

# Re Shep

IN THE MATTER OF:

THE BY-LAWS OF THE  
INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

DAVID FRANCIS SHEP

2009 IIROC 26

Investment Dealers Association of Canada  
Hearing Panel (Ontario District Council)

Heard: May 4, 2009

Decision: May 25, 2009

(12 paras.)

## Hearing Panel:

Honourable John B. Webber, Q.C. (Chair)

David W. Kerr, Member

F. Michael Walsh, Member

## Appearances:

Diana Iannetta, Enforcement Counsel for the Investment Industry Regulatory Organization of Canada

Peter-Paul E. DuVernet, for the Respondent David Francis Shep

---

## REASONS FOR DECISION

---

1. The respondent, David Francis Shep, brought a motion for an order as follows:
  - (1) quashing these proceedings unless or until Taub is reversed or another binding Court decision decides that IIROC has jurisdiction over former registrants;
  - (2) directing IIROC Staff to immediately remove from IIROC's website all references to the proceedings against David Shep and the allegations made therein, other than to report this decision;
  - (3) abridging the time for service and filing of the within motion; and
  - (4) costs of this motion.
2. IIROC (formerly the IDA) brought a cross-motion for an order as follows
  - a) Adjourning these proceedings on a *sine die* basis until the release of the decision of the Ontario Court of Appeal in the *Taub* matter and until any further right of appeal has been exercised or has expired.

- b) In the alternative, a temporary stay of proceedings, on the same basis as the relief sought in (a) above.
3. This matter was set to proceed as a hearing on the merits on September 2, 2008. A motion was brought by IIROC to adjourn the hearing scheduled for that date because of the decision of the Ontario Divisional Court in *Taub v. Investment Dealers Assn. of Canada* which was decided on July 15, 2008. That Court ruled that IIROC does not have jurisdiction over former registrants. The motion heard on the trial date on September 2, 2008 was clearly without prejudice to the respondent. The respondent did not oppose or request an adjournment. Upon being advised of the parties' consent and after hearing submissions by counsel for the parties, this panel ordered that the hearing be adjourned from September 2, 2008 until May 4, 2009 at 10:00 a.m. to be spoken to. As noted above, both IIROC and the respondent brought motions that were returnable on May 4, 2009, which was the return date of the matter in accordance with our earlier order.
4. We are advised by counsel for IIROC that IIROC sought leave to appeal the *Taub* decision. Leave to appeal was granted. The appeal was argued on February 11, 2009. As of May 4, 2009, no decision has been released.
5. Counsel for the respondent advised that on October 6, 2008, a hearing panel of IIROC considered a motion by IIROC to adjourn a hearing date *sine die* and adjourn *sine die* all other fixed dates granted by that hearing panel on June 4, 2008, in the matter of the *IDA and Paul Van Benthem and Anthony Petriccione*. The decision of that panel was as follows:
- (a) It [IIROC] is bound by the *Taub* decision as it now stands and therefore IIROC does not have jurisdiction to continue these proceedings;
  - (b) These proceedings are quashed, unless and until *Taub* is reversed or another binding court decision decides that IIROC has jurisdiction over former registrants;
  - (c) IIROC Staff is directed to immediately remove from IIROC's website all references to the proceedings against these Respondents and the allegations made therein, other than to report this decision; and
  - (d) No costs are awarded in this motion and cross-motion.
6. Counsel for the respondent contends that the decision in *Van Benthem* should be followed, unless or until *Taub* is reversed or another binding court decision decides that IIROC has jurisdiction over former registrants. We are further advised that IIROC Staff has applied for a hearing and review of the *Van Benthem* decision to the Ontario Securities Commission.
7. We are of the view that there are three reasons to refuse the relief sought by the respondent.
- a. First, we note that when *Van Benthem* was argued and released, IIROC Staff had already sought leave to appeal to the Court of Appeal in the *Taub* matter. As of that date in October 2008, leave had not been granted. We are now aware that leave was, in fact, granted.
  - b. Second, it is our view that the decision in *Van Benthem* makes two inconsistent legal determinations. It is our view that the panel in *Van Benthem* has erred in law, in that it purported to quash the IIROC proceeding therein while at the same time provided that IIROC might continue with matters contingent upon certain events. We have difficulty understanding how a matter can be quashed and yet be allowed to continue.
  - c. Third, in the reported decision of the Pacific District hearing panel of the IIROC in *Re Collias* on July 31, 2008, the panel considered the same problem. The hearing panel in *Collias* considered the case of *Charles K. Dass v. Investment Dealers Association of Canada* wherein the British Columbia Securities Commission held that the jurisdiction of the IDA did extend to former members. The *Dass* matter had been appealed to the British Columbia Court of Appeal. The appeal was argued on May 14, 2008 and a decision was pending. The panel in *Collias* issued a

temporary stay until the release of the decision of the British Columbia Court of Appeal in *Dass*. We were advised that *Dass* has now been released by the British Columbia Court of Appeal. That Court upheld the decision of the British Columbia Securities Commission and found that IIROC has jurisdiction over former registrants.

8. It is our view that it would be entirely inappropriate to issue the type of order issued in *Van Benthem* or the order sought here given the fact that the Court of Appeal has not only granted leave but heard the appeal some three months ago.
9. Therefore, the relief sought in sub (1) of the Notice of Motion is denied.
10. We see no basis upon which to make the order directing IIROC's Staff to remove from IIROC's website all references to the proceedings against the respondent and, therefore, that relief is dismissed.
11. The motion of IIROC Staff will be allowed. The matter will be adjourned *sine die* returnable before this panel within 20 days of the release of the decision of the Ontario Court of Appeal in the *Taub* matter.
12. This is not a case for costs.

Dated at Toronto, this 25<sup>th</sup> day of May 2009.

The Honourable John B. Webber, Q.C., Chair  
David W. Kerr, Member  
F. Michael Walsh, Member

*Copyright © 2009 Investment Industry Regulatory Organization of Canada. All Rights Reserved.*