2012 BCSECCOM 237

Dirk Christian Lohrisch

***Securities Act,* RSBC 1996, c. 418**

Hearing

Panel	Brent W. Aitken	Vice Chair
	Kenneth G. Hanna	Commissioner
	Suzanne K. Wiltshire	Commissioner
Date submissions completed	January 18, 2012	
Date of Decision	June 19, 2012	

Appearing

Kristine Mactaggart Wright	For the Executive Director
Ronald N. Pelletier	For Dirk Christian Lohrisch

Decision

I Introduction

¶ 1 This is a hearing under section 161(1) of the *Securities Act*, RSBC 1996, c. 418.

¶ 2 On February 7, 2011 the executive director issued a notice of hearing against Dirk Christian Lohrisch alleging that Lohrisch engaged in conduct contrary to the public interest when, as found by a hearing panel of the Investment Industry Regulatory Organization of Canada (IIROC), he contravened IIROC rules.

¶ 3 The executive director seeks orders prohibiting Lohrisch permanently from

- trading or purchasing securities and exchange contracts,
- acting as, or acting as a director of, any issuer or registrant,
- acting in a management or consultative capacity in connection with activities in the securities market, and
- engaging in investor relations activities.

¶ 4 With the parties' consent, we conducted the hearing in writing and considered the issues of liability and sanction concurrently.

II Background

A History of the IIROC Proceedings

¶ 5 At a hearing on April 20, 2010 an IIROC hearing panel found that Lohrisch:

- in August 2003 submitted to IIROC a Change of Registration form in which he stated that he had completed a required professional financial planning course when he knew that he had in fact failed the course;
- in April 2009 submitted to IIROC a transcript that he had forged to show he had passed the course; and
- in an October 2009 interview, lied to IIROC staff about his completion of the course and his reasons for forging the transcript and in so doing attempted to obstruct IIROC staff's investigation.

¶ 6 Lohrisch appeared at the April 20, 2010 IIROC hearing. He was not represented by counsel and sought an adjournment to retain counsel. Lohrisch told the IIROC hearing panel that he disputed neither the facts nor the contraventions of IIROC rules alleged in the IIROC notice of hearing. He said he wanted to retain counsel primarily to deal with the matter of penalty. The panel refused his application to adjourn.

¶ 7 Lohrisch did not file a response to the IIROC notice of hearing. IIROC staff argued that in those circumstances the IIROC panel was entitled to accept as proven the allegations in the notice of hearing. Lohrisch stated again that he did not dispute the allegations in the IIROC notice of hearing but wanted to seek legal advice solely on the matter of penalty.

¶ 8 After considering the parties' submissions, the IIROC panel accepted as proven the facts and contraventions alleged in the notice of hearing and adjourned the hearing to May 27, 2010 for submissions on penalty, in order to give Lohrisch the opportunity to retain counsel.

¶ 9 Lohrisch appeared at the penalty hearing on May 27, 2010 without counsel and made submissions.

¶ 10 The panel issued its decision that day and issued reasons for its decision dated July 26, 2010 (*Lohrisch* [2010] IIROC No. 31). The panel banned Lohrisch permanently from IIROC approval in all capacities, and ordered him to pay a fine of $40,000 and costs of $27,000.

B The IIROC Hearing Panel's findings

¶ 11 These are the IIROC hearing panel's findings, based on the allegations in the IIROC notice of hearing that the panel accepted as proven as set forth in its July 26, 2010 reasons:

"28 The respondent first became licensed as a Registered Representative in February 2001, and as part of that initial process, he had until August 6, 2003 to complete the Canadian Securities Institute sponsored Professional Financial Planning Course ('PFPC'). There is no question that he knew that his failure to complete this course, within the prescribed time, would result in the immediate withdrawal of approval.

29 The Respondent apparently did not apply himself to the requirements he had to meet. He did not write Exam A of the PFPC until July 23, 2003 and he wrote Exam B of the PFPC on July 20, 2003. He was informed of his failing grades, and there is no question he knew that he did not successfully pass either of the PFPC exams. Notwithstanding that he could have rewritten those exams, he signed and submitted a form to [IIROC], which misrepresented that he had successfully passed the PFPC Courses.

30 Unfortunately, due to a failure of the systems within [IIROC], the Respondent's certification on the F5 form that he had completed the PFPC was accepted, and remained in place until it came to staff's attention in 2009. It is clear that for a period of approximately 6 years the Respondent knew he had misrepresented the facts, namely that he had successfully passed the PFPC exams.

31 We have no doubt that the Respondent was fully aware of his failure to pass, and that he had mislead [*sic*][IIROC] staff, when at all times he had a positive obligation to advise them of the material change in his status; i.e. his failure to pass.

32 When staff finally did discover the true state of affairs, the Respondent compounded matters by causing a forged transcript to be created, which he then submitted to IIROC. He knew that the transcript would be relied upon by staff because staff had requested that he provide verification that he had successfully completed the PFPC.

33 The Respondent printed off his transcript; caused it to be forged; and then submitted it to staff as a genuine document. This is deliberate conduct designed to deceive IIROC staff, and perpetuate his 2003 misrepresentation.

> 34 The Respondent was interviewed by staff on April 9, 2009 [*sic* – the interview was actually on October 7, 2009]. During that interview, he admitted the transcript he had submitted was falsified, but he explained, although he failed the first attempt at the PFPC exams, he re-wrote those exams shortly thereafter and passed them both. He told staff he couldn't find the evidence of his passing PFPC grades, and thus he panicked and had his transcript falsified to represent the 'alleged' true state of affairs, and submitted it.
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> 35 As the interview continued, and staff presented the Respondent with all of the evidence, including the fact there was no evidence of him [*sic*] re-writing the exams let alone receiving passing grades, he admitted he hadn't in fact re-written the PFPC exams. He admitted that he knew that he had failed the PFPC exams, but he had submitted the appropriate forms and allowed both his member firm and staff to believe that he had passed. He did nothing to advise those parties of the true state of affairs.
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> 36 Once again, in the interview of [October 7], 2009, the Respondent's behaviour was egregious. He embarked upon a deliberate course of deception which did not stand up under scrutiny.
>
> 37 At no time during these proceedings has the Respondent expressed any remorse for his transgressions and his conduct since 2003."

¶ 12 The hearing panel found that Lohrisch's conduct was a contravention of IIROC Rules 29.1 and 19.6.

¶ 13 The hearing panel also made these observations about Lohrisch's conduct when it was considering penalty:

> "52 Considering the contraventions that are set out in the three counts in the Notice of Hearing, and the Particulars, a number of matters are significant:
>
> i. Lohrisch's actions were not the result of inadvertence or carelessness, but were purposeful and deliberate;
>
> ii. Lohrisch did not make any attempt to correct the misrepresentation of his examination results;

iii. Because of the failure of the system, Lohrisch was able to succeed in his misrepresentation of his qualifications and remain registered for approximately 6 years;

iv. Misrepresentation of credentials to the regulator is inconsistent with the just and equitable principles of trade in that it is a fundamental tenant [*sic*] of securities regulations in Canada that registrants be educated to an established standard;

v. Forgery is always a serious regulatory matter because it shows that the respondent lacks the honesty required of a professional in the securities industry;

vi. The forgery by Lohrisch in this case is egregious. If IIROC had merely accepted the document and made no further inquiries, he would have again been successful in a misrepresentation. This was not a forgery of convenience, or forgery to protect a client. At all material times Lohrisch knew that he wrote the exams, failed them, and he never attempted to re-write;

vii. The failure of Lohrisch to cooperate, and his lies to Staff to impede the investigation, is serious regulatory misconduct; it subverts [IIROC's] ability to perform its regulatory function;

viii. Lohrisch has expressed no remorse for his misrepresentations, forgery, or lies; conduct which spans a number of years;

ix. The only mitigating factors, in our view, are that Lohrisch has no previous disciplinary history, and there were no client losses or complaints.

. . .

56 In summary, we have concluded that a lifetime ban is appropriate and necessary in this case to protect the securities industry.

. . .

59 Given the need for general deterrence, it is our view that the penalty ordered here will protect the integrity of IIROC's processes and prevent a repetition of conduct of the type set forth here, and support the goals of IIROC's disciplinary processes."

III Issues

¶ 14 The executive director alleges that Lohrisch's misconduct as found by the IIROC hearing panel is conduct contrary to the public interest.

¶ 15 The only evidence the executive director is relying on to support that allegation is the IIROC decision dated July 26, 2010.

¶ 16 Lohrisch entered no evidence in the hearing before us. He argues the following in defence of the allegations in the notice of hearing:

- the Commission does not have the jurisdiction under section 161(6) of the Act to make a "reciprocal order" as sought by the executive director
- the proceedings before the IIROC panel are not admissible in this hearing, because of:
  - the authority established in *British Columbia (Attorney General) v Malik*, 2011 SCR 18;
  - procedural deficiencies in the IIROC hearing leading to the IIROC panel's findings, and deficiencies in those findings; and
  - deficiencies in the IIROC panel's penalty decision.

IV Analysis and Findings

A Section 161(6)

¶ 17 Lohrisch's submissions about section 161(6) are irrelevant. This is a hearing under section 161(1). The executive director is not seeking orders under section 161(6) – the notice of hearing makes no mention of that section.

¶ 18 The reference in the notice of hearing and the executive director's submissions to a "reciprocal order" are merely descriptive. The term has no legal relevance – it appears nowhere in section 161.

B Admissibility of the IIROC decision

¶ 19 Lohrisch says that the prior IIROC proceedings should not be admitted as evidence, citing *Malik.*

¶ 20 *Malik* is not relevant in these circumstances. Its subject matter is the extent to which evidence from prior proceedings can be used in connection with civil proceedings between parties. This is a regulatory hearing held for the purposes of determining whether Lohrisch's conduct was contrary to the public interest and, if so, what sanctions are appropriate.

¶ 21 The Supreme Court of Canada has recognized the complementary roles of securities commissions and self regulatory bodies like IIROC in Canada's system

of securities regulation. In *Pezim v British Columbia (Superintendent of Brokers)* [1994] 2 SCR 557, the Court said (at page 38):

> "It is important to note from the outset that the [British Columbia Securities] Act is regulatory in nature. In fact, it is part of a much larger framework which regulates the securities industry throughout Canada. Its primary goal is the protection of the investor but other goals include capital market efficiency and ensuring public confidence in the system . . .
>
> Within this large framework of securities regulation, there are various government administrative agencies which are responsible for the securities legislation within their respective jurisdictions. The Commission is one such agency. Also within this large framework are self-regulatory organizations which possess the power to admit and discipline members and issuers. . . ."

¶ 22 By these words, the Court recognized that the system of securities regulation in Canada depends upon a cooperative network of securities regulators and self regulatory bodies to ensure the protection of investors and the integrity of our capital markets.

¶ 23 The Commission has recognized IIROC as a self regulatory body under section 24 of the Act. Section 26 requires a recognized self regulatory body "to regulate the operations, standards of practice and business conduct of its members." This includes disciplining members for contraventions of the self regulatory body's rules. As a matter of administrative practice, the Commission relies on IIROC to perform this function and has done so for many years. Over that time, IIROC has developed considerable expertise in dealing with member discipline matters.

¶ 24 However, IIROC's obligation to enforce its rules does not displace the Commission's jurisdiction over IIROC members. It is always open to the executive director to take action directly against an IIROC member should he consider it in the public interest to do so.

¶ 25 An example of that is when the conduct for which IIROC sanctions a member is sufficiently serious that the public interest requires broader orders than what IIROC has the authority to make. IIROC's powers are limited. Apart from its power to impose fines, IIROC can do no more than prohibit members from being approved persons under IIROC rules. The Commission has the power to prohibit a much wider range of activities in order to protect investors and markets.

¶ 26 It is both appropriate and necessary that the Commission rely on a decision made by an IIROC hearing panel when asked to consider whether an IIROC member, as found by that panel, has acted contrary to the public interest.

¶ 27 Indeed, this has now been formally recognized by the Legislature in amendments to section 161(6) made since the notice of hearing was issued in this matter. Section 161(6) empowers the Commission, after giving a person the opportunity to be heard, to make an order against that person under section 161(1) solely on the basis that, among other things, the person is subject to a sanctioning order of a securities regulator. As a result of the amendments, that includes sanctioning orders of a self regulatory body.

¶ 28 Lohrisch says he was not given an opportunity to contest the facts or contraventions alleged in the IIROC notice of hearing, because the IIROC hearing panel accepted the facts and allegations as proven without any consideration of the evidence.

¶ 29 In his submissions, Lohrisch included, and argued that we ought to consider, "the entire evidentiary record which IIROC staff intended to put before the IIROC hearing panel" including the transcript of IIROC's October 2009 interview with Lohrisch. He also wants us to consider the transcript of proceedings before the IIROC hearing panel.

¶ 30 This ignores Lohrisch's two statements in his appearance before the IIROC hearing panel that he did not contest the facts and contraventions alleged in the IIROC notice of hearing. Although Lohrisch sought an adjournment to retain counsel, he made it clear that he wanted to do so only for the purposes of the penalty determination. The panel gave him about a month's adjournment for that purpose.

¶ 31 It was Lohrisch's choice not to contest the allegations in the IIROC notice of hearing. The IIROC hearing panel, having heard what amounted to an admission by Lohrisch of the allegations in the notice of hearing, was entitled to rely on that admission and to accept those allegations as proven without any further review of the evidence.

¶ 32 It is worth noting that this is a hearing under section 161(1), not a hearing and review under section 28. Lohrisch had the right to a review under section 28 but elected not to exercise that right. The issue before us is whether, as alleged by the executive director, Lohrisch acted contrary to the public interest based on his misconduct as found by the IIROC hearing panel.

C Public Interest Considerations

¶ 33 It is well-established that the Commission's authority to make orders under section 161(1) does not depend on a contravention of the Act. The Commission can make orders under section 161(1) solely on a finding of conduct contrary to the public interest.

¶ 34 We find that Lohrisch acted contrary to the public interest. In our opinion, it is in the public interest to make orders under section 161(1).

¶ 35 The factors relevant to sanction are set forth in *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22 (see page 24).

¶ 36 The IIROC hearing panel decision eloquently expressed the relevant factors in paragraph 52 of its decision (quoted above):

- Lohrisch's deliberate and repeated deceptions that resulted in a 6-year-long misrepresentation to his member firm and IIROC about his credentials
- his attempt to mislead IIROC investigators at his interview by telling more lies
- his attempted forgery to show he passed the PFPC exams
- his lack of the honesty required of a registrant
- his lack of remorse

¶ 37 The hearing panel noted as mitigating factors that Lohrisch had no disciplinary history and that there were no client complaints (we would not go so far as to consider that a mitigating factor – the existence of client complaints could be an aggravating factor, but the absence of that does not, in our view, constitute mitigation).

¶ 38 Lohrisch says that the sanctions sought by the executive director would be punitive and excessive, and "are not rationally connected" to Lohrisch's conduct.

¶ 39 Lohrisch left it to the last minute to meet his obligation to pass the PFPC exams. There may be no sin in that but, when he failed the exams, he chose to lie instead of owning up to his predicament. When his past caught up with him, he chose again, not only to lie, but to resort to forgery to cover his tracks. He has yet to express any remorse.

¶ 40 We think the orders proposed by the executive director are appropriate in scope, with two exceptions.

¶ 41 First, the executive director sought a prohibition only against Lohrisch's being a director of an issuer or a registrant. In our opinion, it is appropriate that he be similarly prohibited to act as an officer of those entities. Second, although

Lohrisch did not ask for it, we think it is appropriate to draft the cease trade order to allow him to trade securities for his own account.

¶ 42 The IIROC orders have the effect of permanently prohibiting Lohrisch from a career in the segment of the securities industry regulated by IIROC.

¶ 43 Is it appropriate for us to make permanent orders prohibiting Lohrisch from other involvement in our markets? The executive director did not cite any authorities on point, but in our opinion, the answer is yes.

¶ 44 This is not about Lohrisch's failure to meet his prescribed requirements. It is about what he did after he failed to do so. First, he told his employer and IIROC that he had passed the courses when he had not.

¶ 45 Second, when confronted by IIROC investigators some years later, he did not own up to his misrepresentation and undertake to rewrite and pass the courses. Had he done so, no doubt there would have been disciplinary consequences, but they would likely have been far less severe than what he has suffered at the hands of IIROC and what he is facing here. Instead, he lied again.

¶ 46 Third, when IIROC investigators pressed him for proof, he resorted to forgery.

¶ 47 Forgery is a line that, once crossed, affords little opportunity for retreat. It is cold, hard evidence of an intent to deceive.

¶ 48 In considering appropriate sanctions, we considered the importance of investor confidence to the integrity of our capital markets, including investors' trust of those who participate in the markets. No investor confidence means, ultimately, no markets.

¶ 49 The integrity of registrants is especially important to investor confidence. A registrant who makes a mistake, even a dishonest one, and remedies it, is one thing. A registrant whose dishonesty continues and escalates as the pressure increases is quite another. That evinces a character flaw that is inconsistent with credible participation in the capital markets. As the IIROC panel recognized, honesty is the central value for registrants.

¶ 50 Not only has Lohrisch followed a path of dishonesty, he shows no remorse. How could investors have confidence in a market that would tolerate that misconduct? On what basis could we impose less than permanent sanctions when there is no evidence that he acknowledges that he has done anything wrong?

V Orders

¶ 51 Considering it to be in the public interest, we order:

1. under section 161(1)(b) of the Act, that Lohrisch cease trading in, and is prohibited from purchasing, securities and exchange contracts, permanently; provided, that Lohrisch may trade and purchase securities and exchange contracts for his own account through accounts in his name with a registered dealer, if he provides the dealer with a copy of this decision;

2. under sections 161(1)(d)(i) and (ii), that Lohrisch resign any position he holds as, and is prohibited permanently from becoming or acting as, a director or officer of any issuer or registrant;

3. under section 161(1)(d)(iii), that Lohrisch is permanently prohibited from becoming or acting as a registrant or promoter;

4. under section 161(1)(d)(iv), that Lohrisch is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and

5. under section 161(1)(d)(v), that Lohrisch is permanently prohibited from engaging in investor relations activities.

¶ 52 June 19, 2012

¶ 53 **For the Commission**

Brent W. Aitken
Vice Chair

Kenneth G. Hanna
Commissioner

Suzanne K. Wiltshire
Commissioner