Re Debus

IN THE MATTER OF:

THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES AND THE DEALER MEMBER RULES

and

Joseph Debus

2024 CIRO 65

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: May 13, 14, 15, 17 and July 15, 2024, in Toronto, Ontario
Decision: August 1, 2024
Reasons for Decision: August 1, 2024

Hearing Panel:
Martin Sclisizzi, Chair, Steven Garmaise and David Lang

Appearances:
Joe Kelly and Michael Mantle, Enforcement Counsel
Joseph Debus, Self-Represented (present)

DECISION ON THE MERITS

INTRODUCTION

¶ 1 The Respondent was a Registered Representative at Echelon Wealth Partners Inc. ("Echelon") from October 28, 2016 until his employment was terminated on January 24, 2022, for reasons unrelated to CIRO Enforcement Staff ("Staff")'s allegations against the Respondent in this proceeding. The Respondent was under close supervision at Echelon from October 2017 until November 3, 2019, and under strict supervision at Echelon from November 4, 2019 until January 24, 2022, when his employment was terminated.

¶ 2 In the Notice of Hearing and Statement of Allegations dated December 18, 2023, Staff alleged in summary the following contraventions:

- **Contravention 1:** Between March 2019 and September 2021, the Respondent failed to identify and address a material conflict of interest between himself and his clients, contrary to Dealer Member Rule 42 of the Investment Industry Regulatory Organization of Canada ("IIROC"), the predecessor of the Canadian Investment Regulatory Organization ("CIRO").
- **Contravention 2:** Between May 2020 and September 2021, the Respondent violated the terms of his strict supervision by not bringing transactions to his Dealer Member for approval, contrary to Investment Dealer and Partially Consolidated ("IDPC") Rule 1400.
- **Contravention 3:** Between December 2019 and March 2020, the Respondent facilitated off-book transactions without the knowledge or approval of his Dealer Member, contrary to IDPC Rule 1400.

¶ 3 The Respondent did not serve and file a response to the Statement of Allegations. However, he attended the hearing on the merits, cross-examined witnesses called by Staff, gave evidence in chief, was

cross-examined, asserted his defence of those allegations, made closing arguments and filed written closing submissions. In short, the Respondent denies the allegations and alleges that the transactions referred to in the Statement of Allegations were conducted with the knowledge and approval of his Dealer Member.

Preliminary Issues

¶ 4 Unfortunately, many find themselves in courts or before tribunals in professional discipline proceedings such as this with few financial resources and no legal assistance. This is one of such cases.

¶ 5 The adversarial process assumes that the adverse parties are represented by counsel. Each party fends for themselves, the adjudicator maintains detached independence, and the truth emerges. However, what responsibilities does the adjudicator have to level the playing field for those who do not have a lawyer, without compromising the adjudicator's neutrality and obligation to conduct a fair and impartial hearing, or over-riding the rights of the other hearing participants? The Panel was faced with this question in this hearing.

¶ 6 Mr. Debus was not represented by counsel. Throughout the proceeding, he acted in person. On March 4, 2024, an initial hearing pursuant to section 8414 of the IDPC Rules was conducted virtually to, among other things, deal with documentary disclosure and to set the hearing date. Mr. Debus attended and participated at the initial hearing. At the initial hearing, he was advised to retain counsel or at least to consult counsel. He advised that he had exhausted his financial resources defending the previous IIROC proceeding referred to below and that given the termination of his employment he cannot afford counsel for this proceeding.

¶ 7 Mr. Debus had not served and filed a response to the Statement of Allegations and therefore, at the initial hearing, he was ordered to serve and file his Response by March 22, 2024. It was further ordered that by April 29, 2024, Mr. Debus serve and file a compendium of his documents, a witness list, a summary of the evidence, and witness statements or transcripts of recorded statements of witnesses pursuant to IDPC Rule 8418(2). Mr. Debus did not serve and file a Response to the Statement of Allegations, any documents, a witness list, a summary of evidence, witness statements or transcripts prior to the hearing or at the hearing of this matter.

¶ 8 Individual respondents subject to enforcement or regulatory proceedings may represent themselves and appear before CIRO hearing panels without counsel. This right comes with a responsibility to learn about the process, the rules and the law that relate to their case.

¶ 9 Mr. Debus attended the hearing in person without counsel and represented himself. On the first day of the hearing, Mr. Debus made an opening statement in which he summarized his defence to the alleged contraventions. At the conclusion of his opening statement, Mr. Debus stated that he was going to leave the hearing because, based on a previous IIROC disciplinary proceeding in which he was a respondent, he felt that adverse findings against him were a foregone conclusion. The Panel advised Mr. Debus that there are no foregone conclusions, that Staff are required to prove the allegations, that he is entitled to cross-examine Staff's witnesses, testify on his own behalf notwithstanding he did not serve and file a Response to the Statement of Allegations and to make closing argument. The Panel advised Mr. Debus that only after all the evidence has been adduced and closings arguments have been made by the parties, will the Panel determine, based on the evidence presented and the arguments made, whether the allegations have been proven. The Panel urged Mr. Debus to remain and participate in the hearing. He did so.

¶ 10 The Ontario Superior Court of Justice (Divisional Court), in *Hirtle v. College of Nurses of Ontario*[1], weighed in on administrative tribunals' obligations to self-represented litigants in the context of a professional disciplinary proceeding. In *Hirtle v. College of Nurses of Ontario*, the Divisional Court held that although the 2006 *Statement of Principles on Self-Represented Litigants and Accused Persons* (the "Statement of Principles") established by the Canadian Judicial Council is directed at court proceedings, not tribunal proceedings, it is relevant guidance to be considered in professional discipline proceedings "bearing in mind the particular circumstances of [the] case"[2]. The Statement of Principles provide that all participants in the justice system are accountable for understanding and fulfilling their roles, including judges, counsel and self-represented parties, and judges have a responsibility to promote opportunities for all persons to understand and

[1] 2022 ONSC 1479
[2] *Ibid.* at para. 55

meaningfully present their case. The judge cannot leave the self-represented party to flounder. The Statement of Principles refer to an expectation that judges, court administrators and members of the Bar will do whatever is possible to provide a fair and impartial process and to prevent an unfair disadvantage to self-represented persons. There are similar expectations of professional disciplinary and regulatory tribunals.

¶ 11 However, the responsibility to assist a self-represented party is not unqualified. There are clear limits to a judge's responsibility to assist a self-represented party. Similarly, a Hearing Panel's responsibilities to self-represented parties in understanding and presenting their case are not unlimited. They must be fulfilled without compromising the requirements of neutrality, fairness to all parties and impartiality. The Panel is obliged to conduct a fair and impartial hearing. To preserve and maintain fairness and impartiality in the hearing, the Panel must respect the rights of the legally represented party.[3]

¶ 12 The Panel was aware of the procedural and evidentiary challenges faced by Mr. Debus at the hearing. Therefore, the Panel provided Mr. Debus with foundational information needed by him to defend the allegations, including the process and procedure, burden of proof, calling witnesses, the ability to admit or deny allegations, the distinction between submissions and evidence, cross-examination of witnesses, opening statement and closing argument. The Panel also exercised procedural leniency during the hearing with respect to the presentation of Mr. Debus' defence.

¶ 13 Mr. Debus participated fully in the hearing. He made an opening statement. He cross-examined witnesses. He gave evidence in chief and was cross-examined, made closing argument and filed written closing submissions. We commend Mr. Debus on the way he participated and conducted himself in the hearing and on the very able job in presenting the substance of his case.

Credibility

¶ 14 Staff's position is that the evidence of Staff's witnesses should be preferred wherever it conflicts with Mr. Debus' evidence. Enforcement Counsel submitted that there are numerous examples where Mr. Debus either misspoke or was misleading, vague, inconsistent, evasive or was otherwise lacking in credibility. We disagree.

¶ 15 There are many factors that go into assessing the credibility of witnesses and the reliability of their evidence. In our view, credibility is not a central issue in this case and therefore it is unnecessary to elaborate on the myriads of factors to be considered in assessing credibility and reliability. Suffice it to say that Mr. Debus presented himself as an educated, articulate and balanced witness. He gave his testimony and answered the questions asked in a balanced manner. He did not attempt to answer strategically. He did not exaggerate or minimize, and he readily made admissions. There are no material conflicting accounts of the facts, and Mr. Debus' testimony was consistent with the documentary evidence.

BACKGROUND

¶ 16 Before considering the individual allegations, we review the basic facts and the background that is common to all the alleged contraventions.

¶ 17 Mr. Debus worked in the investment industry for various firms for 27 years, from April 1995 until January 2022. From July 2006 until March 2013, Mr. Debus worked at Blackmont Capital Inc. (later Macquarie Research Capital Corporation). From March 2013 until October 2016, he worked at Mackie Research Capital ("Mackie"). From there, Mr. Debus joined Echelon Wealth Partners Inc. ("Echelon"), where he continued to work as a Registered Representative and a Portfolio Manager until his employment was terminated on January 24, 2022. Mr. Debus is not now employed in the investment industry.

Previous IIROC Proceeding

¶ 18 Mr. Debus has had a lengthy history of heightened supervision imposed by his firms and by IIROC. Except for about five months in 2011, from 2009 until 2013, he was under firm-imposed close or strict supervision. In September 2017, IIROC placed him under close supervision at Echelon.

¶ 19 Mr. Debus was the respondent in a previous CIRO (formerly IIROC) disciplinary proceeding commenced

[3] *Ibid.* at para. 60

in July 2017 and completed in June 2019 (the "2019 Proceeding").[4] Following 18 days of hearing between June 2018 and January 2019 [5], on March 18, 2019, the Panel in the 2019 Proceeding found Mr. Debus guilty of four contraventions, namely, improperly recommending that two clients purchase shares outside their firm accounts ("off-book trading") without disclosing these recommendations to his firm, effecting unauthorized trades in two clients' accounts, engaging in discretionary trading in a client's non-discretionary account, and failing to use due diligence to ensure recommendations were suitable for a particular client.

¶ 20 During the time frame at issue in the 2019 Proceeding (in or about March 2009 to in or about February 2013), Mr. Debus was employed at Macquarie Research Capital Corporation. During most of the time frame at issue he was under firm-imposed enhanced supervision. Mr. Debus' position was that it would not have been possible for him to engage in any of the alleged improper conduct because all his activities were always supervised and monitored by the firm. He argued that any unauthorized trades, off-book trading, off-book recommendations or unsuitable trades would have been identified by the firm's technology, its managers, client complaints or in the firm's monthly reports to IIROC and he relied on that unless he was told by the firm to stop.[6] The Panel rejected Mr. Debus' argument stating that close and strict supervision maintained by the firm could not identify all misconduct and did not purport to be able to do so.[7] The Panel stated that it was not the adequacy of the firm's supervision of Mr. Debus that was at issue in the proceeding but rather his own conduct or misconduct, and that responsibility for his actions and his communications and relationships with clients rested in the first instance with Mr. Debus and not with the firm.[8]

¶ 21 The sanction decision in the 2019 Proceeding was issued on June 25, 2019. Among other sanctions for the contraventions, the Panel imposed fines, suspended Mr. Debus for nine months from approval by or registration with IIROC and imposed strict supervision by Mr. Debus' Dealer Firm for 12 months upon any re-registration with IIROC.[9]

¶ 22 Mr. Debus sought a review by the Ontario Securities Commission of the merits and penalty decisions in the 2019 Proceeding. The review by the Ontario Securities Commission was dismissed,[10] and an appeal by Mr. Debus of the Commission's decision to the Ontario Divisional Court was also dismissed by the court.

Strict Supervision

¶ 23 Mr. Debus was under close supervision at Echelon from October 2017 until November 3, 2019. During this time, Echelon was required to file and did file with IIROC monthly Close Supervision Reports.[11] While under close supervision, among other supervisory measures, all of Mr. Debus' orders, both buy and sell, were reviewed by Echelon by the next business day.

¶ 24 Mr. Debus was under strict supervision by Echelon from November 4, 2019, until the termination of his employment on January 24, 2022. Strict supervision required enhanced oversight of Mr. Debus' activities by Echelon including the requirement that all orders of Mr. Debus, both buy and sell, be reviewed and pre-approval by a qualified Echelon supervisor prior to a trade occurring. During this time, Echelon was required to file with IIROC and did file monthly Strict Supervision Reports.[12] The Strict Supervision Reports were signed by Louis Cavalaris, Echelon's Chief Compliance Officer, who testified in this proceeding. The reports certify that strict supervision of Mr. Debus' activities has been conducted and evidence to support the review of the activities has been retained. The reports further certify that:

- All orders, both buy and sell of the Approved Person [Mr. Debus], have been reviewed by a qualified Supervisor prior to a trade occurring.
- All client accounts of the Approved Person have been reviewed by a qualified Supervisor on a

[4] *Re Debus* 2019 IIROC 5
[5] *Ibid.*
[6] *Ibid.* at para. 22
[7] *Ibid.* at para. 23
[8] *Ibid*. at para. 25
[9] *Re Debus* 2019 IIROC 18
[10] *Debus (Re),* 2021 ONSEC 22
[11] Close Supervision Reports, Compendium, Exhibit 1, Tab 1
[12] Strict Supervision Reports, Compendium, Exhibit 1, Tab 2

daily and monthly basis, regardless of the amount of commissions generated, including with reference to the items listed in Dealer Member Rule 2500, and a review for leveraging and any recent amendments to know your client information.

- A review of trading activity daily has been conducted by a qualified Supervisor relative to the Approved Person's personal accounts and no regulatory issues or concerns have been identified.
- No transactions have been made in any client account until the full and correct documentation is in place.
- Any transfer of securities between any client accounts has been authorized by the client in writing and reviewed and approved by a qualified Supervisor.

Zoompass Holdings Inc.

¶ 25 The alleged contraventions centre mainly around transactions involving the shares of Zoompass Holdings Inc. ("Zoompass"). Zoompass is a software fintech company that developed, acquired and provided blockchain and payment technology platforms software. Zoompass shares were traded on the Over-the-Counter market ("OTC"). At the relevant time, Zoompass was issuing private placement shares at $0.05 USD. As of April 2024, the value of Zoompass shares was $0.0001 USD.

¶ 26 Mr. Debus' wife (sometimes referred to by her initials "CP") and corporations, of which CP is the incorporator, president and sole shareholder, 2425287 Ontario Inc. ("287 Ontario Inc.") and 2425280 Ontario Inc. ("280 Ontario Inc."), owned shares of Zoompass. Mr. Debus' wife and her corporations were clients of Echelon. Mr. Debus had trading authority for his wife's accounts and the accounts of her corporations. Mr. Debus also had several clients at Echelon that purchased shares of Zoompass.

¶ 27 The Investor Relations Consulting Agreement and the Stock Purchase Agreements referred to below, that are central to the alleged contraventions, relate to Zoompass and to the sale of Zoompass' shares by the corporations and Mr. Debus' wife and to the purchase of Zoompass' shares by Mr. Debus' clients. Around the same time as Zoompass' shares were sold from Mr. Debus' wife's account, Mr. Debus' other clients purchased Zoompass' shares in their Echelon accounts.

¶ 28 Mr. Debus' wife also had a trading account at Mackie. Mr. Debus had full trading authority over the account. Zoompass' shares were traded in that account. By a letter dated March 25, 2019, Mr. Debus' wife authorized Mackie "to sell at its discretion securities held in" her account and to "apply the proceeds thereof to reduce the indebtedness of" Mr. Debus to Mackie.

¶ 29 Echelon was aware that 287 Ontario Inc. was a shareholder of Zoompass and that Mr. Debus' wife was the beneficial owner of 287 Ontario Inc. Echelon was also aware of Mr. Debus' wife's trading account at Mackie. Mr. Debus disclosed the existence of his wife's account at Mackie in the Echelon Annual Compliance Canvas for 2019 and 2020[13]. On June 5, 2020, Mr. Debus requested approval in writing from Echelon to the maintenance of the account, and approval in writing was provided by Mr. Cavalaris on June 9, 2020.[14] Mr. Cavalaris testified that Echelon only learned of CP's account at Mackie and that Zoompass' shares traded in the account in 2020 and that he had no previous knowledge of the account.

Investor Relations Consulting Agreement

¶ 30 Mr. Debus' wife was employed part-time as a nurse. She did not have financial advisory or investor relations experience. She is the sole shareholder, director and officer of 287 Ontario Inc. and of 280 Ontario Inc. However, at the relevant time, she was an officer and director of the corporations in name only. Mr. Debus was a signing officer of the corporations and managed and conducted the affairs of the corporations.

¶ 31 287 Ontario Inc. entered into an Investor Relations Consulting Agreement dated September 20, 2018 with Zoompass (the "Investor Relations Agreement").[15] The Investor Relations Agreement states that 287 Ontario Inc. (referred to in the Investor Relations Agreement as the "Consultant") is in the business of assisting

[13] Compendium, Exhibit 1, Tabs 70 and 71
[14] Compendium, Exhibit 1, Tab 72
[15] Compendium, Exhibit 1, Tab 15

public companies in financial advisory, and investor and public relations strategies and that Zoompass engaged the Consultant to provide services including to "introduce investors and/or other entities to the Company for the purpose of purchasing the Company's publicly available shares".

¶ 32 The Investor Relations Agreement provides that Zoompass will pay compensation for the Consultant's services by way of 2,500,000 Zoompass' shares issued to CP in four phases - 1,000,000 shares four months following the effective date of the Investor Relations Agreement, 500,000 shares seven months following the effective date, 500,000 shares 10 months following the effective date and 500,000 shares 13 months following the effective date of the Investor Relations Agreement.

¶ 33 Mr. Debus testified that although his wife signed the Investor Relations Agreement, she played no role in either negotiating or performing the agreement. The Investor Relations Agreement was negotiated by Mr. Debus. He acknowledged that he asked his wife to sign the agreement without explanation and that she willingly signed it.

¶ 34 Mr. Debus admitted that he did not inform Echelon of the Investor Relations Agreement. He testified that the Investor Relations Agreement was "not executed". He stated that he did not inform Echelon of the agreement because the agreement was "not executed". He explained that by "not executed" he meant that although the Investor Relations Agreement was signed by the parties, it was not performed or carried out. He stated that after the agreement was signed, he decided not to proceed with it. He testified that no marketing activities or any other services were performed by him or his wife, and no shares were issued to his wife.

¶ 35 Mr. Debus was asked several times by Mr. Cavalaris and others at Echelon whether his wife had a consulting agreement or other agreement with Zoompass. Each time, Mr. Debus denied any such agreement. In an email dated November 24, 2021, to Echelon, Mr. Debus stated: "my wife's numbered company... has no affiliation to Zoompass whatsoever. It is simply a shareholder"[16]. Mr. Debus testified that he denied the existence of the Investor Relations Agreement because the agreement was "not executed". In Mr. Debus' view, he had no obligation to disclose the Investor Relations Agreement to Echelon because the terms of the agreement were not carried out.

¶ 36 Mr. Debus understood the severity of the Investor Relations Agreement and the consequences of his failure to disclose it to the firm. He stated:

> I'm not going to tell my firm, oh, there's the document [the Investor Relations Agreement] I did three years ago, because they'll walk me to door. What are you doing, you idiot? You're not supposed to do that. And I realized that.
>
> Q. ...why did you not tell Echelon about the agreement?
>
> A. Because I didn't act on it and it was not relevant. And if I told them, I probably would have got fired, because that's not what you're supposed to do.

¶ 37 Mr. Debus testified that if he was going to proceed with the Investor Relations Agreement, he would have informed Echelon of the agreement. He testified that the Investor Relations Agreement was never acted upon and that, as far as he was concerned, there was no agreement and therefore there was nothing to report to Echelon.

Consulting Services Invoices to Zoompass

¶ 38 Approximately six months after the Investor Relations Agreement was signed, Mr. Debus' wife's corporations issued two invoices to Zoompass.

¶ 39 287 Ontario Inc. issued an invoice to Zoompass dated November 16, 2018, for $3,097.35 plus HST, and 280 Ontario Inc. issued an invoice to Zoompass dated March 28, 2019 for $60,000 USD.[17] The invoices state that they are for "Management Consulting Services". Mr. Debus testified that the corporations provided no services to Zoompass under the Investor Relations Agreement or any other services to Zoompass and that the invoices were not paid. He stated that he prepared and issued the invoices at the request of Zoompass' CEO for

[16] Compendium, Exhibit 1, Tab 23
[17] Compendium, Exhibit 1, Tabs 16 and 17

"accounting purposes" and to help Zoompass "balance the books". Mr. Debus did not satisfactorily explain what was meant by "accounting purposes" and "balance the books", given that he testified that no services were provided by the corporations to Zoompass and the terms of the Investor Relations Agreement were not carried out. Mr. Debus testified that he did not ask Zoompass' CEO what he meant by "accounting purposes" or "balance the books".

¶ 40 Mr. Debus denied that the invoices were paid or that any payments were made by Zoompass. Staff adduced no evidence of any payment of the invoices.

Stock Purchase Agreements

¶ 41 Between December 2019 and January 2021, Mr. Debus facilitated several private Stock Purchase Agreements whereby 287 Ontario Inc. sold Zoompass' shares to third parties. The purchasers were clients of Mr. Debus. Mr. Debus prepared the Stock Purchase Agreements and signed them on behalf of 287 Ontario Inc. Seven of the Stock Purchase Agreements prepared by Mr. Debus were printed on Echelon's letterhead on the top of each page.[18] Two of the agreements were not printed on Echelon's letterhead.

¶ 42 Mr. Cavalaris acknowledged that he helped Mr. Debus with and approved the two Stock Purchase Agreements that were not printed on Echelon's letterhead. One of those agreements, dated January 5, 2021, contained in the Compendium, is between two other Echelon clients.[19] 287 Ontario Inc. is not a party to that agreement. Mr. Cavalaris testified that he would have questioned any agreement to which 287 Ontario Inc. was a party and that he would not have approved any stock purchase agreement printed on Echelon's letterhead. The second agreement approved by Mr. Cavalaris has not been produced. Mr. Debus testified that the second agreement was printed on Echelon's letterhead. There was no direct evidence presented as to whether 287 Ontario Inc. was a party to the second agreement. However, given Mr. Cavalaris' testimony, which we accept, that he would have questioned any stock purchase agreement to which 287 Ontario Inc. was a party and that he would not have approved an agreement printed on Echelon's letterhead, it is more likely than not that 287 Ontario Inc. was not a party to the second agreement approved by Mr. Cavalaris and that the agreement was not printed on Echelon's letterhead.

¶ 43 The "Seller" in the seven Stock Purchase Agreements printed on Echelon's letterhead is 287 Ontario Inc. The Stock Purchase Agreements printed on Echelon's letterhead were prepared by Mr. Debus without Echelon's knowledge or approval. They were discovered by Echelon in Mr. Debus' client files after the termination of Mr. Debus' employment. Mr. Cavalaris testified that he did not approve the Stock Purchase Agreements printed on Echelon's letterhead and that he had no knowledge of these agreements. He testified that agreements on Echelon's letterhead would have implied that Echelon was somehow involved with the transactions, when in fact it was not, and therefore he would never have approved them. With respect to the Stock Purchase Agreements printed of Echelon's letterhead Mr. Cavalaris testified as follows:

> The implication is Echelon Wealth Partners is [sic] mandated this agreement, so therefore I would never have allowed this agreement. In addition, the agreements were with the numbered company [287 Ontario Inc.] and therefore I would have questioned that.

¶ 44 Echelon approved the two Stock Purchase Agreements that are not printed on Echelon's letterhead. Mr. Debus testified that Mr. Cavalaris told him that he could do the off-book private placements but admitted that Mr. Cavalaris did not expressly approve the seven Stock Purchase Agreements printed on Echelon's letterhead. We find that Mr. Cavalaris and Echelon did not approve these agreements and had no knowledge of them.

¶ 45 Between December 17, 2019, and March 12, 2020, 287 Ontario Inc. sold 2,547,000 Zoompass' shares to Mr. Debus' clients at CAD $0.10 pursuant to the seven Stock Purchase Agreements. While 287 Ontario Inc. was selling Zoompass' shares in the private transactions at CAD $0.10, Zoompass was issuing private placement shares at USD $0.05. 287 Ontario Inc. paid $200,000 for 3,030,000 Zoompass' shares and sold 2,547,000 Zoompass' shares to Mr. Debus's clients pursuant to the Stock Purchase Agreements for $257,000.

Respondent's Wife's Zoompass' Shares

[18] Compendium, Exhibit 1, Tabs 3, 5, 6 (2 agreements), 7, 8 and 9
[19] Compendium, Exhibit 1, Tab 4

¶ 46 As stated, Mr. Debus' wife was also a client at Echelon. She held a personal trading account over which Mr. Debus had full trading authority. Between March 2019 and August 2019, Mr. Debus' wife sold all 683,333 Zoompass' shares from her account. During the same time, 39 of Mr. Debus' clients bought Zoompass' shares in their Echelon accounts. The evidence presented shows that there were instances where on the same day Mr. Debus' wife sold Zoompass' shares, Mr. Debus' clients purchased the same number of Zoompass shares.[20]

¶ 47 Mr. Debus' wife also had a trading account at Mackie, which held Zoompass' shares over which Mr. Debus had trading authority. Mr. Debus informed Echelon of his wife's account at Mackie.

¶ 48 According to account statements for Mr. Debus' wife account at Mackie, CP received from unknown sources 500,000 Zoompass' shares on March 29, 2019, 250,000 shares on March 2, 2020, and 900,000 shares on June 11, 2020. The account was pledged to Mackie to secure payment of Mr. Debus' indebtedness to Mackie. Prior to May 27, 2020, securities held in CP's account were sold from time to time by Mackie to reduce Mr. Debus' indebtedness to Mackie. By letter dated May 27, 2020, Mackie advised CP that Mr. Debus' indebtedness to Mackie had been retired from the proceeds of sale of securities in her account and that she was "now free to request the transfer out of the remaining cash and securities in [her] account".[21]

¶ 49 The evidence presented shows that between June 2020 and May 2021, Mr. Debus sold Zoompass' shares in his wife's account at Mackie and that during the same period, on or about the same dates as the sales, Mr. Debus' clients bought Zoompass' shares in their Echelon accounts.[22]

ANALYSIS

Contravention 1: Conflict of Interest

¶ 50 Staff allege that between March 2019 and September 2021, Mr. Debus failed to identify and address a material conflict of interest between himself and his clients contrary to Dealer Member Rule 42.

¶ 51 Contravention 1 relates to the Investor Relations Agreement. The crux of this alleged contravention is that Mr. Debus failed to inform Echelon of the Investor Relations Agreement.

¶ 52 Contravention 1 also relates to the sale of Zoompass' shares in Mr. Debus' wife's account at Echelon, while at the same time Mr. Debus facilitated the purchase of Zoompass' shares in his clients' accounts.

¶ 53 Approved Persons are not permitted to allow their personal interest to conflict with the interest of their clients. It is essential to investor protection and market integrity that Approved Persons must observe high standards of ethics and conduct, must act openly and fairly and in accordance with just and equitable principles of trade[23] and diligently identify and respond to conflicts of interest pursuant to their obligations under Dealer Member Rule 42. Clients need to have confidence that their advisors will not place their interests ahead of their clients' interest.

¶ 54 As was stated in *Gaunt (Re)*[24], a conflict of interest occurs when a party to a matter advances, uses or pursues their own interest in dealing with another person, to whom they have an obligation of dealing fairly, to the detriment of that other person or to their own advantage rather than the person to whom they owe the duty of fairness.

¶ 55 Dealer Member Rule 42 provides than an Approved Person must avoid any material conflict of interest with a client, take reasonable steps to identify material conflicts of interest, and material conflicts of interest that are reasonably foreseeable, between the Approved Person and a client. If an Approved Person identifies a material conflict of interest, they must promptly report the conflict to the Dealer Member.

¶ 56 Dealer Member Rule 42.2(2) provides that an "Approved Person must avoid any material conflict of interest between the client and the Approved Person if the conflict is not, or cannot be, otherwise addressed in the best interest of the client".

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[20] Compendium, Exhibit 1, Tab 93
[21] Compendium, Exhibit 1, Tab 48
[22] Compendium, Exhibit 1, Tabs 33 and 93
[23] IDPC Rule 1402(1)
[24] [2013] MFDA File No. 201232 at para. 47

¶ 57 Rule 42.2(3) provides:

> An Approved Person must not engage in any trading or advising activity in connection with a material conflict of interest identified by the Approved Person under subsection 42.1(2) unless:
>
> (a) the conflict has been addressed in the best interest of the client, and
>
> (b) the Dealer Member has given the Approved Person its consent to proceed with the activity.

¶ 58 Identifying material conflicts and reporting them to the firm are fundamental principles of the securities industry. Conflicts of interest can result in harm to the client, expose the Dealer Member to liability and seriously undermine public trust in the investment industry. As was stated in *Salina (Re)*[25], the failure to disclose and properly address conflicts or potential conflicts of interest is serious misconduct.

¶ 59 No conflicts or potential conflicts of interest for Mr. Debus relating to Zoompass or otherwise were clearly or sufficiently identified to Echelon or Echelon supervisory personnel by Mr. Debus. Mr. Debus argues that it was not necessary to obtain approval for each specific transaction because Echelon was aware of the transactions by virtue of the trade pre-approvals and the monthly statements of his wife's account at Mackie, and Mr. Cavalaris "told [him] to do them [the private Stock Purchase Agreements] off book" in that manner.

¶ 60 Mr. Debus' trade orders were reviewed and preapproved by Mr. Cavalaris or by Nicole Erlbeck, a Tier 1 Supervisor. Mr. Debus testified that although he did not show the seven Stock Purchase Agreements printed on Echelon's letterhead to Mr. Cavalaris, Mr. Cavalaris had given him approval to do stock purchase agreements and approved two other stock purchase agreements. Mr. Debus argues that as Echelon knew of his wife's and her corporations' sales of Zoompass' shares to other clients and Mr. Cavalaris approved off-book private stock purchase agreements, he had no further obligation to report conflicts or to seek further approvals from Echelon.

¶ 61 Under the Investor Relations Agreement, Mr. Debus' wife stood to receive Zoompass' shares. It was in Mr. Debus' interest and in his family's interest for 287 Ontario Inc. to succeed and for the value of Zoompass' shares to increase. Between December 17, 2019, and March 12, 2020, 287 Ontario Inc. entered into the Stock Purchase Agreements with Mr. Debus' clients. We find that the Investor Relations Agreement and the Stock Purchase Agreements constituted a material conflict of interest or potential conflict of interest that should have been disclosed by Mr. Debus to Echelon and Echelon's approval to these agreements should have been sought. In our view, even if the Investor Relations Agreement was not acted upon or did not take effect as Mr. Debus testified, he should nevertheless have disclosed the agreement to Echelon, because its existence created a reasonable apprehension of conflict.

¶ 62 Between March 2019 and August 2019, Mr. Debus sold his wife's Zoompass' shares in her account at Echelon. The evidence shows there were instances where, on the same day, as Mr. Debus' wife sold Zoompass' shares, Mr. Debus' clients bought the same number of Zoompass' shares. Between June 2020 and May 2021, Mr. Debus sold approximately 318,000 Zoompass' shares in his wife's account at Mackie. Mr. Debus argued that there is no co-relation between the buy and the sell trades. However, the evidence shows that on the same dates as the sales, Mr. Debus' clients bought Zoompass' shares in their Echelon accounts. It is not coincidental that Mr. Debus' clients bought Zoompass' shares on the same dates as Mr. Debus' wife sold her Zoompass' shares. The evidence is sufficiently clear, convincing and cogent to satisfy the Panel on the balance of probabilities that Mr. Debus facilitated the sale of some of his wife's shares to his clients.

¶ 63 The purchase of Zoompass' shares by Mr. Debus' clients at the same time as he sold the same securities in his wife's accounts and the private stock purchase agreements between 287 Ontario Inc. and his clients were entered into placed Mr. Debus in a direct conflict of interest with his clients. As was noted in *Re Sammy*[26]*:*

> It is probably not an exaggeration to say that there is always a conflict between the interest of a seller and that of a buyer. It is in the buyer's interest to pay as low a price as possible. It is in the seller's interest to obtain as high a price as possible. The conflict is clear.

¶ 64 Mr. Debus testified that he informed his clients that his wife was the seller of the Zoompass' shares they were buying and that she was the principal of 287 Ontario Inc. There was no contrary evidence adduced by

[25] [2013] MFDA File No. 202081 at para. 32
[26] 2016 IIROC 4 at para. 28

Staff. However, in our view, the clients' knowledge that the seller of the shares was Mr. Debus' wife and that she was the principal of 287 Ontario Inc. did not relieve Mr. Debus from his obligation under Dealer Member Rule 42.2 to report the conflict to Echelon. Mr. Debus' failure to report the conflict to Echelon resulted in Echelon's inability to address the conflict in the best interest of the clients.

¶ 65 Mr. Debus argues that as Echelon received monthly statements of his wife's investment account at Mackie from March 2019 until January 2022, and as all of his trades and transactions in his clients' accounts and in his wife's account at Echelon were pre-approved by Echelon, full disclosure of all transactions was made to Echelon. He argues that he was in full compliance with the strict supervision protocols and that all activities pertaining to the allegations of conflict of interest were known to and approved by Echelon. He argues that any wrongdoing would or should have been identified by Echelon. Mr. Debus also argues that if there was conflict of interest in respect of any of the trades, Echelon should have identified the conflict and should not have granted trading approval. This is essentially the same argument Mr. Debus made in the 2019 Proceeding and was rejected by the hearing panel in that proceeding. We also reject the argument. The obligation to comply with Dealer Member Rule 42 was Mr. Debus' in the first instance.

¶ 66 The issue in this proceeding is not the adequacy of the firm's supervision of Mr. Debus. The issue is Mr. Debus' conduct or misconduct as set out in the Statement of Allegations.

¶ 67 The language of Dealer Member Rule 42 is mandatory. The responsibilities of an Approved Person and requirements under Dealer Member Rule 42 are mandatory. An Approved Person:

- must take reasonable steps to identify existing material conflicts of interest;
- must promptly report that conflict of interest to the Dealer Member;
- must address all material conflicts of interest;
- must avoid any material conflict of interest;
- must not engage in any trading or advising activity unless the conflict has been addressed in the best interest of the client, and the Dealer Member has given the Approved person its consent to proceed with the activity.

¶ 68 The ordinary meaning of "to report something" is the act of giving a verbal or written account of something that one has observed, heard, done or investigated. It is a standard way of giving information and presenting facts or information concerning an event or an occurrence. The *Cambridge Dictionary* defines the verb "report": "to give a description of something or information about it to someone." The *Oxford English Dictionary* defines the verb "report": "to give an account of (a fact, event, etc.); to relate, recount, tell; to describe." *Merriam-Webster's Dictionary* defines the verb "report": "to give an account; to make, issue or submit a report."

¶ 69 The obligation on an Approved Person is to "promptly report [a] conflict to the Dealer Member". In our view, it is not sufficient for an Approved Person to provide the firm with documents or other information from which the firm might, on close scrutiny, be able to decipher that a conflict of interest exists or might exist. Where an Approved Person identifies a material conflict of interest, they must clearly, plainly and sufficiently report the conflict to the firm. Where an Approved Person fails to promptly report a conflict of interest, it is not open for them to successfully argue in their defence that the firm's compliance officers were in possession of documents or other information from which they should have identified the conflict.

¶ 70 By facilitating the Stock Purchase Agreements between 287 Ontario Inc. and Mr. Debus' clients, and by facilitating the sale of his wife's Zoompass' shares to his clients, Mr. Debus advanced his own interests ahead of the interests of his clients thereby creating a reasonably foreseeable material conflict of interest. We find that these activities created a reasonably foreseeable conflict of interest even in the absence of the Investor Relations Agreement. Mr. Debus was obligated to report the conflict to Echelon and to obtain Echelon's approval to proceed with the activities. Mr. Debus did not clearly, plainly and sufficiently report the conflict to Echelon to permit the firm to address the conflict in the best interest of the clients. Mr. Debus proceeded with these activities without the firm's approval contrary to Dealer Member Rule 42.2.

¶ 71 The obligations under Dealer Member Rule 42 required Mr. Debus to consider, address and report any

conflicts of interest to the firm. These obligations reflect the very high standard of conduct expected from investment advisors, and the seriousness of the conflict-of-interest rule arising from the fiduciary nature of investment advisors' duties and responsibilities.[27] We find that Mr. Debus failed to clearly and sufficiently report to Echelon a conflict of interest, contrary to Dealer Rule 42. Therefore, for these reasons we find that Contravention 1 has been established.

Contravention 2: Violation of Terms of Strict Supervision

¶ 72 Staff allege that between May 2020 and September 2021, Mr. Debus violated the terms of his strict supervision by not bringing transactions to Echelon for approval, contrary to IDPC Rule 1400.

¶ 73 Contravention 2 relates to trades in Mr. Debus' wife's personal account at Mackie, over which Mr. Debus had full trading authority.

¶ 74 IDPC Rule 1400 sets out the general standards of conduct that applies to regulated persons. The relevant Rule which Staff submits applies to Contraventions 2 and 3 is Rule 1402. Rule 1402 provides:

> (1) A Regulated Person:
>
> (i) in the transaction of business must observe high standards of ethics and conduct and must act openly and fairly and in accordance with just and equitable principles of trade, and
>
> (ii) must not engage in any business conduct that is unbecoming or detrimental to the public interest.
>
> (2) Without limiting the generality of the foregoing, any business conduct that:
>
> (i) is negligent,
>
> (ii) fails to comply with a legal, regulatory, contractual or other obligation, including the rules, requirements, and policies of a Regulated Person,
>
> (iii) displays an unreasonable departure from standards that are expected to be observed by a Regulated Person, or
>
> (iv) is likely to diminish investor confidence in the integrity of securities, futures or derivative markets,
>
> may be conduct that contravenes one or more of the standards set forth in subsection 1402(1).

¶ 75 From November 4, 2019, until January 24, 2022, Mr. Debus was under strict supervision. During this time, all orders of Mr. Debus, both buy and sell, required review and pre-approval by a qualified Echelon supervisor prior to a trade occurring. Echelon's trading department would not accept a trade order from Mr. Debus unless it was preapproved. Mr. Debus' trade orders were reviewed and preapproved by Mr. Cavalaris or Nicole Erlbeck, a Tier 1 Supervisor. Mr. Cavalaris admitted that all of Mr. Debus' OTC trades in accounts at Echelon were approved either by him or by Ms. Erlbeck.

¶ 76 Mr. Debus was required to complete annual compliance attestations. The attestations required disclosure of all employee accounts. The attestation form defines an "employee account" to include "not only the account of the employee but also the account of a spouse, dependent child or family member residing in the same residence and any other account in which the employee has an interest or control".

¶ 77 Mr. Debus completed compliance attestations in 2017, 2018, 2019 and 2020. In the 2019 and 2020 Compliance Attestations,[28] Mr. Debus disclosed to Echelon that his wife had an account at Mackie.

¶ 78 Mr. Debus testified that after May 2020, he gave a broker at Mackie authority to sell Zoompass' shares in his wife's account. He testified that he did not make the trades himself and that he did not obtain pre-approval from Echelon for the trades. He stated that it was the broker at Mackie who put the trades in the system and therefore pre-approval for the trades from Echelon was not required. Mr. Debus argued that

[27] *Re Noronha* 2017 IIROC 3 at para. 64

[28] Compendium, Exhibit 1, Tabs 70 and 71

because he did not make the trades himself, he was not required to obtain pre-approval from Echelon for the trades.

¶ 79 Echelon knew of Mr. Debus' wife's account at Mackie, and that Mr. Debus had full trading authorization over the account. Mr. Cavalaris testified that to the best of his knowledge he never approved the sale of any Zoompass' shares from Mr. Debus' wife's account at Mackie. Echelon received and reviewed monthly account statements that reflected the trades in the account, albeit a month later. Echelon certified to CIRO each month that "All orders, both buy and sell of the Approved Person, have been reviewed by a qualified Supervisor prior to a trade occurring".[29] Mr. Debus testified that he was never questioned by Echelon why the trades in his wife's account at Mackie had not been pre-approved or advised by Echelon that trades in his wife's account must be pre-approved. He argues that it was reasonable for him to conclude that no trading approvals were required from Echelon when Echelon's compliance team was fully aware of his wife's account at Mackie and of all the trades. He argues that he relied on Echelon's compliance team to tell him what he can do and what he was prohibited from doing. In essence, he argues that if Echelon knew or ought to have known of his activities, he was entitled to continue to engage in those activities without pre-approval unless Echelon told him to stop or expressly advised him that pre-approval was required. We reject this argument because the fact that Echelon did not say "no" to an activity does not mean "yes", and the responsibility for compliance rests in the first instance with Mr. Debus.

¶ 80 Another justification advanced by Mr. Debus for not seeking pre-trade approval for the sale of Zoompass' shares in his wife's account at Mackie was that he directed the broker at Mackie to make the trades and did not do them himself. Mr. Debus testified as follows:

> If I was doing the trade, yes, I would get pre-approval. But if another broker was doing it, no...I didn't put it in the system; he did.

¶ 81 We do not accept Mr. Debus' submission that because a broker at Mackie placed the trades and he did not do so himself, he was not required to obtain Echelon's approval to the trades. The broker did not independently make the trades. Mr. Debus had full trading authority over the account, and he directed the broker on the trades to be made in the account. We find that in these circumstances, the trades required pre-approval. Otherwise, it would be too easy to circumvent the terms on strict supervision.

¶ 82 In our view, there is no principled reason why Mr. Debus' wife's account at Mackie, over which he had full trading authority, should be treated differently than the accounts at Echelon. The risk in not obtaining pre-approval is apparent in that the trades in Zoompass shares in the account at Mackie conflicted with those of Mr. Debus' clients at Echelon.

¶ 83 Mr. Debus knew that the terms of his strict supervision required him to obtain pre-approval of all trades. Therefore, we do not accept Mr. Debus' submission that it was reasonable for him to conclude that Echelon did not require pre-approval of the trades in the account at Mackie. Having said that, given that the account was disclosed by Mr. Debus to Echelon and Echelon received monthly account statements, it is not unreasonable to expect that Echelon would have questioned the trades. We are troubled by Echelon's supervision of Mr. Debus which enabled him to engage in these activities and contraventions. It is not our function in this proceeding to judge Echelon's supervision, but it seems to us that in this regard Echelon's strict supervision was neither strict nor very well supervised.

¶ 84 In the result, we find that notwithstanding Echelon's knowledge of the account at Mackie, its receipt of monthly account statements and its failure to question Mr. Debus concerning the account and the trades therein, Mr. Debus was not relieved of his obligation under the terms of his strict supervision. Mr. Debus was required to obtain pre-approval of the trades and he failed to do so, contrary to the terms of his strict supervision. Therefore, for these reasons we find that Contravention 2 has been established.

Contravention 3: Off-Book Transactions Without Echelon's Approval or Knowledge

¶ 85 Staff allege that between December 2019 and March 2020, Mr. Debus facilitated off-book transactions without the knowledge or approval of Echelon, contrary to IDPC Rule 1400.

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[29] Compendium, Exhibit 1, Tab 2

¶ 86 Contravention 3 relates to the Stock Purchase Agreements and specifically to the seven agreements prepared by Mr. Debus that were printed on Echelon's letterhead.

¶ 87 Mr. Cavalaris knew that Mr. Debus was a strong supporter of Zoompass' stock and that he knew a great deal about the company, its stock and its officers. Mr. Cavalaris assisted Mr. Debus with the preparation of stock purchase agreements and approved two Stock Purchase Agreements for Mr. Debus' clients. However, the seven Stock Purchase Agreements between 287 Ontario Inc. and Mr. Debus' other clients, prepared by Mr. Debus and printed on Echelon's letterhead, were made without Echelon's or Mr. Cavalaris' approval or knowledge. Mr. Debus admitted that he did not show these agreements to Mr. Cavalaris, did not obtain Mr. Cavalaris' approval of the agreements and did not ask for Echelon's approval. He prepared and proceeded with the seven Stock Purchase Agreements without Echelon's express approval on the basis that Mr. Cavalaris had assisted him with the other two agreements and told him to do the private sales "off the books, away from the firm".

¶ 88 For the reasons stated above, we find that Mr. Debus prepared the seven Stock Purchase Agreement printed on Echelon's letterhead and proceeded with them without Echelon's approval or knowledge. The fact that Mr. Cavalaris approved two Stock Purchase Agreements was not blanket approval of all stock purchase agreements.

¶ 89 Mr. Debus was not a stranger to the prohibition against off-book transactions. In the 2019 Proceeding, the Hearing Panel sanctioned Mr. Debus for off-book transactions without disclosure to his firm. The hearing panel concluded that the off-book transactions without disclosure to his firm constituted misconduct within the meaning of IIROC Dealer Member Rule 29.1, now IDPC Rule 1402 (the "Standards of Conduct").

¶ 90 Off-book business activities without the approval of the firm are outside the scrutiny of the firm. Conducting off-book transactions by securities registrants has been repeatedly recognized by CIRO hearing panels as conduct or practice unbecoming or detrimental to the public interest, and thereby contrary to the Standards of Conduct.[30] The reason for this is explained by a concurring member of the IIROC hearing panel in *Re Trueman* [31] as follows:

> Disclosure of outside business activities is one of the fundamental principles of the securities regulatory framework. It allows a firm on a Tier 1 basis [Tier 1 is at the business supervisor level at the firm] to look at all the activities that a salesperson is undertaking and to make sure that they are in the client's best interests and that issues such as conflicts of interest and potential for client confusion are identified and addressed. It also allows that activity to be monitored at the Tier 2 level [an independent compliance review].
>
> When a person undertakes activity outside the auspices of the firm, that fundamental protection provided for in securities regulation is unable to occur.
>
> One should never forget the fundamental principle of outside business activity and disclosure. For the respondent and anybody else who might read these reasons in the future, it should be very clear that these are fundamental protections in the securities regulatory framework, and we cannot tolerate people who do not adhere to them.

¶ 91 We find that Mr. Debus engaged in off-book transactions, namely the seven Stock Purchase Agreement printed on Echelon's letterhead, without the approval or knowledge of Echelon and such conduct was unbecoming or detrimental to the public interest contrary to the Standards of Conduct. Therefore, for these reasons, we find that Contravention 3 has been established.

CONCLUSION

¶ 92 Accordingly, for these reasons, we find that Contraventions 1, 2 and 3 in the Statement of Allegations have been proven.

¶ 93 We remit this matter to CIRO's Hearings Office to schedule a sanctions hearing. If no agreement to sanctions has been reached by CIRO Staff and Mr. Debus within two weeks of the date of service of this

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[30] *Re Noronha* 2017 IIROC 3 at para. 50

[31] *Re Trueman* 2016 IIROC 29 at paras. 2-3, 6

decision, CIRO Staff shall deliver sanction submissions within two weeks thereafter and Mr. Debus shall deliver his responding submissions within two weeks thereafter. If this timetable is not feasible, either party may request the Hearings Office to arrange a video conference with the Panel to consider amendments to the timetable.

Dated at Toronto this 1st day of August 2024.

"Martin Sclisizzi"

Martin Sclisizzi, Chair

"Steven Garmaise"

Steven Garmaise

"David Lang"

David Lang

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