



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Debus (Re), 2021 ONSEC 28
Date: 2021-11-12
File No. 2019-16

**IN THE MATTER OF
JOSEPH DEBUS**

**REASONS AND DECISION ON A STAY MOTION
(Subsection 9(2) of the *Securities Act*, RSO 1990, c S.5)**

Hearing: In writing

Decision: November 12, 2021

Panel: Wendy Berman Vice-Chair and Chair of the Panel

Appearances: Dalbir Kelley For Joseph Debus
Mark Persaud

Kathryn Andrews For Staff of the Investment Industry
Sally Kwon Regulatory Organization of Canada

Aaron Dantowitz For Staff of the Commission

REASONS AND DECISION ON A STAY MOTION

I. OVERVIEW

- [1] Joseph Debus asks for a stay of a Commission decision¹ dismissing his application for a review of two decisions of the Investment Industry Regulatory Organization of Canada (**IIROC**)² until the disposition of his appeal of the Commission's decision to the Divisional Court.
- [2] In the IIROC decisions, Debus, a registered investment advisor, was found to have engaged in conduct which contravened various IIROC rules, including the business conduct, supervision of accounts and suitability determination rules. Among other sanctions imposed, his registration as an advisor was suspended for nine months and he was ordered to pay a fine of \$65,000.
- [3] On October 22, 2021, I granted an interim stay pending the disposition of this motion or further order of the Commission.³
- [4] I heard this motion in writing. Having considered the motion materials from Debus and written submissions from Debus, IIROC Staff and Commission Staff, I decline to grant a stay pending the disposition of Debus's appeal to the Divisional Court. In my view, it is appropriate to grant a further stay for sixty days for the limited purpose of allowing Debus to bring a stay motion before the Divisional Court, should he wish to do so.

II. BACKGROUND

- [5] On April 16, 2019, Debus filed his application for hearing and review of the IIROC decisions, pursuant to section 21.7 of the *Securities Act*⁴ (the **Act**).
- [6] The application was heard on January 27 and 28, 2021. Near the end of the hearing, Debus brought a motion for the recusal of the presiding Commissioner, alleging bias against both him and his counsel.
- [7] On August 31, 2021, the Commission issued its decision, in which it dismissed Debus's application and confirmed the IIROC decisions. On the same day, the Commission issued a separate decision dismissing Debus's recusal motion.⁵
- [8] On September 29, 2021, Debus appealed the first of those two Commission decisions to the Divisional Court. On the same day, he filed this motion for a stay, pursuant to section 9 of the Act.
- [9] In his appeal to the Divisional Court, Debus raises several grounds, including bias, misapprehension and/or failure to consider relevant evidence, exclusion of relevant evidence and improper assessment of witness credibility.
- [10] As of November 8, 2021, by which time the parties had filed their materials for this motion, Debus had not yet perfected his appeal to the Divisional Court and no schedule for the conduct or hearing of the appeal had been set.

¹ *Debus (Re)*, 2021 ONSEC 22, (2021) 44 OSCB 7430

² *Debus (Re)*, 2019 IIROC 5 and *Debus (Re)*, 2019 IIROC 18

³ (2021) 44 OSCB 8864

⁴ RSO 1990, c S.5

⁵ *Debus (Re)*, 2021 ONSEC 21, (2021) 44 OSCB 7447

- [11] On November 7, 2021, after Debus and IIROC Staff had filed their written submissions for this motion, and shortly before the release of this decision, Debus's counsel wrote to the Commission's Registrar, with a copy to IIROC Staff and Commission Staff. In that email, Debus's counsel purported to rescind an agreement they had previously made with IIROC Staff related to the time by which Debus was to perfect his appeal. Neither that agreement nor its purported rescission was relevant to my decision on this motion, so I need not address that portion of the email.
- [12] The email from Debus's counsel also contained wide-ranging allegations of serious misconduct by many involved in this proceeding. Those allegations are not in a proper form for my consideration. If Debus wishes to pursue these allegations he must do so in the proper forum with proper notice to those who are the subject of his allegations. I decline to consider them for the purposes of this motion.
- [13] I turn now to consider Debus's request for a stay of the Commission's decision.

III. LEGAL FRAMEWORK

- [14] Subsection 9(2) of the Act authorizes both the Commission and the Divisional Court to stay a Commission decision that is appealed to the Divisional Court, until the disposition of the appeal.
- [15] The test to be applied for the grant of a stay is the three-part test articulated by the Supreme Court of Canada and adopted by the Commission in numerous cases:⁶
- a. there is a serious issue to be tried;
 - b. the moving party would suffer irreparable harm if the stay were refused; and
 - c. the balance of convenience favours granting the stay.
- [16] Debus bears the onus of establishing that all three parts of the above test have been met. Debus submits that a stay of the Commission's decision pending the disposition of the appeal to the Divisional Court is consistent with the Commission's public interest mandate and that all three parts of the above test are met.

IV. ANALYSIS AND CONCLUSION

- [17] Debus submits that:
- a. the appeal raises serious issues relating to errors of law and procedural fairness;
 - b. if I refuse his request for a stay, he will lose his employment as a registered representative, his "book of business", and his career in the financial sector, and his family would suffer serious consequences, as they depend on his income; and

⁶ *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 at para 43; *Argosy Securities Inc (Re)*, 2015 ONSC 38, (2015) 38 OSCB 9711 at para 12; *Eley (Re)*, 2020 ONSC 30, (2020) 43 OSCB 9479 at para 14

- c. the absence of inconvenience to the other parties, and the fact that Debus is currently, and will continue to be, under strict supervision by his sponsoring firm, mitigate any potential harm to the public interest; accordingly, the balance of convenience favours the granting of a stay.
- [18] IIROC Staff takes no position on whether Debus meets the first two parts of the test. IIROC Staff submits that the balance of convenience favours granting a stay only if conditions are imposed relating both to strict supervision of Debus and to the timely conduct of the appeal. IIROC Staff submits that if a stay is granted, it should be with the following conditions:
- a. Debus's registration shall be subject to strict supervision by his sponsoring firm; and
 - b. if Debus has not perfected his appeal to the Divisional Court and delivered a certification of perfection to IIROC Staff on or before November 12, 2021, the stay will terminate.
- [19] OSC Staff also takes no position on whether Debus meets the first two parts of the test. OSC Staff adopts IIROC Staff's submissions related to the third part of the test.
- [20] Although the Commission has the authority to grant a stay pending the disposition of an appeal to the Divisional Court, the Commission should take a cautious approach to the exercise of this discretion. Generally, the determination of whether a stay pending the disposition of the appeal is warranted is better made by the Divisional Court.⁷
- [21] The Divisional Court is better placed to conduct a preliminary assessment of the merits of an appeal (which necessarily involves scrutiny of the Commission decision and the process leading to the decision) and to determine whether the appeal is frivolous or raises serious issues (the first part of the test for a stay).
- [22] The Divisional Court also controls the appeal process and is therefore better able to consider the duration of any stay, which is a factor when assessing the balance of convenience.
- [23] Accordingly, I decline to grant a stay pending the disposition of Debus's appeal to the Divisional Court. However, it is appropriate to grant a stay for sixty days to allow Debus to bring a stay motion before the Divisional Court, should he wish to do so.
- [24] For the reasons set out above, I shall issue an order providing that the Commission's decision is stayed for sixty days on the following conditions:
- a. the registration of Debus shall be subject to strict supervision by his sponsoring firm; and
 - b. Debus's sponsoring firm must submit written monthly strict supervision reports to IIROC.

⁷ *Vitug (Re)*, 2010 ONSC 8, (2010) 33 OSCB 4601 at para 27

Dated at Toronto this 12th day of November, 2021.

"Wendy Berman"

Wendy Berman