

August 12, 2024
BY SECURE EMAIL

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Request for Hearing and Review In the Matter of Teymur Englesby and Cale Nishimura

Enforcement Staff of the Canadian Investment Regulatory Organization (“CIRO”) requests a hearing and review of the CIRO hearing panel decision in the matter of Teymur Englesby and Cale Nishimura dated July 22, 2024, pursuant to section 28 of the Securities Act, RSBC 1996, c 418 and Part 7 of BC Policy 15-601. CIRO Enforcement Staff was a party to the enforcement proceeding and CIRO is a person directly affected by the decision.

The Grounds for the Review

The hearing panel proceeded on incorrect principles, made errors of law, and overlooked material evidence:

1. The hearing panel failed to provide adequate reasons for its decision by not setting out (a) the findings of fact with sufficient particularity, (b) the evidence upon which those findings of fact were based, and (c) the reasoning for arriving at its conclusions.
2. The hearing panel made findings of fact not based on evidence as to industry practice or standards. A CIRO hearing panel is entitled to use its expertise to evaluate evidence but cannot use its expertise as a substitute for evidence.
3. The hearing panel made a central finding about “possible reasonable explanations.” This finding was based on speculation and proffered by respondents’ counsel without supporting evidence. Moreover, this finding was contradicted by material evidence that was ignored or overlooked, including direct evidence from the respondents given during the course of the investigation.
4. The hearing panel made central findings about the red flags alleged against the respondents that were not supported by any evidence. The hearing panel dismissed the red flags based on speculation, concluding that the trading in the client accounts “might have” a “perfectly reasonable explanation” without any clear and cogent evidence to support that conclusion.
5. The hearing panel accepted the opinions or assumptions of Richard Thomas, the Chief Compliance Officer of PI Financial Inc., in the absence of evidence to support them, when he was not an expert witness, and when he had no direct or contemporaneous knowledge of the conduct surrounding the alleged red flags.
6. The hearing panel relied on Richard Thomas’ evidence as to the policies and procedures in effect at the respondents’ firm as if the policies and procedures established the standard that was required of the respondents.
7. The hearing panel appears to have relied on selected portions of Richard Thomas’s oral testimony despite the fact that much of his testimony was speculative or contradicted by documentary evidence in the record. Moreover, the hearing panel mischaracterized or misapprehended certain of his evidence, including about the necessity of making inquiries of clients and the swapping of shares between unrelated clients.
8. The hearing panel misinterpreted the scope and content of the gatekeeper obligation and misapplied Investment Dealer and Partially Consolidated Rule 1400 to the facts.

They erroneously interpreted Enforcement Staff's allegations as expanding the scope of the gatekeeper obligation. The hearing panel's conclusion on the gatekeeper obligation actually has the effect of rendering the obligation meaningless. The hearing panel's conclusions effectively stand for the proposition that registered representatives, if they are able to craft a "reasonable explanation," without having to inquire of the client, have no obligation to make inquiries of, or confirm essential facts relative to, a client, and can in fact act as mere order takers.

9. The conclusion of the hearing panel with respect to the gatekeeper obligation is contrary to the public interest.

Based on the grounds above, and such further grounds as the Commission may permit, Enforcement Staff request that the Commission revoke or vary the decision.

We look forward to scheduling a hearing management meeting with all the parties.

Yours very truly,

April Engelberg
Senior Enforcement Counsel, CRO

AE/rn

cc. David McLellan, Senior Enforcement Counsel, CRO