

Re Buskell

IN THE MATTER OF:

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

JOHN D.W. BUSKELL

2008 IIROC6

Investment Dealers Association of Canada
Hearing Panel (Alberta District)

Heard: June 3, 2008 in Calgary, ON

Decision: June 3, 2008

(16 paras.)

Hearing Panel:

John D. James, Chair
Martin Davies
William J. Welton

Appearances:

Faye N. Emmanuel, for the Investment Dealers Association of Canada

REASONS FOR DECISION

Introduction

1. This is a disciplinary hearing held pursuant to Bylaw 20.10 of the Investment Dealers Association of Canada arising from a Notice of Hearing issued by the Association to John D.W. Buskell and which Notice is dated April 16, 2008. In the Notice, it is alleged that Buskell committed the following contravention:

“On or about February 12, 2007 to the present date the respondent, at all material times a Registered Representative with Wolverton Securities Ltd., failed to attend and give information in respect of an investigation conducted by the Association’s Enforcement Department and/or failed to otherwise cooperate with the investigation contrary to Association Bylaw 19.5.”
2. The Respondent, Buskell, did not reply to the Notice of Hearing, nor did he attend, either in person or by counsel, at the Hearing.
3. At the Hearing, counsel for the Association also sought an abridgement of time for service of the Notice of Hearing on the Respondent, Buskell, as effective service had only been effected thirty-eight (38) days prior to the Hearing rather than the forty-five (45) days as required pursuant to the Rules of the Association. Based on all of the evidence before the Panel, that application for an abridgement of time was granted and the Hearing proceeded on its merits.

4. As a result of the Respondent Buskell's failure to either serve a Response to the Notice of Hearing in accordance with Rule 7.1 of the Association and his failure to attend the Hearing, the Hearing Panel, pursuant to Rule 7.2(b) of the Rules accepted as proven the facts and violation alleged by the Association in the Notice of Hearing and proceeded to hear submissions on penalties and costs from Association counsel.

Particulars Alleged and Proven

5. The Respondent Buskell was first employed in the securities industry in 1981 as an investment advisor and, between 1981 and 2004, he held employment with approximately thirty different companies in either securities, real estate or banking positions. On July 12, 2004, he was employed by Wolverton Securities Ltd. ("Wolverton") as an investment advisor and a registered representative in training as of that date. On February 25, 2005, the Respondent became a registered representative. His employment was terminated by Wolverton effective February 7, 2007 and the Respondent has not been registered with the Association since that date.
6. Wolverton later filed a Notice of Termination with the Association in respect of the Respondent, effective February 7, 2007, indicating that the Respondent had been dismissed for cause and that there was an unresolved client complaint which alleged personal financial dealings.
7. On February 19, 2007, Wolverton filed a further ComSet Notice with the Association in respect of the Respondent indicating a possible regulatory violation of inappropriate personal financial dealings with a second client.
8. Over the course of the next twelve months, the Association made numerous attempts to contact the Respondent, including four letters (three Registered) to the address listed for him on the National Registration Database. Numerous attempts were also made to contact the Respondent by telephone at the number listed for him on the National Registration Database, but those attempts were unsuccessful. Over the course of time that the Association was attempting to contact the Respondent, he, in fact, contacted Wolverton on several occasions in an attempt to receive documentation (a 2006 T-4 slip) from them. The Respondent refused to provide a telephone number where he could be contacted.
9. During the course of the investigation by the Association, Association Staff discovered that the Respondent may have been involved in further and other outside business activities, inappropriate personal financial dealings, trading outside approved jurisdictions, unsuitable investment recommendations, excessive commission/churning and theft or misrepresentation between 2006 and 2007. Association Staff also determined that the Respondent had not been completely forthcoming or cooperative with Wolverton with respect to the latter's investigative interview with the Respondent prior to his termination.
10. While there was no determination of the exact amounts lost by the two client complainants, we are satisfied that with respect to each, the sum was between \$20,000 and \$25,000. Once client has received and accepted a settlement from Wolverton and the second client, we are advised, is still negotiating with Wolverton with respect to his claim.

Sanctions Sought and Imposed

11. In its submissions to the Hearing Panel, Association Staff sought the following sanctions:
 1. Pursuant to Sections 20.33 and 20.34 of the Association's Bylaws:
 - a. A fine of \$50,000;

- b. A permanent ban on registration in any capacity of the Respondent Buskell; and
 - c. Costs in the amount of \$31,836.13.
12. In support of its position, Association Staff provided a Book of Authorities to the Hearing Panel which included the Association's Sanction Guidelines, a summary of the Association's costs and the following five Decisions of other Association Hearing Panels:
 1. Re: John William Stewart (2005) I.D.A.C.D. No. 23 Bulletin #3443;
 2. Re: Davor Dave Milardovic (2007) I.D.A.C.D. No. 31 Bulletin #3665;
 3. Re: Michael Joseph Puccini (2007) I.D.A.C.D. No. 11 Bulletin #3619;
 4. Re: Stephen Matthew White (2003) I.D.A.C.D. No. 28 Bulletin #3181; and
 5. (2007) I.D.A.C.D. No. 50, File #0799/July/05.
13. With one minor exception, all of the precedents cited supported the sanctions sought by Association Staff. In particular, they all spoke to and supported the general principle that the requirement to cooperate in any Association investigation is fundamental to maintaining an efficient, competitive market environment and to maintaining the integrity of the security system and protect the public interest.
14. The facts put forward by Association Staff and accepted by the Hearing Panel established that the Respondent's failure to cooperate was intentional. His failure to cooperate was complete and its effect was to substantially frustrate the investigation into what we consider were serious allegations of other misconduct. We would reiterate the view expressed in Re: John William Stewart (*supra*) that the seriousness of the alleged impropriety that forms the basis of the investigation which may have been frustrated in whole or in part by the Respondent's failure to cooperate with the investigative process can be considered a serious aggravating factor. That factor is present in this case.
15. We are also mindful that the apparent losses of the two clients exceeded fifty thousand dollars and, to date, the Respondent has not participated in any process meant to address those losses.
16. In the result, we are satisfied that the sanctions sought by Association Staff are appropriate and should be imposed. Therefore, we impose the following sanctions for the infraction of Bylaw 19.5:
 1. A fine of \$50,000.00;
 2. A permanent ban on registration in any capacity of the Respondent; and
 3. Costs in the amount of \$31,836.13.

John D. James, Chair
Martin Davies
William J. Welton

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