

IN THE MATTER OF THE *SECURITIES ACT*, R.S.O 1990, C. S.5, AS AMENDED

AND

IN THE MATTER OF BARDYA ZIAIAN

AND

**IN THE MATTER OF A DECISION ON JURISDICTION BY A HEARING PANEL OF
THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
DATED SEPTEMBER 24, 2020**

**APPLICATION FOR A HEARING AND REVIEW UNDER SECTION 21.7 OF THE
SECURITIES ACT, R.S.O 1990, C. S.5, AS AMENDED**

The Applicant, Bardya Ziaian (“**Mr. Ziaian**”), applies to the Ontario Securities Commission (the “**Commission**”) pursuant to Section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) for a hearing and review of the decision of the Hearing Panel dated September 24, 2020 *In the Matter of Bardya Ziaian*, on a jurisdictional motion brought by Mr. Ziaian (the “**Decision**”).

A. ORDER SOUGHT

The Applicant asks that the Commission make the following orders:

1. An interim order staying the Decision and the proposed IIROC Hearing on the merits until the requested hearing and review has been decided;
2. An order setting aside the Decision of the Hearing Panel;

3. An order that the Hearing on the merits before the IIROC Panel is to be conducted as an in-person Oral Hearing; and
4. Such further and other relief as counsel for the Applicant may request and the Commission may deem just.

B. GROUNDS

The grounds for the request and the reasons for seeking a hearing and review are:

5. IIROC began a formal investigation against Mr. Ziaian in 2015. The investigation remained dormant from 2016-2019.
6. IIROC issued a Notice of Hearing (“**NOH**”) on August 1, 2019 against Mr. Ziaian, on the basis of the Statement of Allegations filed by IIROC Staff on July 31, 2019. In the NOH, IIROC stated that the Hearing on the merits would be conducted by way of an Oral Hearing.
7. The Oral Hearing on the merits was initially scheduled to be heard in May, 2020. On March 30, 2020, a pre-hearing conference was held whereby the Oral Hearing on the merits was adjourned to a date to be determined. The parties reserved the dates of October 13 to 16, and October 19 to 23, 2020. The Oral Hearing on the merits had still not been formally set to proceed on those dates.
8. On August 26, 2020, the National Hearing Coordinator (“**NHC**”) emailed counsel for the parties and asked whether the matter would proceed on the reserved dates in October, 2020. The NHC advised the parties that the Hearing on the merits could take place via video conference, or in-person at the offices of Atchison & Denman.

9. A pre-hearing conference was held on September 2, 2020. No pre-hearing conference memo was provided by IIROC Staff and no motion was brought by IIROC Staff. No evidence was filed before the Hearing Panel. IIROC Staff advised that they were ready to proceed with a video conference Hearing on October 13, 2020. IIROC Staff stated that he believed a virtual hearing was appropriate. IIROC Staff acknowledged that the Atchison & Denman offices could conduct a socially-distanced Oral Hearing.
10. Counsel for the Applicant advised the Hearing Panel during the course of responding to IIROC Staff's comments that no evidence was before the Hearing Panel, and that there was no motion. A motion would be necessary to determine the issue of whether the Hearing on the merits was to proceed by way of an Oral Hearing or if it would be changed to an Electronic Hearing.
11. The Hearing Panel discussed these matters amongst themselves. After the members of the Hearing Panel conferred, the Chair of the Hearing Panel advised the parties that the Hearing Panel had decided that the Hearing on the merits was to proceed by way of video conference beginning on October 13, 2020.
12. The Hearing Panel issued their pre-hearing memorandum on September 8, 2020 which stated that Mr. Ziaian's request for an oral in-person hearing and an adjournment of the Hearing on the merits to January 2021 is denied, and that Mr. Ziaian should expeditiously bring a motion and file materials if he sought an adjournment and an oral in-person hearing. Mr. Ziaian did not and did not have to make a request for an oral in-person Hearing as the Hearing was always to be an oral in-person Hearing and that had not changed. He has never asked for an adjournment.

13. Mr. Ziaian filed a Notice of Motion on September 10, 2020. Mr. Ziaian requested an order that the Hearing on the merits continue as an Oral Hearing, or in the alternative, that the proceeding be permanently stayed on the ground that IIROC has no jurisdiction to continue with it if the Hearing on the merits proceeded by way of an Electronic Hearing.
14. A motion was heard on September 23, 2020. Counsel for Mr. Ziaian argued, *inter alia*, that the Hearing Panel did not have jurisdiction to convert the Hearing from an Oral Hearing to an Electronic Hearing under the IIROC Rules of Practice and Procedure.
15. The order of the Hearing Panel for the motion was released on September 24, 2020 (the “**Order**”). The Order dismissed Mr. Ziaian’s motion, and stated that the Hearing on the merits was to proceed by way of Electronic Hearing from October 13-16, and October 19-23, 2020.
16. The Order stated that written reasons are to follow. The written reasons for dismissing the motion have yet to be issued.
17. In reaching its Decision on the motion, the Hearing Panel erred in law, proceeded on incorrect principles and/or overlooked material evidence in:
 - (a) Misconstruing that Mr. Ziaian had made a request for the Hearing on the merits to be an Oral Hearing, when it had always been the case that the Hearing on the merits would and must continue as an Oral Hearing;

- (b) Failing to consider the evidence from the NHC that an Oral Hearing was feasible, and the uncontradicted evidence before the Hearing Panel that an Electronic Hearing would significantly impair Mr. Ziaian's ability to defend himself;
- (c) Purporting to convert an Oral Hearing to an Electronic Hearing, with no motion being made by a party for such a change, and with Mr. Ziaian clearly objecting to any such change; and
- (d) Failing to issue written reasons, or subject to receipt and review of any written reasons from the Hearing Panel, for other instances of erring in law, proceeding on incorrect principles and/or overlooking material evidence as may be apparent from those reasons.

18. Sections 8 and 21.7 of the Act.

19. Rule 14 of the Commission's *Rules of Procedure*.

20. Such further and other grounds as counsel may advise and the Commission may permit.

C. DOCUMENTS AND EVIDENCE

The Applicant intends to rely upon the following documents and evidence at the hearing:

21. The record of the proceeding before the Hearing Panel including, in particular:

- (a) the motion record of the Applicant;
- (b) the written submissions of the parties;
- (c) the transcripts of the motion before the Hearing Panel;

(d) the Order; and

(e) the written reasons of the Hearing Panel, if/once available.

22. Such further and other evidence as counsel may advise and the Commission may permit.

September 30, 2020

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