \$40,000 for count 1, a fine of \$20,000 for count 2, and a fine of \$20,000 for count 3.
 - iii. 12 months strict supervision upon his re-registration with IIROC in any capacity;
 - iv. to rewrite the CPH upon his re-registration with IIROC in any capacity, and;
 - v. costs of \$20,000.

- ¶ 4 The Respondent submitted:
- i. that this case does not justify a suspension (paragraph 44 of Penalty Submissions of the Respondent);
 - ii. fines totaling \$12,500 for all counts (paragraph 46 of Penalty Submissions of the Respondent);
 - iii. that the Panel may order supervision for a reasonable period (Paragraph 42 of the Penalty Submissions of the Respondent)
 - iv. that the Panel may order the re-writing of an appropriate examination within a reasonable period of time. Paragraph 43 of the Penalty Submissions of the Respondent);
 - v. costs of \$7,500.

¶ 5 The Respondent submitted that any sanction imposed must be “proportionate to the gravity of the misconduct.” (Paragraph 6 of the Penalty Submissions of the Respondent). In particular, the Respondent argues that the Respondent’s ability to pay (Paragraph 9) is not nearly as great as in the case of *Re Steinhoff* 2112 IIROC 39. In that case the registrant had a book of \$250 million whereas the Respondent’s share of his book is only \$25 million. In *Steinhoff* the registrant was fined \$100,000 and ordered to pay back commissions of \$6,813.

¶ 6 The Respondent also submitted that cases such as this one receive much more publicity than similar cases in the rest of Canada and that this should be factored into the penalties. The degree to which this submission is valid is unclear.

¶ 7 The Respondent submitted that a penalty imposed on the Respondent to act as a general deterrence to others can be “grossly unfair to the unfortunate registrant who finds himself or herself being made the example. (Paragraph 11 of the Penalty Submissions of the Respondent.)

¶ 8 In *Re Cartaway Resources Corp.* [2004] S.C.J. No.22 at para.60 the Supreme Court of Canada said:

“In my view, nothing inherent in the Commission’s public interest jurisdiction, as it was considered by this Court in *Asbestos*, *supra*, prevents the Commission from considering general deterrence in making an order. To the contrary, it is reasonable to view general deterrence as an appropriate, and perhaps necessary consideration in making orders that are both protective and preventative.”

¶ 9 The panel is cognizant that there must be a balance between the public interest and that of the Respondent.

¶ 10 The Respondent also submitted that the panel should consider other financial “hits” taken by the Respondent as was done in *Re Bush* 2011 IIROC 52. In *Re Bush* the registrant had paid clients nearly \$60,000, paid a fine to his employer of \$30,000, was ordered to pay another fine of \$15,000 and costs of \$5,000 under the Settlement Agreement. The “hits” totaled nearly \$110,000.

¶ 11 We are not of the view that the amount of a payment to a client made contrary to the rules of IIROC should be taken as a reduction in assessing the penalty for breach of the rule. Otherwise, the inference to be

drawn could lead to the conclusion, the larger the payment, the smaller the fine.

¶ 12 As to be expected, the monetary fines imposed in the cases cited to the panel vary significantly. In *Re Gareau* 2011 IIROC 72 the registrant paid client back a total of \$106,000, ordered to pay a fine of \$100,000, disgorge commissions of \$47,383 and pay costs of \$20,000, totaling over \$270,000.

SANCTIONS IMPOSED

¶ 13 We are of the view that the following penalties are appropriate in this case and order that the Respondent:

- a. Be suspended for 6 months from registration in any capacity with IIROC;
- b. Pay a fine of \$20,000 for each of the 3 counts for a total of \$60,000;
- c. Be subject to 12 months strict supervision upon his re-registration with IIROC in any capacity;
- d. Rewrite the CPH upon his re-registration with IIROC in any capacity, and;
- e. Pay costs of \$20,000.

Richard Bird, Q.C. Chair

Bruce Walker, Member

John Chappell, Member

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