Re Gravitas & Creed

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rule

and

Gravitas Securities Inc. and Blayne Creed

2023 CIRO 30

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: October 3, 2023 in Toronto, Ontario
Decision: October 3, 2023
Reasons for Decision: October 24, 2023

Hearing Panel:
Louise Barrington, Chair, Nick Pallotta and Sarah Shody
Appearances:
Rob DelFrate, Senior Enforcement Counsel
David DiPaolo, for Gravitas Securities Inc. and Blayne Creed
Laura Poppel, for Gravitas Securities Inc. and Blayne Creed
Blayne Creed (present]

REASONS FOR DECISION

INTRODUCTION

¶ 1 This Hearing was convened by a Notice of Application for Settlement Hearing dated 26 September 2023, in accordance with sections 8215 and 8428 of the Investment Dealer and Partially Consolidated ("IDPC") Rules.

¶ 2 In February of 2020, Mr. Blayne Creed, a Registered Representative with Gravitas Securities Inc., became its Chief Executive Officer and Ultimate Designated Person (UDP). He had had no prior experience in supervision or compliance. In May of 2020, despite contrary advice from Gravitas' CFO, he bought a private placement on behalf of Gravitas. The transaction caused Gravitas to report a capital deficit to CIRO, in contravention of Dealer Member Rules 17.1 and 38.5. The deficit was remedied within 48 hours. Gravitas earned fees on the transaction, of which one-half were paid to Mr. Creed.

¶ 3 As UDP of Gravitas, the Respondent Creed was responsible for the conduct of Gravitas and for promoting compliance with the Rules. Gravitas had advised CIRO of its intention to wind up its business due to financial and operating difficulties and, in June of 2023, a CIRO hearing panel suspended its membership.

¶ 4 Gravitas had, at the time of the contravention, already been in the Early Warning designation since December 2019. Its membership was subsequently suspended.

¶ 5 In the course of the ensuing investigation, the Respondents admitted to the facts set out below, and the parties reached a settlement.

¶ 6 Having reviewed the Settlement Agreement proposed jointly by CIRO Enforcement Counsel and the Respondents, heard the submissions of the parties by teleconference, and reviewed the Sanction Guidelines and a

number of disciplinary decisions involving similar circumstances, this Panel has decided unanimously to approve the Settlement Agreement.

FACTS

¶ 7 The facts as admitted by the Respondents are set out in the Settlement Agreement and were summarized by Mr. DelFrate at the hearing. Mr. DiPaolo addressed mitigation factors on behalf of the Respondent Creed.

¶ 8 The Respondent Blayne Creed had been a Registered Representative of Gravitas Securities Inc. since 2016 and in February of 2020 became the Chief Executive Officer and UDP. Mr. Creed had previously been registered as a Registered Representative with another Dealer Member between 2009 and 2016, but prior to February 2020, he had had no experience supervising others or with compliance issues.

¶ 9 Gravitas had been a Dealer Member since 2008, and in 2019 had been placed in Early Warning Level II, where it remained until October of 2020. If a firm is placed in Early Warning, it is monitored closely to measure certain characteristics likely to lead to financial difficulty. It does not imply that any contravention has taken place, although it may lead to increased reporting obligations or other restrictions for the firm so designated.

¶ 10 On 11 May 2020, Mr. Creed bought on behalf of Gravitas a private placement of just over $1 million, despite contrary advice from the CFO and COO of Gravitas. At the time, Gravitas had a risk adjusted capital position of approximately $130,000. By participating in the transaction, it would incur a capital deficiency of approximately $370,000. Having been warned by the Chief Financial Officer and the Chief Compliance Officer that Gravitas lacked the capital to participate, he arranged with the majority shareholders of Gravitas that they would fund a capital injection.

¶ 11 Mr. Creed accepted the invitation to participate in the transaction before receiving the capital injection, thus triggering a capital deficiency. Gravitas earned a commission of $78,688.80, of which half was paid to Mr. Creed. The CFO reported the deficiency to CIRO the following morning. Within 48 hours the deficit was paid, but by allocating transaction shares to clients of Gravitas, rather than by capital injection.

¶ 12 The Canadian Investor Protection Fund levied a Capital Deficiency Assessment of $7,251 against Gravitas.

¶ 13 In June of 2023 a CIRO hearing panel issued a suspension order against Gravitas, pursuant to sections 8212 and 8426 of the IDPC Rules. Gravitas had advised CIRO of its intention to wind up the business due to financial and operating difficulties.

CONTRAVENTIONS

¶ 14 As set out in the Settlement Agreement, the Respondents admitted to the following contraventions of CIRO requirements:

(a) In May of 2020, Gravitas failed to have and maintain its risk adjusted capital greater than zero, contrary to Dealer Member 17.1; and

(b) In May of 2020, the Respondent Creed, as UDP of Gravitas, failed to promote compliance by Gravitas with the Dealer Member Rules by agreeing to participate in the transaction which resulted in capital deficiency, contrary to Dealer Member Rule 38.5.

SETTLEMENT TERMS

¶ 15 In the Settlement Agreement, the Respondents agreed to the following sanctions and costs:

(a) disgorgement by Gravitas of $38,834.40 of its share of the commissions from the transaction;

(b) disgorgement by Respondent Creed of $38,834.40 of his share of the commissions from the transaction;

(c) Respondent Creed to pay a fine of $40,000;

(d) prohibition of Creed’s approval as an Ultimate Designated Person for a period of one year;

and

(e) costs of $15,000.

¶ 16 Upon acceptance of the Settlement Agreement by this Hearing Panel, Enforcement Staff will not initiate further action against the Respondents in relation to the facts and contraventions set out in the Settlement Agreement, provided that the Respondents comply the terms of the Agreement. Should either or both Respondents fail to comply, then Enforcement Staff may bring proceedings under IDPC Rule 8200 against the Respondents and those proceedings need not be based only on the facts set out in the Settlement Agreement.

Legal Analysis

¶ 17 Mr. DelFrate, Senior Enforcement Counsel, summarized the facts of the case as admitted by the Respondent Creed, and informed the Hearing Panel that, upon acceptance and execution of the Settlement Agreement, no further issues would remain outstanding with regard to this case. He observed that although the conduct was a single transaction, and that no harm was caused to clients, the conduct of the Respondent Creed was wilful and serious, and that the agreed penalties reflected that conduct.

¶ 18 Mr. DiPaolo, speaking for Mr. Creed and Gravitas at the hearing, noted as mitigating factors that:

(a) Mr. Creed had admitted the alleged conduct, thus avoiding the time and expense of a full disciplinary hearing;

(b) The capital deficit resulted from a single transaction and was remedied within 48 hours;

(c) No harm came to any client of Gravitas or to any other person; and

(d) After disgorgement of the fees earned on the transaction, neither Mr. Creed nor Gravitas has benefitted from the contraventions.

SANCTIONS

¶ 19 In assessing the appropriate sanctions in this case, the Hearing Panel has reviewed a number of prior decisions provided by Enforcement Counsel and has referred to the Sanction Guidelines available as of the date of the Settlement Agreement.

¶ 20 The Sanction Guidelines are not binding but do provide general principles and many key factors to consider. The primary purpose of the Sanction Guidelines is to maintain high standards of conduct in the securities industry and to protect market integrity by assisting Enforcement Staff and hearing panels in determining appropriate sanctions. Hearing panels have the discretion to determine appropriate sanctions depending on the circumstances and the conduct involved in each case. Relevant principles applicable to the present case include the following:

(a) sanctions are preventive in nature by deterring future harmful conduct;

(b) sanctions should be more severe for respondents with prior disciplinary records;

(c) sanctions should ensure that a respondent does not financially benefit as a result of the misconduct;

(d) suspension should be considered where the conduct involved willful and/or reckless misconduct; and

(e) in determining the appropriate sanction, a respondent's proactive and exceptional assistance in the investigation will be considered.

¶ 21 Turning to the cases submitted to the Hearing Panel by Enforcement Counsel, first is the case of *Re Bereskin* 2020IIROC 37, where the hearing panel considered the case of a Registered Representative who failed to do due diligence regarding a client's authority, but no harm was caused to the client. That panel accepted the proposed sanction of $10,000.

¶ 22 In the case of *Re Milewski*, [1999] I.D.A.C.D. 04, the District Council assessed (*inter alia*) a total of $23,150

for three contraventions related to failure to ensure that RRSP recommendations were appropriate for the client, for failure to consult the client about her objectives and for failure to hold a written authorisation from the client. The District Council noted that settlements tend to be at the low end of the spectrum to avoid the costs of a contested hearing and [to guarantee] a favourable result.

¶ 23 *Re Cavalaris* 2017 IIROC 04 concerned a Chief Compliance Officer who failed to supervise the management of client accounts by a portfolio manager with regard to risk tolerance, conflicts of interest and divestment of high-risk shares. There were clients' claims totalling $279,000 against the manager in question but Mr. Cavalaris made no personal gain. Citing Moldaver, J. in the Supreme Court of Canada case of *R. v. Anthony-Cook,* the hearing panel observed that in deciding whether to accept a proposed settlement, it needed to determine whether it satisfied the public interest, or whether it risked bringing the administration of justice into disrepute. Rejection should occur only when the proposal is "so unhinged from the circumstances of the offence...that[it] would lead reasonable and informed persons ...to believe that the proper functioning of the justice system has broken down." That hearing panel accepted as reasonable the proposed penalty of $60,000 and $5,000 in costs, plus a reprimand.

¶ 24 The case of *Re Global Maxfin Capital & El Bouji* 2016 IIROC 09 also concerned violations of Rules 17.1. In that case, the conduct continued over a period of three months, involving deficits of up to $2.2 million. The respondent El Bouji was aware of the deficiencies which were obscured by inaccurate financial reporting. The respondent admitted that he had failed as UDP, over a period of over five years, to maintain his firm's capital at a level greater than zero. Moreover, it was disclosed to the hearing panel that Mr. El Bouji was still under prohibition by order of the Ontario Securities Commission in 2014 from the prior case when he misconducted himself in the second. The penalties in the 2014 El Bouji case totalled $75,000 plus $25,000 in costs. In the 2016 case, the new contravention, albeit for a much shorter time, in combination with the violation of his prohibition resulted in penalties totalling $55,000 plus $5,000 in costs.

¶ 25 In *Re Everest* 2019 IIROC 16, the Respondent CFO had failed to ensure that the Risk Adjusted Capital and financial circumstances of the company were accurately reported, contrary to Dealer Member 38.6. In that case, the respondent's financial hardship was a factor in the agreement to settle the penalty at a significantly low level without an order to contribute to costs. The hearing panel in that case noted that, but for his inability to pay, the fine would have been much larger than the $10,000 assessed and would have included an order for costs.

¶ 26 Finally, *Re Credit Suisse Securities (Canada) Inc* 2009 IIROC 15 dealt with two unrelated incidents on two consecutive days involving capital deficits. The first was a deficiency of $121,321,000 on September 17, 2008. The respondent had requested funds from its European affiliate, but did not receive the full amount until September 18, at which time the deficit was remedied. Meanwhile, the Respondent reported the deficiency to IIROC, as required. A second incident occurred the next day, when a trader took on a position involving large long and short equity positions, with long futures to hedge the equity positions' risks. This required a margin of $57 million, without which the respondent would have been in a positive capital position. The respondent rectified it on the following trading day and has since implemented a plan to address the incorrect hedging of principal positions in the future. The incident, although involving a large deficiency, was the result of a technical issue rather than of willful misconduct or negligence and did not suggest any financial problems. IIROC Staff suggested a minimum fine of $25,000. The hearing panel was of the view that a minimum fine of $25,000 for each contravention was unnecessary in this case, as the deficiency was technical, was immediately corrected, and the respondent was quick to address it and the concerns of IIROC, provided full disclosure and cooperation, resulting in minimum costs to IIROC in settling the matter. They added that the embarrassment caused by the deficiency was in itself a deterrent. The hearing panel accepted the proposed sanction of $25,000 with no costs ordered.

Conclusion

¶ 27 This Hearing Panel, in light of the facts and circumstances of this case, and having noted the cases cited by Enforcement Counsel, takes the view that the sanctions agreed in the proposed Settlement Agreement are reasonable. Mr. Creed's conduct was wilful and/or reckless; however, it was a single incident and he had no prior disciplinary history to aggravate the situation. The level of the penalties and costs, in conjunction with the one-year prohibition from acting as UDF, is appropriate to deter the Respondent and others from future similar

misconduct. Neither Gravitas nor Mr. Creed will retain any benefit from the transaction after disgorgement of the commissions earned on the transaction. No client was harmed by the misconduct. Mr. Creed admitted the offence, thereby avoiding the delay and expense of an enforcement hearing.

¶ 28 In accordance with the IDPC Rules, this Panel finds that the proposed settlement is reasonable in all the circumstances and serves the public interest. The Hearing Panel approves the Settlement Agreement.

Signed at the City of Toronto in the Province of Ontario this 24 day of October 2023.

Louise Barrington

Nick Pallotta

Sarah Shody

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