

2009 BCSECCOM 279

Kianosh Rahmani
Investment Industry Regulatory Organization of Canada
(formerly Investment Dealers Association of Canada)

Section 28 of the *Securities Act*, RSBC 1996, c. 418

Hearing and Review

Panel	Brent W. Aitken Bradley Doney Suzanne K. Wiltshire	Vice Chair Commissioner Commissioner
Date of Hearing	April 28, 2009	
Date of Decision	May 26, 2009	
Appearing		
Kianosh Rahmani	For himself	
Barbara G. Lohmann	For the Investment Industry Regulatory Organization of Canada	

Decision

I Introduction

- ¶ 1 This is a hearing and review under section 28 of the *Securities Act*, RSBC 1996, c. 418 of an August 9, 2004 decision of a hearing panel of the Pacific District Council of the Investment Dealers Association of Canada.
- ¶ 2 Since the hearing panel's decision, the IDA has merged with Market Regulation Services Inc. The name of the merged entity is the Investment Industry Regulatory Organization of Canada. We refer to the IDA as IIROC, the acronym for the name of the merged organization.
- ¶ 3 Rahmani is asking us to review the panel's decision permanently prohibiting him from acting in any registered capacity with any IIROC member. IIROC opposes the application.

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II Background

Facts

- ¶ 4 Rahmani first entered the investment industry in 1996. Prior to this matter he had no disciplinary record.
- ¶ 5 On May 4, 2000, Rahmani was charged with an offence under the Criminal Code. He did not report the charge to his employer, nor to IIROC as required by IIROC By-law 18.11. The offence was not related to financial matters or the investment industry, did not involve theft or substance abuse, and did not evidence behaviour that would call into question Rahmani's ability to competently and honestly perform his duties as a registrant.
- ¶ 6 On November 8, 2000, Rahmani's employer filed Rahmani's registration renewal form with IIROC. Rahmani answered "no" to questions on the form about changes to his registration information and, specifically, whether he was subject to a charge or indictment.
- ¶ 7 The instructions on the form included the following statement:
- Offences under such Federal Statutes as the Income Tax Act (Canada) and the Immigration Act (Canada) constitute criminal offences and must be disclosed when answering this question. It should be noted that pleas or findings of guilt for impaired driving are Criminal Code (Canada) matters and must be disclosed.
- ¶ 8 Bold type at the bottom of the form warned, "Any application containing a false statement may result in refusal, suspension or cancellation of any registration."
- ¶ 9 In connection with Rahmani's employment with another dealer, that dealer filed Rahmani's application for registration on February 18, 2002. Rahmani answered "no" to the question, "Are you currently the subject of a charge or indictment under any law of any province, territory, state or country for contraventions, criminal offences"
- ¶ 10 Rahmani was found guilty of the criminal charge in October 2002.

IIROC Proceedings

- ¶ 11 IIROC alleged that Rahmani breached By-laws 18.11 and 29.1.
- ¶ 12 This is the relevant portion of By-law 18.11:

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A registered representative . . . shall report in writing to the Association . . .

Within ten days of . . . any change in the information submitted on . . . the form of application for approval including, without limitation, any required information with respect to criminal . . . proceedings

¶ 13 This is the relevant part of By-law 29.1:

. . . each . . . registered representative . . . shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest

¶ 14 The IIROC panel found that Rahmani breached By-law 18.11 by failing to notify IIROC within 10 days of the laying of the criminal charge and that he breached By-law 29.1 by engaging in business conduct unbecoming or detrimental to the public interest when he submitted applications with false information.

¶ 15 The IIROC panel ordered that Rahmani be permanently prohibited from approval to act in any registered capacity with any IIROC member. The panel also ordered him to pay a fine of \$15,000 and costs of \$15,000.

III Issue

¶ 16 Rahmani is not disputing the IIROC panel's findings and is not seeking a review of the orders for fines and costs. He is asking us to substitute for the permanent ban a suspension of not longer than 5 years on the basis that a permanent ban is not reasonable in the circumstances.

¶ 17 IIROC argues that a permanent ban is reasonable given the panel's findings that Rahmani demonstrated a "callous disregard" in completing the registration renewal and application forms. IIROC also says that the ban is consistent with IIROC's Disciplinary Sanction Guidelines.

IV Discussion and analysis

¶ 18 Under sections 28 and 165(4) of the Act the Commission may review a decision of a self regulatory body like IIROC. The Commission may confirm or vary the decision or make another decision it considers proper.

¶ 19 The Commission's standard for reviewing decisions under section 28 is set out in section 5.9(a) of BC Policy 15-601 as follows:

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5.9(a) The Commission does not provide parties with a second opinion on a matter decided by an SRO. If the decision under review is reasonable and was made in accordance with the law, the evidence, and the public interest, the Commission is generally reluctant to interfere simply because it might have made a different decision in the circumstances. For this reason, generally, the person requesting the review presents a case for having the decision revoked or varied and the SRO responds to that case.

In these circumstances, the Commission generally confirms the decision of the SRO, unless

- the SRO has made an error of law
- the SRO has overlooked material evidence
- new and compelling evidence is presented to the Commission or
- the Commission's view of the public interest is different from the SRO's.

¶ 20 The issue before us is not whether the IROC panel made an error of law, overlooked material evidence or that there is new and compelling evidence. The issue is whether the panel's decision to permanently ban Rahmani is reasonable in the circumstances and consistent with the Commission's view of the public interest.

¶ 21 As stated in BCP 15-601, the Commission is reluctant to interfere in SRO decisions that, among other things, are reasonable. However, if the Commission finds that an SRO decision under review is not reasonable, it will consider whether to confirm or vary the decision, or make another decision it considers proper.

¶ 22 The IROC panel applied section 5.2 of its Disciplinary Sanction Guidelines *Misrepresenting Credentials to Association upon Registration/Transfer*. This is the relevant portion of that section:

The filing with the Association of information with respect to . . . registration which is incomplete or inaccurate so as to be misleading, or . . . the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade, in that it is a fundamental tenet of securities regulation in Canada that registrants be educated to an established standard, and otherwise proficient to serve and protect investors. When a registrant has misrepresented his or her

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credentials to the Association, this amounts to conduct unbecoming, contrary to Association By-law 29.1, and disciplinary sanctions should be imposed.

Any intentional misrepresentation on an application for registration or transfer should be treated severely, and a substantial fine, suspension or permanent prohibition from acting in any capacity should be considered.

- ¶ 23 Although the second paragraph of the section invites consideration of a permanent ban, it has to be read in the context of the section as whole. The section starts by stating that “incomplete or inaccurate” information is unacceptable because “it is a fundamental tenet of securities regulation in Canada that registrants be educated to an established standard, and otherwise proficient to serve and protect investors.” It then comments on the seriousness of misrepresentations about credentials, clearly a reference to the registrant’s education and proficiency. Accordingly, the permanent ban mentioned in the second paragraph of section 5.2 can refer only to misrepresentations about education and proficiency.
- ¶ 24 IIROC did not allege, and the panel did not find, that Rahmani misrepresented his credentials, but IIROC argued that the panel was correct in applying section 5.2 of the Guidelines in determining the appropriate sanction in this case, and in applying the four cases IIROC also cited to us, three of which involved misrepresentation of credentials.
- ¶ 25 In *Brennan* (2004) IDA Bulletin 3281 the respondent twice submitted false certificates evidencing that he had completed courses necessary for his registration. The IIROC panel imposed a 5 year suspension, a fine of \$5,000 and costs of \$7,500. In determining its sanction the panel considered that Brennan had subsequently completed the necessary courses; that there were no allegations of negligence in the handling of client accounts; that he had no prior disciplinary record; and, that he fully cooperated with the investigation.
- ¶ 26 In *Nyren* [2001] I.D.A.C.D No 27 the respondent admitted in a settlement that he submitted false certificates to IIROC, falsely disclosed to the Ontario Securities Commission that he had a university degree, and made misrepresentations to clients about his qualifications. The IIROC panel amended the settlement agreement, with the consent of the parties, adding a conditional three-month suspension. The panel concluded, despite compelling mitigating circumstances, that an appropriate penalty must include a suspension.

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- ¶ 27 In *Trumper* [1999] I.D.A.C.D. No 25 the IIROC panel found that the respondent had on two occasions misrepresented that he had successfully completed required educational courses. He was suspended for 5 years, fined \$15,000 and assessed costs of \$2,000.
- ¶ 28 In *Warden* [1997] I.D.A.C.D. No 14 the respondent failed to report that he had declared personal bankruptcy and obtained an undisclosed loan from a client. The IIROC panel accepted a settlement with sanctions of a fine of \$10,000, the imposition of close supervision for 12 months, and a requirement to re-write examinations prior to re-registration.
- ¶ 29 All of these cases involved conduct more serious than Rahmani's. The respondents in those cases misrepresented their credentials to regulators and clients, filed false documents with IIROC, failed to disclose a bankruptcy, and improperly borrowed money from a client – all matters highly relevant to their fitness to act as registrants. Yet none of them was permanently banned.
- ¶ 30 Section 4.3 of the Guidelines provides specific guidance about the imposition of a permanent ban:
- A permanent ban . . . is a severe economic penalty and should generally be reserved for cases where:
- the public itself has been abused
 - where it is clear that a respondent's conduct is indicative of a resistance to governance;
 - the misconduct has an element of criminal or quasi-criminal activity;
or
 - there is reason to believe that the respondent could not be trusted to act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole.
- ¶ 31 This, appropriately, appears to reserve permanent bans for cases where lesser sanctions would not be effective to protect investors and markets against future misconduct.
- ¶ 32 Considering the factors in section 4.3 of the Guidelines, there were no allegations or findings that Rahmani abused the public or his clients. There is no evidence that he is "resistant to governance." His misconduct – failure to disclose the criminal charges – is not itself criminal or quasi-criminal. Neither that misconduct nor Rahmani's criminal conviction evidences behaviour that would

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call into question his ability to competently and honestly perform his duties as a registrant.

- ¶ 33 The IIROC panel found that Rahmani showed a “callous disregard” to the filing of his registration forms, and did not accept that his conduct was inadvertent. In light of that finding, it may have been reasonable for the panel to impose a short suspension.
- ¶ 34 However, considering the cases cited and the Guidelines, in our opinion it is not reasonable to impose a permanent ban in these circumstances. Neither is a permanent ban necessary in the public interest. There is no evidence that Rahmani’s return to the industry will present a risk to investors or the integrity of the markets.

V Decision

- ¶ 35 We set aside the permanent prohibition imposed by the IIROC panel. Since the expiry date has long since passed for any suspension that may have been reasonable in the circumstances, we make no further order.
- ¶ 36 May 26, 2009
- ¶ 37 **For the Commission**

Brent W. Aitken
Vice Chair

Bradley Doney
Commissioner

Suzanne K. Wiltshire
Commissioner