

Re Ahn

IN THE MATTER OF:

**The Dealer Member Rules of the Investment Industry Regulatory
Organization of Canada (IIROC)**

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Harold Hee Jeen Ahn

2011 IIROC 31

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District Council)

Heard: April 29, 2011
Decision: May 24, 2011
(32 paras.)

Hearing Panel:

Paul M. Moore, Q.C, Chair, Deborah Archer, Selwyn Kossuth

Appearances:

Natalija Popovic, IIROC Counsel

DECISION AND REASONS

Introduction

¶ 1 This is a case of (1) misappropriation by the respondent, a registered representative and an Approved Person, from an elderly client, (2) the creation of false documents by the respondent (together, the first charge) and (3) non-cooperation with IIROC by the respondent (the second charge).

¶ 2 The respondent chose not to attend, and not to have his counsel attend, the hearing.

¶ 3 The respondent did not attend at interviews arranged for him by IIROC.

¶ 4 The respondent did not put in a reply to the statement of allegations.

¶ 5 IIROC's rules of practice and procedure provide that where a respondent fails to respond to allegations in a notice of hearing served on him, or where a respondent served with a notice of hearing fails to attend the hearing, the hearing panel may proceed in his absence, may accept as proven the facts and violations alleged in the notice of hearing, and may impose penalties and costs against him.

¶ 6 Before proceeding against the respondent as permitted under the rules, we asked enforcement counsel to lead us through the evidence and to make her submissions.

¶ 7 We heard from one witness, Mr. Edward Valera, the IIROC investigator on this matter.

¶ 8 We reviewed the documentary evidence, including various transcripts of interviews with the victim of the misappropriation.

Facts

¶ 9 The respondent misappropriated more than \$778,000 from his client, who was 80 years old, through a series of cheques written by her over a two-month period.

¶ 10 She was led to believe that the moneys were for investment in Manulife investment products.

¶ 11 Although the client signed the cheques, they were completed by the respondent and were payable to another client of the respondent.

¶ 12 The client was provided with false documentation showing that the investments of the money belonged to her.

¶ 13 In fact, the moneys were transferred from the elderly client to the respondent's other client when the cheques were cashed by the other client.

¶ 14 We were told by the witness that the other client was not involved with the respondent's wrongdoing and that the other client had been told by the respondent that the moneys were to repay the other client an obligation that the respondent owed to that other client. However, we were not presented with any other evidence in this regard. It does not matter to our decision whether the other client was or was not a participant in the respondent's wrongdoing and, accordingly, we make no finding in this regard.

¶ 15 The victim of the misappropriation raised the money in question for the new investments the respondent would supposedly purchase for her, by selling various investments, and by collapsing her tax deferred registered retirement income fund, all on the advice of the respondent. The money misappropriated represented more than half of her liquid and invested assets.

¶ 16 The elderly client trusted the respondent. She was not sophisticated in investment and financial matters.

¶ 17 The respondent's former employer firm has reimbursed the victim for her losses, including liability for income taxes of approximately \$90,000, but the respondent has not reimbursed her, nor has he reimbursed his employer firm for the money it paid in restitution.

¶ 18 The respondent's employer firm reported the matter to the police.

Decisions on the merits

¶ 19 We decided that the allegations against the respondent had been proven and we requested enforcement counsel to make submissions as to sanctions.

Submissions as to sanctions

¶ 20 Enforcement counsel submitted that the appropriate sanctions in this case were:

- a. a permanent ban from registration in any capacity;
- b. a fine of \$850,000 for the first charge of misappropriation and falsification of documents, based on the \$778,000 misappropriated plus \$75,000; and
- c. a fine of \$50,000 for non-cooperation.

¶ 21 Counsel requested a costs award of \$7000 against the respondent.

Decision as to sanctions

¶ 22 The dealer member rules restrict the levy of a fine to a maximum of \$1,000,000 per contravention for an Approved Person but allow a hearing panel to require a respondent to pay an amount equal to three times the profit made or loss avoided by the respondent as a result of a contravention.

¶ 23 After reviewing various cases referred to us by counsel, and considering counsel's submission we order

that the respondent pay a fine of \$1,000,000 for the first charge and \$50,000 for the second charge, and that he be permanently banned from approval in any registered capacity with any IIROC member.

¶ 24 We also order that he pay costs in the amount of \$7000.

Reasons for sanctions

¶ 25 The respondent took advantage of an elderly, unsophisticated client who put her complete trust and faith in him, and he advised her to collapse her registered retirement income fund to provide moneys which he falsely misappropriated for his own purposes. Although the client has been reimbursed by the respondent's former employer firm for her losses, the tax sheltering provided by her collapsed RRIF cannot be restored.

¶ 26 Although the respondent has no history of previous disciplinary problems, there are no persuasive mitigating factors in this case. His actions were fraudulent, deliberate and without regard for the consequences to a vulnerable client without the prospect of earning future moneys for retirement.

¶ 27 Such conduct was egregious and convinces us that the respondent should not be permitted the opportunity to reoffend. A permanent ban is appropriate.

¶ 28 Considering IIROC's guidelines for sanctions, the precedents presented to us, the devastating effect the respondent's conduct had on the financial well-being of his elderly client, and the damage this kind of conduct can have on public confidence in the integrity of the financial services industry, we determined that a penalty of \$1,000,000 for the first charge was appropriate.

¶ 29 The respondent has not cooperated with IIROC's investigation, has failed to reply to the allegations, and has chosen not to attend the hearing.

¶ 30 We determined that a penalty of \$50,000 for the second charge of non-cooperation by the respondent was also appropriate.

¶ 31 Whether the fine is ever collected, or whether criminal charges against the respondent prove successful, are not things we took into account in setting the fine.

¶ 32 IIROC has established through a bill of costs and submissions that costs of \$7000 are appropriate.

Dated at Toronto this 24th day of May, 2011.

Paul M. Moore Q.C.

Deborah Archer

Selwyn Kossuth

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