



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Debus (Re), 2020 ONSEC 20

Date: 2020-08-18

File No. 2019-16

IN THE MATTER OF JOSEPH DEBUS

REASONS FOR DECISION

Hearing:

In writing

Decision:

August 18, 2020

Panel:

M. Cecilia Williams

Commissioner and Chair of
the Panel

**Submissions received
from:**

Dalbir Kelley

For Joseph Debus

Kathryn Andrews
Sally Kwon

For Staff of the Investment
Industry Regulatory
Organization of Canada

Katrina Gustafson

For Staff of the Ontario
Securities Commission

REASONS FOR DECISION

I. OVERVIEW

- [1] Joseph Debus has applied for a hearing and review of an Investment Industry Regulatory Organization of Canada (**IIROC**) decision,¹ in which an IIROC panel found that Debus breached IIROC's rules and imposed sanctions on him. There have been several appearances before the Ontario Securities Commission (the **Commission**) to determine dates of the hearing and for the exchange of materials by the parties in advance of the hearing.
- [2] The hearing was scheduled to begin on July 29, 2020. On July 22, 2020, Debus sought an adjournment of the hearing until October 2020 and an extension of the timeline for filing his reply submissions, citing the continued unavailability of his counsel, Mark M. Persaud, due to health reasons. Debus provided a medical note from Persaud's physician in support of his request (the **Medical Note**).
- [3] On July 28, 2020, I ordered² that:
- a. the Medical Note be marked as confidential;
 - b. Debus serve and file written reply submissions, if any, by no later than September 22, 2020; and
 - c. the hearing be held by videoconference on September 29 and 30, 2020.
- [4] I advised that my reasons for that decision would follow. These are my reasons.

II. HISTORY OF THE PROCEEDING

- [5] On August 21, 2019, I scheduled the hearing for March 23 and 24, 2020, and ordered Debus to provide his hearing brief, witness summaries, if any, and written submissions (**Materials**) by January 17, 2020.
- [6] On January 14, 2020, Debus requested a four-week extension to file his Materials due to his counsel's unspecified health issues. I granted an extension, on consent of the parties, to February 14, 2020.
- [7] At an attendance on February 24, 2020, Debus requested that I issue a summons to a third party for the delivery of certain documents. I asked the parties to provide written submissions with respect to that request.
- [8] Because of the need for submissions on the summons issue, I extended the deadline for Debus to deliver his Materials to April 23, 2020, and adjourned the hearing to May 21 and 22, 2020 (the **First Adjournment**).
- [9] Debus failed to serve and file his Materials by April 23, 2020. On April 24, 2020, again citing his counsel's health issues, Debus requested a 60-day extension of the time to serve and file his Materials, a similar extension of the relevant timelines for service of materials by IIROC and Staff, and an adjournment of the hearing to September 2020.
- [10] On May 8, 2020, I:

¹ *Debus (Re)*, 2019 IIROC 5; *Debus (Re)*, 2019 IIROC 18

² *Debus (Re)*, (2020), 43 OSCB 6097

- a. ordered that Debus serve and file his Materials by June 22, 2020 (60 days from the April 23, 2020, deadline);
- b. granted extensions to IIROC and Staff for the service and filing of their materials to July 8, 2020 and July 15, 2020, respectively;
- c. ordered that Debus serve and file any reply submissions by July 22, 2020; and
- d. set July 29 and 30, 2020, as the dates for the hearing (the **Second Adjournment**).

III. ANALYSIS

A. Confidentiality of the Medical Note

- [11] As a preliminary matter I address my decision to mark the Medical Note, which contained intimate personal information, as confidential.
- [12] Counsel did not request that the Medical Note be marked as confidential. However, under Rule 22(4) of the Commission's *Rules of Procedure and Forms*³ and subsection 2(2) of the *Tribunal Adjudicative Records Act, 2019*⁴, a Panel may order an adjudicative record to be kept confidential, if it determines that "intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public."⁵
- [13] In my view, the objective of transparency is adequately served by the general description of the contents of the Medical Note in paragraph [22] below. Disclosure of the specifics would infringe on Persaud's privacy for no good reason. I therefore concluded that Persaud's interest in avoiding the disclosure of those specifics outweighs the desirability that the Medical Note be made available to the public. Therefore, I ordered the Medical Note to be marked as confidential.

B. Does Debus's counsel's continued unavailability warrant a further adjournment of this matter?

- [14] The main issue I must decide is whether the fact that Debus's counsel continues to be unavailable due to health reasons justifies a further adjournment of the hearing.
- [15] Rule 29(1) of the *Rules* provides that every merits hearing shall proceed on the scheduled date unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment."
- [16] The Commission has ruled that the standard set out in Rule 29(1) is a "high bar" that reflects the important objective set out in Rule 1, that Commission proceedings be conducted in a "just, expeditious and cost-effective manner".⁶

³ (2019) 42 OSCB 9714, r 22(4) (the **Rules**)

⁴ SO 2019, c 7, Sch 60

⁵ *Tribunal Adjudicative Records Act, 2019*, s 2(2)(b)

⁶ *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 at para 28; *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40, (2020) 43 OSCB 35 (**Money Gate**) at para 54

This objective must be balanced against parties' ability to participate meaningfully in the hearing and present their case.⁷

- [17] The balancing of these objectives is necessarily fact-based and must take into account the circumstances of the parties and the manner in which they have conducted themselves in the proceeding.⁸
- [18] Debus has already been granted an extension of the filing timelines in this matter and two adjournments. In my May 21, 2020 reasons for decision granting the Second Adjournment I assessed how the behaviour of the parties factored into my decision to grant that adjournment. I considered the timeline extension due to Debus's counsel's health issues to be a negative factor, while the First Adjournment was a neutral factor in my analysis.⁹
- [19] In my May 21, 2020 reasons for decision I weighed the circumstances relating to the request for the Second Adjournment and I consider that request to be neutral with respect to my analysis of this request.
- [20] The fact that Persaud was experiencing health issues was one of the circumstances that factored into my decision to grant the Second Adjournment.
- [21] For the purposes of this request I have been provided with new evidence, the Medical Note. Up to this point, Persaud's health issues had been unspecified.
- [22] The Medical Note stated that Persaud is under active care for a condition that had recently worsened, and that he was, as a result, unable to participate in any prolonged matter that lasts more than a couple of hours. The Medical Note also indicated that the condition was unlikely to have sufficiently improved by the end of July to permit Persaud to return to his regular work functions.
- [23] While both the *Statutory Powers Procedure Act*¹⁰ and the *Rules* provide that a party appearing before the Commission has the right to be represented by counsel, that right is not absolute.
- [24] Limitations have been placed, in an administrative context, on the right of a party to be represented by counsel of choice. The right to be represented by counsel does not include the right of a party to insist on adjournments due to the unavailability of counsel, where such adjournments would unreasonably delay the course of the proceedings.¹¹
- [25] While Debus's counsel's health has been an issue for some months, the Medical Note provides specificity and makes clear that a hearing in July was not possible. An adjournment into late September should provide time for Persaud's care to continue and for Debus to assess whether or not alternate arrangements may be necessary for the hearing to proceed as scheduled. I find that the circumstances meet the level of "exceptional" for the purposes of a further adjournment of this matter.

⁷ *Money Gate* at para 54

⁸ *Money Gate* at para 54

⁹ *Debus (Re)*, 2020 ONSEC 13 at paras 24 to 26

¹⁰ RSO 1990, c S.22

¹¹ *Aseervatham v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No. 804 at para 16 cited in *Re Hollinger Inc.*, 2006 ONSEC 2 at para 22

IV. CONCLUSION

- [26] On July 28, 2020, I ordered that the Medical Note be marked as confidential, pursuant to subsection 2(2) of the *Tribunal Adjudicative Records Act, 2019* and Rule 22(4) of the *Rules*.
- [27] I also granted an extension of time for Debus to deliver reply submissions, if any, to September 22, 2020.
- [28] The hearing is now scheduled to take place by videoconference on September 29 and 30, 2020, commencing at 10:00 a.m. on each scheduled day, or on such other dates or times as may be agreed to by the parties and set by the Office of the Secretary.

Dated at Toronto this 18th day of August, 2020.

"M. Cecilia Williams"

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