Re Carrigan

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

Darren Clayton Carrigan

2024 CIRO 70

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: August 22, 2024, in Toronto, Ontario via videoconference
Decision: September 16, 2024
Reason for Decision: September 16, 2024

Hearing Panel:
Barry Bresner, Chair, Sarah Shody and Debbie Archer

Appearances:
Joe Kelly, Senior Enforcement Counsel, CIRO
Cameron Rempel and Emma Parry for Darren Clayton Carrigan

REASONS FOR DECISION ON MOTION TO STAY

I. INTRODUCTION

¶ 1 Darren Clayton Carrigan ("Mr. Carrigan"), a Dealing Representative/Registered Representative ("Dealing Representative") brought this motion seeking the consent of the Hearing Panel to bring this motion and, if consent is granted, an order permanently staying an investigation by CIRO's Enforcement Department ("Enforcement Staff") or, in the alternative, such relief as may arise from certain alleged breaches of natural justice or, in the further alternative, an order mandating that an expedited hearing on the merits be held by August 30, 2024.

¶ 2 Mr. Carrigan claims that the delay in formally instituting a proceeding and scheduling a hearing since November 20, 2020, when a complaint was made against him, and April 22, 2021, when he was notified that Enforcement Staff had opened an investigation into that complaint, was excessive and has caused significant prejudice to him, such that a continuation of the investigation would constitute an abuse of process which warrants a stay order. Mr. Carrigan also submitted that he had relied to his prejudice on representations from Enforcement Staff regarding the imminency of a proceeding.

¶ 3 There is a threshold issue as to whether the Hearing Panel should consent to the hearing of this motion. Rule 8413(2) of the Investment Dealer and Partially Consolidated Rules ("the Rules") provides that a "motion may be brought: (i) with the consent of a hearing panel, prior to, or (ii) at any time after, the commencement of a proceeding."

¶ 4 Enforcement Staff sought to have the issue of consent heard as a preliminary matter. As there would be significant overlap between the submissions on whether consent should be granted and on the merits of the motion, in the interests of procedural efficiency, the Hearing Panel directed that the parties address both the consent issue and the merits of the motion. As indicated to the parties at the hearing of the motion, these

Reasons will separately address the question of consent as a threshold issue.

¶ 5 Enforcement Staff submitted that the Hearing Panel should refuse consent to bring this motion but, if consent is granted, the motion should be dismissed, as no "proceeding" has been commenced by issuance of a Notice of Hearing, such that there is no proceeding which can be the subject of a stay. Enforcement Staff also submits that, in the absence of a proceeding, the Hearing Panel lacks jurisdiction to schedule a hearing on the merits. Further there is nothing in the Rules which grants the authority to stay an ongoing investigation, and, in any event, it would be inappropriate for a hearing panel to interfere with an investigation.

I. The Threshold Issue

¶ 6 This motion raises a novel question as to the jurisdiction of a hearing panel to grant relief to a party under investigation prior to the commencement of enforcement proceedings against that person. Rule 8201(1) of the Rules provides that "Rule 8200 sets out the authority of the Corporation and hearing panels to hold hearings for enforcement purposes". Rule 8205(2) of the Rules provides that a proceeding under Rule 8200 (Enforcement Proceedings) "must be commenced by notice of application or notice of hearing in accordance with the Rules of Procedure". It is common ground that no notice of application or notice of hearing has been issued to date. It follows that no enforcement proceeding has yet been commenced.

¶ 7 As noted above, Rule 8413(2)(i) provides that a motion can be brought prior to the commencement of a proceeding with the consent of a hearing panel. There is no guidance to be found in the Rules or the jurisprudence on the test for granting or refusing consent. This appears to be the first instance in which the issue has arisen.

¶ 8 The Hearing Panel has concluded that consent should generally be granted to the bringing of a motion prior to the commencement of an enforcement proceeding when the issue to be decided on the motion is significant to the rights of the parties and/or, more generally, to the interpretation of the Rules and the jurisdiction of hearing panels. While it is necessary to consider the nature of the issues raised in the proposed motion, generally it should not be necessary to consider the merits of the proposed motion beyond determining that there is a serious issue to be addressed on the proposed motion. There may be situations in which consent should be refused, where, for example, it is apparent that the proposed motion is frivolous, a delay tactic or otherwise inappropriate, but this is not such a case.

¶ 9 It is apparent from the facts detailed in these Reasons that the questions raised on this motion by Mr. Carrigan are significant both to him and to the interpretation of the Rules and the jurisdiction of hearing panels. It is in the interests of justice that Mr. Carrigan be given an opportunity to be heard and, accordingly, consent is granted to the hearing of this motion prior to the commencement of an enforcement proceeding.

II. BACKGROUND

¶ 10 The salient background facts are set out in Mr. Carrigan's affidavit of July 5, 2024 and in the correspondence attached as exhibits to that affidavit. Enforcement Staff chose not to cross-examine Mr. Carrigan on his affidavit or to adduce any evidence on the motion, by affidavit or otherwise. The reasons for the significant delay from the initial complaint and the commencement of the investigation to date remain unexplained. While Enforcement Staff argued that Mr. Carrigan's affidavit is self-serving, the sequence of events is reflected in correspondence and the allegations of prejudice sworn to by Mr. Carrigan are uncontested.

¶ 11 Mr. Carrigan has been registered as a Dealing Representative since 2008. In November 2020, he was notified by the Investment Industry Regulatory Organization of Canada ("IIROC") (now CIRO) that a complaint had been made against him alleging a conflict of interest based on his outside business activities in the cannabis sector ("the Complaint"). In April 2021, Enforcement Staff sent a letter to Mr. Carrigan formally advising him that it had opened an investigation into the Complaint.

¶ 12 On July 14, 2021, as a result of the investigation, an Ontario District Council Registration Subcommittee of IIROC placed Mr. Carrigan on modified Strict Supervision. On July 30, 2021, Mr. Carrigan requested a review of the Subcommittee's decision. That Request for Review was withdrawn on August 26, 2021, after Mr. Carrigan's counsel was advised by Enforcement Staff that the investigation was nearly concluded. After a follow up inquiry from Mr. Carrigan's counsel in August 2022, Enforcement Staff advised that the investigation

would be completed within "the next couple of weeks".

¶ 13 In October 2022, Mr. Carrigan brought a further Request for Review which led to an agreement with IIROC to move Mr. Carrigan to Close Supervision. In light of that change, Mr. Carrigan withdrew the second Request for Review.

¶ 14 Throughout the investigation, Mr. Carrigan has denied any wrongdoing and has cooperated with Enforcement Staff by providing, through counsel, such information as was requested and sitting for interviews.

¶ 15 In January 2023, Mr. Carrigan was advised that Enforcement counsel had been assigned to this case.

¶ 16 A year later, by letter of January 5, 2024, Enforcement Staff advised Mr. Carrigan's counsel that Enforcement Staff's investigation had determined that "Mr. Carrigan's conduct constitutes a contravention of CIRO regulatory requirements" and that Staff was "recommending the issuance of a Notice of Hearing to commence proceedings before a Hearing Panel."

¶ 17 On April 17, 2024, a draft Statement of Allegations was sent by Enforcement Staff to Mr. Carrigan's counsel on a without prejudice basis with an invitation to make a settlement proposal by April 30, 2024. Mr. Carrigan's affidavit attached the covering email of April 17, but not the draft Statement of Allegations. To date, no formal Statement of Allegations or Notice of Hearing have been issued.

¶ 18 Against that backdrop, Mr. Carrigan asserts that he has been prejudiced in his ability to work as a Dealing Representative and is currently unemployed, having been terminated from his last position in April 2024 due to delays with his CIRO registration caused by the ongoing investigation. His professional reputation and finances have also been severely prejudiced. As a result, Mr. Carrigan has also suffered from anxiety.

III. ANALYSIS

¶ 19 The issues to be decided on this motion are:

i. whether the Hearing Panel has jurisdiction to grant any of the relief sought by Mr. Carrigan; and

ii. assuming jurisdiction, what relief, if any, should be granted.

(I) JURISDICTION

¶ 20 While a hearing panel has the jurisdiction to grant relief expressly provided for in the Rules, the Rules do not expressly provide a hearing panel with the authority to grant a stay of a proceeding. A hearing panel has no inherent jurisdiction. However, in exercising its authority, a hearing panel "must respect the basic principles of administrative law, among which are a requirement to ensure procedural fairness and a right to be heard"[1].

¶ 21 The obligation and authority of a hearing panel to control its process to ensure fairness is reflected in Rule 8403, which provides, in part:

> (1) The Rules of Procedure shall be interpreted and applied to secure a fair hearing and just determination of a proceeding on its merits and the most expeditious and least expensive conduct of the proceeding [...]
>
> (3) Subject to a requirement in the Rules of Procedure, a hearing panel has authority to control the process of a proceeding before it and may exercise any of its powers on its own initiative or at the request of a party, including:
>
> (i) issuing procedural directions or orders with respect to the application of the Rules of Procedure in respect of any proceeding [...]
>
> (4) At the request of a party, a hearing panel may provide for any procedural matter that is not provided for in the Corporation requirements or the Rules of Procedure by analogy to the Rules of Procedure or by reference to the rules of practice or procedure of another SRO or professional association or to the rules applicable to a securities regulatory authority.

[1] *Re Movassaghi* 2019 CanLII 151741 (CA MFDAC) at para. 17

¶ 22 While Rule 8403(3) is expressly tied to a proceeding that has already been commenced, Rules 8403(1) and (4) are open to interpretation and can be read as applying both before and after the formal commencement of a proceeding. Mr. Carrigan relies on Rule 8403(4) as one basis for the Hearing Panel's jurisdiction to grant the relief sought on this motion.

¶ 23 It is well established that the principles of natural justice and the duty of fairness apply to every administrative proceeding and that a stay may be appropriate where excessive delay impairs the ability of a party to answer the complaint against them. As stated by the Supreme Court of Canada in *Blencoe v. B.C. (Human Rights Commission)*[2]:

> It is thus accepted that the principles of natural justice and the duty of fairness include the right to a fair hearing and that undue delay in the processing of an administrative proceeding that impairs the fairness of the hearing can be remedied.

¶ 24 In *Blencoe*, a government minister was accused of sexual harassment by one of his assistants. He was removed from Cabinet and dismissed from the NDP caucus. Two complaints were filed with the Human Rights Commission by two other women in the summer of 1995. After the Commission's investigation, hearings were scheduled for March 1998, over 30 months after the initial complaints were filed. Mr. Blencoe was the subject of intense media attention and suffered severe depression. He did not stand for re-election and considered himself unemployable because of the publicity. He brought judicial review proceedings seeking a stay of the proceedings on the ground that the unreasonable delay in processing the complaints had caused serious prejudice which amounted to an abuse of process and a denial of natural justice. The majority of the SCC concluded that, in the circumstances, the proceedings against Mr. Blencoe should not be stayed.

¶ 25 Mr. Carrigan has not established that the delay has resulted in a loss of evidence or has otherwise impaired the fairness of a potential hearing. In *Blencoe*, the SCC explained that undue delay could constitute an abuse of process even if the fairness of the hearing had not been affected:

> I would be prepared to recognize that unacceptable delay may amount to an abuse of process in certain circumstances even where the fairness of the hearing has not been compromised. Where inordinate delay has directly caused significant psychological harm to a person, or attached a stigma to a person's reputation, such that the human rights system would be brought into disrepute, such prejudice may be sufficient to constitute an abuse of process. The doctrine of abuse of process is not limited to acts giving rise to an unfair hearing; there may be cases of abuse of process for other than evidentiary reasons brought about by delay. It must however be emphasized that few lengthy delays will meet this threshold. I caution that in cases where there is no prejudice to hearing fairness, the delay must be clearly unacceptable and have directly caused a significant prejudice to amount to an abuse of process. It must be a delay that would, in the circumstances of the case, bring the human rights system into disrepute. The difficult question before us is in deciding what is an 'unacceptable delay' that amounts to an abuse of process.[3]

¶ 26 In *Blencoe*, the SCC further recognized that in order to find an abuse of process, a court must be satisfied that the "damage to the public interest in the fairness of administrative proceedings should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted"[4].

¶ 27 More recently, in *Law Society of Saskatchewan v. Abrametz*[5], the SCC revisited the issues raised in *Blencoe*. In *Abrametz*, the Law Society of Saskatchewan initiated disciplinary proceedings against a member lawyer in 2012. In 2018, the lawyer was found guilty on four charges of conduct unbecoming a lawyer and was disbarred. During the disciplinary proceedings, the lawyer applied for a stay on the ground of inordinate delay

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[2] [2000] 2 S.C.R. 307 at para. 102

[3] *Ibid.* at para. 115

[4] *Ibid.* at para. 120

[5] 2022 SCC 29

amounting to an abuse of process.

¶ 28 The SCC noted that it had previously decided in *Blencoe* that "decision makers have, as a corollary to their duty to act fairly, the power to assess allegedly abusive delay"[6] and that "even when there is no prejudice to hearing fairness, an abuse of process may occur if significant prejudice has come about due to inordinate delay".[7] While the SCC's comments were made in the context of tribunals exercising statutory powers of decision, the powers of such tribunals are circumscribed by their statute and, like a hearing panel under the Rules, they do not have the inherent jurisdiction of a superior court. As a matter of administrative law and pursuant to Rule 8403, the Hearing Panel has a clear duty of fairness and it is a corollary of that duty to assess allegedly abusive delay.

¶ 29 In *Abrametz*, the SCC described the test set out in *Blencoe* as follows:

> *Blencoe* sets out a three-step test to determine whether delay that does not affect hearing fairness nonetheless amounts to an abuse of process. First, the delay must be inordinate. Second, the delay must have directly caused significant prejudice. When these two requirements are met, courts or tribunals will proceed to a final assessment of whether the delay amounts to an abuse of process. Delay will amount to an abuse of process if it is manifestly unfair to a party or in some other way brings the administration of justice into disrepute.[8]

¶ 30 The SCC described the effect of delay in disciplinary proceedings as follows:

> In disciplinary proceedings inordinate delay can be harmful to members of professional bodies, complainants and the public in general. Allegations of misconduct against a member can weigh heavily on that person. They can overshadow his or her professional reputation, career and personal life. Anxiety and stress caused by the uncertainty of the outcome and the stigma attached to outstanding complaints are good reasons to investigate and prosecute in a timely way. Disciplinary bodies have a duty to act fairly with members whose livelihood and reputation are affected by such proceedings.[9]

¶ 31 In *Abrametz*, the SCC cited the decision of the Saskatchewan Court of Appeal in *Investment Dealers Association of Canada v. MacBain*[10] as an example of the rare case where inordinate delay would justify a stay. That case has some similarity to the present matter:

> Even if rare, stays of proceedings are sometimes warranted. An example is *MacBain* where the charge against an investment dealer did not involve complex factual or legal issues, and he did not contribute to or waive the delay. As well, the Investment Dealers Association failed to provide an explanation for the delay (three years and eight months). When the Court of Appeal heard the case, almost seven years had passed since the commencement of the investigation. Moreover, the member was seriously affected, his business declined greatly, and his personal life was adversely affected.[11]

¶ 32 It appears clear that a hearing panel has the jurisdiction to direct a stay of proceedings, set an expedited hearing date or grant other relief for inordinate delay once a Notice of Hearing to commence a "proceeding" has been issued[12]. However, the novel issue before this Hearing Panel is whether such relief can be granted prior to the issuance of a Notice of Hearing. Counsel have been unable to identify any prior decisions which address that issue. *Blencoe*, *Abrametz* and the other cases cited by counsel all involve requests for a stay or dismissal after proceedings have commenced.

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[6] *Ibid.* at para. 38

[7] *Ibid.* at para. 42

[8] *Ibid.* at para. 43

[9] *Ibid.* at para. 55

[10] 2007 SKCA 70

[11] *Abrametz, supra* note 5, at para. 87

[12] *Re Belisle* 2021 IIROC 09; *Azeff et al* 2012 ONSEC 16

¶ 33 As previously noted, Rule 8413(2)(i) permits a motion to be brought prior to the commencement of a proceeding with the consent of the hearing panel. Nothing in the Rules restricts the nature of the motions that may be brought prior to issuance of a Notice of Hearing. A motion seeking a stay on the basis that there has been inordinate delay resulting in an abuse of process can be heard after the commencement of a proceeding, notwithstanding the absence of any express grant of jurisdiction to grant a stay. As a matter of administrative law, a hearing panel has the jurisdiction to address such motions as a corollary to the obligation and authority to ensure fairness in the disciplinary process. On such motions, the delay complained of generally extends from the date a complaint is made and an investigation is commenced to the date of the hearing.

¶ 34 To hold otherwise would potentially give rise to untenable situations. Enforcement Staff take the position that, as Rule 8206(2)[13] provides for a six-year limitation period for the commencement of proceedings, no objection can be taken to a delay of less than six years. We reject that position. The limitation period does not address the issues of prejudice and abuse of process prior to expiry of six years. Acceptance of Staff's position would countenance a situation in which the issuance of a Notice of Hearing was delayed for almost six years, notwithstanding the substantial completion of an investigation, in a bad faith effort to put pressure on a respondent to agree to settlement terms. That sort of conduct would be unacceptable and would bring the administration of enforcement proceedings into disrepute. To be clear, we are not suggesting that Enforcement Staff have acted in bad faith in this matter, but we are concerned that accepting Enforcement Staff's position would result in a hearing panel lacking jurisdiction to determine that issue.

¶ 35 There is no principled reason why a hearing panel would lack jurisdiction to address an alleged abuse of process on the day prior to issuance of a Notice of Hearing, but would have jurisdiction the day after. Accordingly, we have concluded that, in circumstances where it is alleged that the delay prior to the issuance of a Notice of Hearing is inordinate, results in significant prejudice and constitutes an abuse of process that brings the administration of justice into disrepute, a hearing panel must have the same jurisdiction to address those issues before the issuance of a Notice of Hearing as it has after the issuance of a Notice of Hearing.

(II) REMEDY

¶ 36 Having concluded that the Hearing Panel has jurisdiction, we turn to the 3-part test set out in *Blencoe*:

(i) has the delay been inordinate;

(ii) has the respondent suffered significant prejudice; and

(iii) in the circumstances, does the delay amount to an abuse of process.

¶ 37 As a practical matter, a stay has the same effect as an order dismissing the complaint. For that reason, the party seeking a stay bears the difficult onus of satisfying the elements of the 3-part test. While we have concluded that the Hearing Panel has jurisdiction to address the issues raised by the motion, we also recognize that it is only in the rarest of cases that the circumstances would warrant a stay during the course of an investigation. In the particular circumstances of this matter, the investigation is, or ought to be, substantially complete as a draft Statement of Allegations has been shared with Mr. Carrigan, coupled with an invitation to make a settlement proposal. The only remaining step is the issuance of the Notice of Hearing.

Delay

¶ 38 The complaint against Mr. Carrigan was made in November 2020 and the investigation commenced in April 2021. It does not appear that Mr. Carrigan contributed to or waived the delay. He has cooperated in the investigation. As Enforcement Staff have provided Mr. Carrigan with a draft Statement of Allegations and invited him to propose a settlement, it appears that the investigation must be substantially complete, and no explanation has been offered for the failure to issue a Notice of Hearing.

¶ 39 There is no evidence before us regarding the typical or average length of investigations into allegations of conflict of interest, such as those framed by the complaint against Mr. Carrigan. However, in *Re*

[13] Rule 8206(2) states: "The Corporation may commence a proceeding under Rule 8200 against a Regulated Person up to six years after the date of the occurrence of the last event on which the proceeding is based."

Castonguay[14], the hearing panel described the investigative process as follows:

> IIROC has internal guidelines for fulfilling its self-regulatory mandate. When a complaint is brought, 45 to 90 days are allocated to assess the seriousness of the complaint. Once convinced of the seriousness, the file is referred to Investigations. The guidelines provide 'benchmarks' for the length of the investigation, a period of 12 to 24 months. When the investigation is complete, the file goes to Enforcement for processing by legal counsel, who examines the evidence, ensures that it is completed where necessary, and drafts a Notice of Hearing. The timeframe for Enforcement is generally 10 to 12 months. Prior to the Notice of Hearing, it is also customary to send a draft to the Respondent in order to negotiate a settlement agreement, if applicable. In the absence of a settlement agreement, a formal Notice of Hearing is filed.[15]

¶ 40 The guidelines were not put in evidence in this matter and we do not know whether the current guidelines, if any, are the same as those described in *Re Castonguay*. However, the steps described above were all taken in the present matter. *Re Castonguay* describes an investigative period of up to 3 years and 3 months. In the present matter, 3 years and 7 months have elapsed without the issuance of a Notice of Hearing. As in *MacBain*, the underlying complaint does not appear to have been particularly complex and the record does not disclose any factors to explain the delay. Indeed, it appears that Enforcement Staff advised Mr. Carrigan's counsel in August 2021 and again a year later that completion of the investigation was imminent.

¶ 41 On the evidence and in the absence of any explanation for the delay, we conclude that there has been inordinate delay.

Prejudice

¶ 42 The prejudice alleged to have been sustained by Mr. Carrigan included his unemployability and resulting financial losses, the harm to his professional reputation and his anxiety. Those are the sorts of prejudice recognized in the jurisprudence as relevant to a request for a stay. However, the jurisprudence also recognizes the difficulty in distinguishing the consequences attributable to the delay from the consequences attributable to being named in the complaint and made the subject of an investigation.

¶ 43 Mr. Carrigan was placed under Strict Supervision by the IIROC Registration Subcommittee on July 14, 2021 and withdrew his Request for Review of the Subcommittee's decision on August 26, 2021, when his counsel was advised by Enforcement Staff that the investigation was close to being completed. On August 2, 2022, Mr. Carrigan's counsel followed up by letter with Enforcement Staff, stating "Mr. Carrigan agreed not to challenge IIROC's interim supervision terms on the express understanding that IIROC's investigation was close to a conclusion. More than a year has passed since then and there appears to have been no activity on the matter at all". Enforcement Staff replied that the investigation would conclude within "the next couple weeks".

¶ 44 Mr. Carrigan then sought a hearing date for a further Request for Review on September 16, 2022. That Request for Review was withdrawn when Enforcement counsel agreed to recommend that the supervision terms be reduced to modified Close Supervision. As stated by Mr. Carrigan in his affidavit, he believed that the modification of the supervision terms and conditions "would alleviate the prejudice I was experiencing from IIROC's investigation". On November 4, 2022, the Registration Subcommittee accepted the recommendation of Enforcement Staff.

¶ 45 Mr. Carrigan asserts in his affidavit that being placed on Strict Supervision and then on Close Supervision "have had a profound, prejudicial effect on my reputation, career and income. These effects are largely, but not exclusively, related to the Terms and Conditions, that I have been subject to throughout the Investigation." While the imposition of supervisory terms and conditions may have affected his reputation, career and income, that prejudice arises from the decisions of the Registration Subcommittee and not from the delay in the investigation. Mr. Carrigan withdrew his Requests for Review and has not brought a further Request for Review. While we recognize that the Decisions of the Registration Subcommittee were influenced by

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[14] 2012 IIROC 42

[15] *Ibid.* at para. 10

the fact of the investigation, the delay in issuing a Notice of Hearing did not prevent Mr. Carrigan from seeking a further review of the Subcommittee's decision.

¶ 46 As regards Mr. Carrigan's employability, he was employed by Gravitas Financial Inc. ("Gravitas") until January 2023 when he left to join Vector Financial Services Ltd ("Vector"), an investment dealer registered with the OSC. There is no evidence as to his reason for leaving Gravitas. Vector required Mr. Carrigan to be registered with the OSC and sponsored his application. The OSC sought additional information regarding the IIROC (now CIRO) investigation and scheduled an interview with Mr. Carrigan for January 18, 2024. The draft Statement of Allegations was disclosed to the OSC, and Mr. Carrigan was advised by the OSC that his application for registration was not going to be approved because of the investigation and the allegations against him. Mr. Carrigan withdrew his application rather than face rejection and resigned from Vector because he could not secure the requisite registration. The denial of registration appears to be the result of the allegations against Mr. Carrigan and not the direct result of the delay in the investigation of those allegations. It is also noted that there is no evidence explaining why Mr. Carrigan would leave his existing employment to join Vector when he must have known that Vector would require him to be registered with the OSC and he had no assurance that such registration would be granted.

¶ 47 In March 2024, Mr. Carrigan joined PI Financial Corp. ("PI Financial") as an investment advisor. That position required him to be registered as a Registered Representative with CIRO. On April 17, 2024, Mr. Carrigan received the draft Statement of Allegations and shared it with PI Financial. He was terminated two days later. The termination appears to have been the result of the allegations against Mr. Carrigan in the draft Statement of Allegations and not the result of the delay.

¶ 48 There is no question that the delay in bringing this matter to a head has caused prejudice to Mr. Carrigan or, at least, has exacerbated the prejudice caused by the complaint, the commencement of the investigation, the restrictions imposed by the Registration Subcommittee and the threatened refusal of registration by the OSC. However, it is difficult to isolate the prejudice directly attributable to the delay in issuing the Notice of Hearing. For example, if Mr. Carrigan had remained with Gravitas, much of the alleged financial prejudice could have been mitigated.

¶ 49 As regards Mr. Carrigan's anxiety and the reputational stigma, there is no credible evidence that they arose from the delay as opposed to from the nature of the allegations against him.

¶ 50 In the circumstances, Mr. Carrigan has not established that he has suffered significant prejudice from the delay in the investigation of the complaint against him. It follows as well that, in the absence of significant prejudice, there is no abuse of process that would justify a stay of the investigation.

¶ 51 As regards the alternative relief sought by Mr. Carrigan, we agree with Enforcement Counsel that the Hearing Panel cannot direct an expedited hearing of a proceeding that has not and may never be commenced.

IV. CONCLUSION

¶ 52 For the reasons stated above, the motion is dismissed.

¶ 53 However, this matter cannot drag on indefinitely. The investigation appears to be substantially complete, and Enforcement Staff need to either issue a Notice of Hearing or formally close its investigation in the near term. If a Notice of Hearing is issued, an expedited hearing would be appropriate.

DATED at Toronto, Ontario, this 16th day of September 2024.

"Barry Bresner"
Barry Bresner, Chair

"Sarah Shody"
Sarah Shody

"Debbie Archer"
Debbie Archer