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

- and -

IN THE MATTER OF JULIAN ROBERT RICCI

- and -

IN THE MATTER OF A HEARING AND REVIEW OF A DECISION OF A PANEL OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA DATED JUNE 9, 2014

REASONS AND DECISION
(Section 27.1 and Subsection 8(3) of the Act)

Hearing:	November 24, 2014		
Decision:	March 6, 2015		
Panel:	Christopher Portner	-	Commissioner
Counsel:	Scott C. Hutchison Matthew C. Gourlay	-	For Julian Robert Ricci
	Susan Kushneryk Alexandra Clark	-	For Staff of the Investment Industry Regulatory Organization
	Albert Pelletier	-	For Staff of the Ontario Securities Commission

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REASONS AND DECISION

I. BACKGROUND

A. Introduction

[1] On November 24, 2014, the Ontario Securities Commission (the "**Commission**") held a hearing to consider an application by Julian Robert Ricci ("**Ricci**") dated July 9, 2014 (the "**Application**") under section 27.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") for a hearing and review of a decision of a hearing panel (the "**Panel**") of the Investment Industry Regulatory Organization of Canada ("**IIROC**") dated June 9, 2014 (the "**Decision**").

[2] The Decision was issued by the Panel following a sanctions hearing (the "**Hearing**") that was based on an Agreed Statement of Facts and Contraventions dated May 22, 2014 and a Supplementary Agreed Statement of Facts dated May 28, 2014 (together, the "**Agreed Statement of Facts**").

[3] In the Agreed Statement of Facts, Ricci admitted two contraventions of IIROC Rule 29.1, namely, that, from or about August 2011 to April 2013:

(a) He engaged in conduct unbecoming a registrant or detrimental to the public interest in that he made misrepresentations to his firm's compliance staff by inflating the net worth of certain clients; and

(b) He falsely endorsed the signatures of several clients on account documentation and other forms.

[4] In the Decision, the Panel ordered that:

(a) Ricci be prohibited from reapplying for registration with IIROC for a period of 24 months from the date of the Decision, and thereafter until the fines, costs and interest thereon as set out in its order are paid in full;

(b) Should Ricci obtain registration, he be subject to strict supervision for a period of one year; and

(c) Ricci pay a fine of $200,000 and costs of $15,000.

[5] Ricci seeks to set aside the 24 month suspension and submits that the Commission should substitute a shorter period of suspension of eight months. He does not seek to set aside the other sanctions imposed on him by the Panel.

B. The Application

[6] Ricci applied for a hearing and review of the Decision by the Commission on the following grounds:

(a) The Panel's decision to prohibit Ricci from applying for re-registration for a period of 24 months was overly harsh in the circumstances and lengthier than necessary to accomplish the public interest objectives sought to be furthered by the imposition of a penalty.

(b) The 24 month suspension was overly harsh and inconsistent with prior dispositions of IIROC hearing panels imposed in materially analogous circumstances.

(c) The Panel overlooked material circumstances that would have led to a shorter period of prohibition being imposed. In particular, the Panel did not advert to that fact that Ricci had already served the functional equivalent of a lengthy suspension due to his inability to be registered throughout the course of the process and, as a consequence, imposed a period of suspension that was disproportionate in the circumstances and in excess of what was required by the public interest.

(d) The Panel overlooked material evidence in mitigation of the penalty. In particular, although the Panel adverted to the evidence of the three character witnesses who testified on Ricci's behalf, the Panel did not advert to the close to 100 reference letters that were entered into evidence and, based on paragraph 22 of the Decision, did not actually consider the letters in its deliberations.

(e) The Panel erred by not permitting Ricci to make an oral statement to the Panel at the end of the Hearing on his own behalf.

[7] Ricci made no written or oral submissions in this proceeding with respect to the ground for appeal described in paragraph [6](e) above, and, accordingly, I have not addressed the matter.

II. THE ISSUES

[8] In considering the Application, we will address the following issues:

(a) The Commission's jurisdiction to intervene in this matter;

(b) The appropriate standard of review under section 21.7 of the Act;

(c) Whether the Applicant has established any of the grounds on which the Commission may intervene in the Decision; and

(d) If there are grounds to intervene in the Decision, what the appropriate disposition of the matter by the Commission should be in the circumstances.

III. SUBMISSIONS OF THE PARTIES

A. Applicant's Submissions

1. The Need for Commission Intervention

[9] Ricci submits that the intervention of the Commission is required because the Panel committed errors in its treatment of the evidence of support from Ricci's clients and the evidence of the amount of time Ricci had not been registered at the time of the Hearing, and in imposing an inappropriate suspension which is in excess of what the public interest requires.

2. Evidence of Support from Ricci's Clients

[10] Ricci submits that the Panel overlooked material evidence in that it did not advert in the Decision to 95 letters from Ricci's former clients which were entered into evidence and which expressed support for his return to the industry. Ricci submits that the letters were essential evidence to understand the context and nature of his misconduct and properly determine a fit penalty. More specifically, Ricci submits that:

> Unfortunately, the Panel declined to even advert to these letters in its Reasons and gave no indication of even having read them. The Applicant submits that if they had, they would have imposed a more lenient penalty.
>
> (Ricci's Memorandum of Fact and Law at para. 45)

[11] Ricci further submits that the Panel's failure to advert to the letters should be placed in the context of the Panel's direction to Ricci's counsel to shorten the proceeding and limit the number of Ricci's clients from whom the Panel would hear oral evidence. As discussed in greater detail below, the Panel advised Ricci that it did not agree that evidence of client support should be given much weight. Ricci had intended to have 12 clients testify, but ultimately only three testified. Ricci submits that:

> The understanding that the Panel would consider the client evidence contained in the letters also explains why counsel was willing, at the Panel's suggestion, to drastically abridge the anticipated *viva voce* [i.e., live] evidence. With respect, it was unfair to extract this compromise from the Applicant on live witness testimony and then not consider the substantial paper record that compensated for the witness' absence.
>
> (Ricci's Memorandum of Fact and Law at para. 54)

[12] Ricci emphasized that the Panel needed to appreciate the extraordinary extent to which [Ricci's] client base remained loyal to him even after finding out about his misconduct and many had been willing to testify before the Panel on his behalf. In Ricci's submission, the evidence of the support by his clients "persuasively demonstrated [Ricci's] commitment to his clients and the exceptionally positive value he provides to the industry." (Ricci's Memorandum of Fact and Law at para. 55)

3. Evidence Relating to Ricci's Non-Registered Time

[13] Ricci submits that the Panel overlooked material evidence in that it did not advert in the Decision to the fact that he had been unlicensed for 16 months by the date of the Hearing. Ricci submits that, if the Panel had considered the issue, any further suspension should not exceed eight months which would represent the functional equivalent of a two year suspension.

[14] Ricci further submits that, as the Panel did not advert to the issue in the Decision, it is not possible to know whether it was considered or overlooked and that the failure of the Panel to give any credit for the non-registered period of time was a clear error of principle.

4. Appropriate Length of Suspension

[15] Ricci submits that the Panel imposed a suspension that was unfit and in excess of what the public interest requires. He submits that the suspension imposed was outside the range established by prior decisions, and, in support of his submission, refers to a number of prior decisions involving similar conduct in which the suspensions imposed ranged from no suspension to a permanent ban. Ricci submits, as he did to the Panel, that the maximum suspension that should be imposed in the circumstances of his case should be two years and that he be given credit for non-registered time as described above.

[16] Ricci places particular emphasis on *Re Rotstein*, 2012 IIROC 27 ("***Re Rotstein"***) and *Re Steinhoff*, 2010 IIROC 42, rev'd 2011 BCSECCOM 147 ("***Re Steinhoff***"), in which shorter suspensions of 12 months were imposed for conduct which Ricci submits was more egregious than his own. The two cases cited by Ricci are described in paragraph [25] below.

[17] Ricci also submits that the suspension imposed by the Panel was unfit because in its consideration of all of the facts, the Panel misapprehended the evidence regarding (i) the type of investment strategy his clients were placed in; (ii) the number of clients with respect to whom Ricci made misrepresentations; and (iii) the fact that Ricci had only been licensed for two years at the time the misconduct took place.

B. IIROC Staff's Submissions

1. Evidence of Support from Ricci's Clients

[18] IIROC Staff submits that evidence of support from 95 of Ricci's clients which addressed Ricci's character and their satisfaction with the services that he provided to them was received in evidence and formed part of the body of evidence in the case. IIROC Staff also submits that there is no basis to suggest that the Panel dealt unfairly or inappropriately with this evidence.

[19] IIROC Staff submits that the Panel correctly ascribed little weight to the evidence of support from Ricci's clients as such evidence is not relevant to the issue of whether Ricci engaged in fraudulent, misleading and wrongful activity. IIROC Staff also submits that such evidence is also not relevant to the issue of the appropriate penalty for such conduct.

[20] IIROC Staff submits that the Panel's reasons regarding this evidence are sufficient, and a more detailed treatment was not required.

2. Evidence of Ricci's Non-Registered Time

[21] IIROC Staff submits that evidence of Ricci's non-registered time and Ricci's arguments that he should be given credit for this time were squarely before the Panel. IIROC Staff also submits that the details relating to his non-registered time were set out in the Agreed Statement of Facts and are set out in paragraphs 3 and 4 of the Decision.

[22] IIROC Staff further submits that the Panel was not required to credit Ricci's non-registered time against the period of suspension it considered appropriate. IIROC Staff submits that Ricci was not out of the industry but was employed in the industry in a non-registered capacity and continued to receive 70% of the commissions generated by his client base. Accordingly, Ricci's situation cannot be directly compared with the prior decisions to which Ricci refers in which the respondent was given credit for time out of the industry.

[23] IIROC Staff submits that the Panel's reasons regarding Ricci's non-registered time are sufficient, and a more detailed treatment was not required.

3. Appropriate Length of Suspension

[24] IIROC Staff submits that the period of suspension imposed was appropriate, and there is no conflict between the Panel's perception of the public interest and that of the Commission. The period of suspension imposed by the Panel is within the range of suspensions recommended in the IIROC Dealer Member Disciplinary Sanction Guidelines (the "**Guidelines**"). Further, none of the prior decisions referred to by Ricci establish that the sanctions were inappropriately harsh.

[25] IIROC Staff submits that the two authorities on which Ricci relies in particular, namely, *Re Rotstein* and *Re Steinhoff*, involved conduct which was considerably less serious than that of Ricci. The respondent in *Re Rotstein* signed his clients' names as a convenience for them and with their authorization, and did not receive any financial benefit for doing so. Similarly, the respondent in *Re Steinhoff* allegedly directed her staff to re-use signatures and re-date documents to assist her clients and did not receive any financial benefit for doing so. Further, *Re Steinhoff* has no precedential value because the British Columbia Securities Commission found that the panel had erred in law, and set aside its liability and penalty decisions (*Re Steinhoff*, 2011 BCSECCOM 147).

[26] IIROC Staff further submits that the Panel reviewed *Re Pan*, 2012 IIROC 22 and *Re Thomas*, [2004] I.D.A.C.D. No. 47, two decisions of IIROC hearing panels which suggest that misrepresentations by a respondent to a member firm should lead to permanent registration bans.

[27] Finally, IIROC Staff notes that all of the prior decisions relied on by Ricci in connection with his application were before the Panel. The Panel weighed the facts of the case, which it did not misapprehend, against the facts in those decisions in coming to its determination of the appropriate sanction, and IIROC Staff submits that it is not the role of the Commission on an application for a hearing and review to engage in a re-weighing of those facts.

C. OSC Staff's Submissions

[28] Staff of the Commission ("**OSC Staff**") made submissions regarding the appropriate standard of review of the Decision and the grounds on which the Commission would intervene in the decision of an IIROC panel. OSC Staff took no position on whether Ricci had demonstrated that his case meets any of the grounds for intervention.

IV. ANALYSIS OF SUBSTANTIVE ISSUES RAISED ON THE APPLICATION

A. Jurisdiction to Intervene

[29] The Commission has the authority to review any direction, decision, order or ruling of a self-regulatory organization such as IIROC under section 21.7 of the Act which provides as follows:

> **21.7 (1) Review of Decisions** – The Executive Director or a person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange, recognized self-regulatory organization, recognized quotation and trade reporting system or recognized clearing agency may apply to the Commission for a hearing and review of the direction, decision, order or ruling.
>
> **(2) Procedure** – Section 8 applies to the hearing and review of the direction, decision, order or ruling in the same manner as it applies to a hearing and review of a decision of the Director.

[30] Subsection 8(3) of the Act provides that, on a hearing and review, the Commission may confirm the decision under review or make such other decision as the Commission considers proper.

B. Standard of Review and Grounds for Intervention

[31] The Commission exercises original jurisdiction similar to conducting a new trial and may admit new evidence in a hearing and review under section 21.7 of the Act.

[32] The grounds on which the Commission will intervene in a decision of a self-regulatory organization were established in *Canada Malting Co. (Re)* (1986), 9 0SCB 3565 ("***Canada Malting***"). Based on the principles set out in *Canada Malting*, Ricci must demonstrate that his case fits squarely within at least one of the following grounds before the Commission will intervene in the Decision:

(a) The Panel proceeded on an incorrect principle;

(b) The Panel erred in law;

(c) The Panel overlooked material evidence;

(d) New and compelling evidence is presented to the Commission that was not before the Panel; or

(e) The Panel's perception of the public interest conflicts with that of the Commission.

(*Canada Malting* at para. 21; *Re Hudbay Minerals Inc.* (2009), 32 OSCB 3733("***Hudbay"***) at para. 114).

[33] Ricci submits that the Panel committed the following errors thereby entitling the Commission to intervene based on the test articulated in *Canada Malting*:

(a) The Panel overlooked material evidence of support from Ricci's clients and of the amount of time Ricci had been non-registered prior to the Hearing;

(b) The Panel erred in principle or in law in not giving greater weight to the foregoing evidence; and

(c) The Panel imposed a penalty that was unfit and in excess of what the public interest requires.

[34] Although the scope of the Commission's authority on a hearing and review is well established, in practice the Commission takes a restrained approach to applications under section 21.7 of the Act, and will only substitute its decision for that of an IIROC hearing panel in rare circumstances (*Re Kasman* (2009), 32 OSCB 5729 at para. 43 ("***Re Kasman***"); and *Hudbay* at paras. 103-4, 114.

[35] The Commission recognizes the specialized expertise of an IIROC hearing panel and accords deference to factual determinations central to the panel's specialized competence (*Re Boulieris* (2004), 27 OSCB 1597, aff'd (2005), 28 OSCB 5174 (Div. Ct.); *Re Northern Securities Inc*. (2014), 37 OSCB 161 at para. 61; *Re Questrade Inc.* (2011), 34 OSCB 2595 at paras. 16-17; and *Re Kasman* at para. 43). The Commission accords even greater deference in matters of sanctions, and recognizes that IIROC hearing panels will have greater familiarity with IIROC's regulations and sanction guidelines than the Commission (*Re Benarroch* (2011), 34 OSCB 2041 at paras. 4 and 5). As stated by the Divisional Court in respect of the Commission's own expertise in matters of sanctions:

> [T]he standard of review on the penalties ordered against the appellant must be considered. Here again, the Commission has an expertise in the regulation of the markets and is entitled to deference as to its view of the appropriate penalty. We ought not to disturb the penalty imposed unless there is an error in principle or the punishment clearly does not fit the crime. Decisions as to penalty tend to be fact-intensive mixed questions of fact and law and are rarely determinative of future cases.
>
> (*Costello v. Ontario (Securities Commission)*, [2004] O.J. No. 2972 (Div. Ct.) at para. 31; see also *Erikson v. Ontario (Securities Commission)*, 2003 CanLii 245 (Div. Ct.) at paras. 55-57)

C. Analysis

1. Evidence of Support from Ricci's Clients

[36] The Panel describes in the Decision the evidence of the three former clients of Ricci who testified. The Panel also makes reference to the evidence tendered by the parties, which included the 95 letters from former clients of Ricci, but does not expressly refer to the letters.

[37] The Panel is not required to refer to every piece of evidence in the Decision. It is sufficient that the Decision when read in context shows why the Panel decided as it did. (*Clifford v. Ontario Municipal Employees Retirement System*, 2009 ONCA 670 at paras. 29-31.)

[38] As noted above, the Panel heard from three of Ricci's former clients and heard submissions from Ricci about the importance of that evidence. The Panel disagreed with Ricci's submission that the evidence was important. It advised Ricci that it was "not sure how much weight" it was going to ascribe to the evidence that Ricci's former clients supported his return to the industry because "that isn't really what this case is about." With respect to the last of Ricci's former clients who testified, the Chair of the Panel made the following comments:

> THE CHAIR: Can't we just take his will-say statement into the record? If all he's going to say – with great respect to Mr. Hutchison, all he's going to say is, "Ricci was a great advisor and I'm going to follow him over to Chippingham," you know, we're not sure how much weight to provide to that sort of statement. (Transcript, May 28, 2014, p. 27: 11-17).
>
> …
>
> THE CHAIR: But you see, the panel --- the panel is iffy - how do I phrase this? We accept that Ricci's clients love him and want to go with him wherever he goes, but that isn't really what this case is about.
>
> MR. HUTCHISON: Fair enough. But …
>
> THE CHAIR: This case is about Ricci falsely endorsing papers and inflating the net worth and, quite frankly, that is what this tribunal is going to be focusing on. … we don't really think [the testimony of the last of Ricci's former clients who was to testify] is going to add a heck of a lot, but we're quite happy to have it brought into the record as a will-say statement ….. (Transcript, May 28, 2014, p. 28: 11-24)

[39] When the Decision is read in context, it is clear that the Panel did not expressly refer to the letters from Ricci's former clients, in addition to describing the oral evidence provided by three of his former clients, because it did not view that evidence to be material to its decision and ascribed little, if any, weight, to that evidence.

[40] While the Panel's views with respect to the weight to be ascribed to the evidence of Ricci's former clients could have been more clearly stated, the Decision, as it relates to the issue of the evidence of Ricci's former clients, is, in my view, sufficient when read in context. As a result, in my view, Ricci has not established that the Panel was required to ascribe greater weight to the client letters, and therefore, to impose a shorter period of suspension.

[41] The Guidelines include a non-exhaustive list of key considerations for an IIROC hearing panel to take into account in determining an appropriate sanction (*Re Kasman* at paras. 51-52). The Guidelines are not binding on IIROC hearing panels, but rather list general principles that a panel should consider in assessing appropriate sanctions (*Re Gareau*, [2005] I.D.A.C.D. NO. 25 at para. 52).

[42] Ricci did not identify any provision of the Guidelines that would have required the Panel to ascribe greater weight to the client letters, and therefore, to impose a shorter suspension.

[43] The conduct for which Ricci was sanctioned was directed at his employer and not his clients. Ricci was sanctioned for making misrepresentations to his firm's compliance staff and not to his clients. He was also sanctioned for making "false endorsements", which the Guidelines distinguish from "forgery" by the client's knowledge of or consent to the registrant forging his or her signature.

[44] Ricci's business partner, John Eley ("***Eley***"), was also sanctioned for making misrepresentations to his firm and for making false endorsements. In the decision regarding his sanctions, *Re Eley*, 2014 IIROC 52 ("***Re Eley***"), a different IIROC hearing panel expressly ascribed no weight to similar letters from Eley's clients. In that matter, the panel stated:

> We did not give weight to the clients' letters submitted by Mr. Eley. In our view, the clients were unaware and unaffected by Mr. Eley's conduct. Mr. Eley's error was to ignore or abuse his relationship with his employer and his obligations as a member of the investment industry, perhaps in his effort to accommodate his clients. The fact that he did so while not alienating his clients is not a factor to consider in his favour.
>
> (*Re Eley* at para. 61)

[45] Based on the foregoing, I find that the Panel did not proceed on an incorrect principle or err in law by not ascribing greater weight to the evidence of support from Ricci's clients

2. Evidence of Ricci's Non-registered Time

[46] Contrary to Ricci's submission, the Panel did advert to the fact that Ricci had been working in the industry in an unregistered capacity from April 2013 to March 2014, and was not working in the industry at the time of the Hearing.

[47] The Panel did not accept Ricci's submission that he should be given credit for his non-registered time and imposed a 24 month suspension commencing on the date of the Decision and not on the date that Ricci became unregistered.

[48] Ricci submits, as he did to the Panel, that the period of suspension should be reduced to account for the 16 months that he had been without registration by back-dating the period of suspension to the date on which he became unregistered in April 2013.

[49] Ricci referred to decisions in which non-registered time had been considered by IIROC hearing panels in determining the appropriate period of suspension.

[50] Ricci refers to the case in *Re Smith*, 2014 IIROC 16 ("***Re Smith***"), in which the respondent had been out of the industry following the termination of his employment for misconduct. The respondent entered into a settlement agreement which provided that he would be subject to a two-year suspension which would be deemed to have been served. The IIROC hearing panel in *Re Smith* endorsed the approach by stating the following:

> As the Respondent's two year absence from the industry came as a result of his conduct in this case, IIROC did not seek to extend the Respondent's time out of the industry beyond that two year period. IIROC's written submissions state the Respondent's record and any publications regarding this case will show a two year suspension. IIROC counsel also referred the Panel to a number of cases in which a suspension had been determined to commence at the time of the respondent's departure from the industry, rather than at the time of the panel decision. See *Re Bell* [2005] I.D.A.C.D. No 15, *Re Nott* 2011 LNIIROC 26, *Re Morrison* [2004] I.D.A.C.D. No. 63, *Re Conville*, 2013 IIROC 5, *Re Little* [2007] I.D.A.C.D. No. 24 and *Re Parkinson*, 2012 LNIIROC 18.
>
> (*Re Smith* at para. 21)

[51] Ricci also refers to other authorities in which the respondent was given credit for time spent out of the industry, including *Re Bell*, [2005] I.D.A.C.D. No 15 ("***Re Bell***"), *Re Morrison*, [2004] I.D.A.C.D. No. 63 ("***Re Morrison***"), and *Re Conville*, 2013 IIROC 5 ("***Re Conville***").

[52] *Re Smith* and the other authorities referred to by Ricci establish that non-registered time is one of the factors that may be considered by a panel in determining the appropriate period of suspension, but do not establish that such time must be credited against the period of suspension. Contrary to Ricci's submission, the Panel is not required to determine an appropriate period of suspension and then reduce the period of suspension by crediting the non-registered time; rather, the Panel is required to impose a suspension that is appropriate having regard to all of the circumstances. In *Re Eley* the panel stated that:

> …in an appropriate case an allowance can be made by a Hearing Panel for the time during which the respondent is effectively suspended from acting as a registrant. … [T]he preferable approach is to consider the amount of the suspension from a total, over-all perspective and decide what period of suspension is appropriate having regard to all of the facts.
>
> (*Re Eley* at para. 70)

[53] The weight, if any, which a panel ascribes to the respondent's non-registered time in its determination of the appropriate suspension varies and depends on the facts of the case. For example, in *Re Morrison* the panel accepted a settlement in which the one year suspension

imposed was deemed served by the three years the respondent had been under strict or close supervision, because, among other things, the period of supervision had been imposed on the respondent in circumstances which the panel held were "patently unfair" (*Re Morrison* at paras. 61-65). In *Re Conville* the panel determined that the six month suspension it imposed should be back-dated by about three and a third months to the date when the respondent lost his employment in the industry. Unlike in *Re Morrison*, the panel did not reduce the suspension it determined was appropriate to account for the 40 months the respondent had been under strict supervision before he lost his employment. In *Re Eley*, the panel noted that one-for-one credit should not be given to the respondent since he was still employed in the industry, albeit in a non-registered capacity, but did not expressly stipulate how much credit was given. Finally, in *Re Bell* the panel noted *Re Spowart*, [2004] I.D.A.C.D. No. 17 ("***Re Spowart***") as representing a more egregious case in which the respondent benefited from his conduct. In *Re Spowart*, a three year suspension was imposed from the date of the decision and no credit was given for the 18 months the respondent had been out of the industry.

[54] Based on the foregoing, I find that the Panel did not proceed on an incorrect principle or err in law by imposing a suspension that commenced on the date of the Decision and by not expressly giving credit for the period of time that Ricci was not registered.

3. Appropriate Length of Suspension

[55] The suspensions recommended in the Guidelines for the type of conduct for which Ricci was sanctioned range from one month to a permanent ban. For false endorsements, the Guidelines recommend a suspension from one month to up to five years for egregious cases. In the case of misrepresentations, the Guidelines recommend a permanent ban for egregious cases, and do not comment on a minimum period of suspension.

[56] Ricci relies on *Re Bell*, which, he submits, provides general guidance on the principles to be applied to the determination of the appropriate length of suspension for the type of conduct for which he was sanctioned (at paras. 10, 11, and 35).

[57] In *Re Bell* the panel reviewed a number of prior decisions and noted that each case turns on its own facts and the sanctions imposed vary significantly depending on the facts of the case. The suspensions imposed in the decisions reviewed by the panel ranged from a one month suspension to a permanent ban.

[58] In *Re Bell* the panel found that certain factors suggested that a longer period of suspension be imposed. Two of those factors are noteworthy because they are present in Ricci's case. First, the panel found that cases involving some benefit to the respondent, such as commissions, were more egregious and should attract severe penalties. The panel cited *Re Spowart* in which a three year suspension was imposed, as an example of a case in which the respondent benefitted. Second, the panel found that cases involving a large number or pattern of forgeries or false endorsements even when there was no benefit to the respondent, are also more egregious and should attract severe penalties. The panel cited *Re Holowatiuk*, [2004] I.D.A.C.D. No. 64, in which a permanent ban was imposed, as an example of a case in which there was a large number or pattern of forgeries or false endorsements without a benefit to the respondent.

[59] Ricci refers to *Re Rotstein* and *Re Steinhoff* in which suspensions of 12 months were imposed, and the decision of the British Columbia Securities Commission (the "**B.C. Commission**") in another proceeding involving Steinhoff, in which the B.C. Commission set aside the penalty decision of the panel (*Re Steinhoff*, 2013 BCSECCOM 308).

[60] In the latter decision, the conduct in question was different from the conduct in this case. Ricci relies on the decision for the B.C. Commission's comment on the effect of a suspension on the respondent. The B.C. Commission set aside certain of the IIROC hearing panel's findings on liability and its penalty decision, and requested submissions on the appropriate suspension for the remaining counts. In its comments on suspension, the B.C. Commission noted that the panel's characterization of the respondent's conduct in its penalty decision was grossly unfair, and stated (at para. 90) that a one year suspension was tantamount to the termination of the registrant's career.

[61] In *Re Rotstein*, the panel also noted that the impact of a suspension on a respondent's career might be a factor to be considered in determining the appropriate suspension, but it should be considered along with all of the other factors and should not be given significant weight if it would detract from the objectives of the disciplinary process. As noted by the panel:

> We believe that the impact on a respondent's business of a lengthy period of suspension might in special circumstances be an appropriate consideration to take into account in considering the issue of whether a Hearing Panel should sanction a divided period of suspension.[1] It must, however, be viewed in light of all of the circumstances of a particular case and should not be afforded significant weight if the result of dividing the suspension would be to impair the objectives of the disciplinary process referred to above including in particular the principle of deterrence inherent in a period of suspension.
>
> (*Re Rotstein* at para. 27)

[62] I find that the 24 month suspension imposed by the Panel was not unfit and was not in excess of what the public interest requires. It is within the range of suspensions recommended in the Guidelines and that were imposed in the authorities referred to by Ricci and IIROC Staff. The determination of the appropriate sanction in each case depends on a consideration of all of the facts, and I am not persuaded that the shorter suspensions imposed in *Re Rotstein* or *Re Steinhoff* (prior to being overturned) suggest that the Panel erred in imposing a 24 month suspension on Ricci. Moreover, I note that the circumstances of Ricci's case include a large number or pattern of false endorsements from which he derived benefits, which, as discussed above, suggest that a longer period of suspension be imposed. Indeed, in *Re Eley*, the panel determined that a six month suspension was appropriate for Eley in light of the 24 month suspension imposed on Ricci, because of the severity of Ricci's conduct, some of which was abusive in the extreme (*Re Eley* at paras. 48-50, 72).

[63] I also find that the Panel did not misapprehend the evidence and its consideration of the appropriate suspension was not based on a misapprehension of the evidence regarding (i) the

[1] The reference to a divided period of suspension is to a 12 month suspension that was to be served in two separate six month intervals.

type of investment strategy Ricci's clients were placed in; (ii) the number of clients in respect of which Ricci made misrepresentations; and (iii) the fact that Ricci had only been licensed for two years at the time the misconduct took place.

[64] Ricci has not established that the type of investment strategy he was employing was considered a factor by the Panel or that it should have been. The Panel did note as a mitigating factor that there was no evidence of financial harm to Ricci's clients (para. 20). Further, the Panel's description of the investment strategy in the Decision (para. 5) mirrors the description in the Agreed Statement of Facts (para. 8).

[65] Ricci notes that the Decision states (at para. 7) that he inflated the net worth of 30% of his clients in order to avoid his firm's suitability requirements, when the Agreed Statement of Facts states that Ricci only inflated the net worth of 30% of his clients who were in the leveraged investment strategy. He further notes that, as stated at paragraph 12 of the Agreed Statement of Facts, his clients who were in the leveraged strategy only held 60% of his approximately $225 million assets under management. In other words, by omitting the words "in the leveraged investment strategy", which were included in the Agreed Statement of Facts, Ricci submits that the Panel misapprehended the severity of his conduct. He only made misrepresentations in respect of clients holding 18% (30% of 60%) of his assets under management and not 30% as stated in the Decision.

[66] I am not persuaded that the omission from the Decision of the references to the leveraged investment strategy and the percentage of Ricci's clients' assets that were invested on that basis establishes that the Panel misapprehended the severity of Ricci's conduct in determining the appropriate sanction. The Panel did not list the number of clients in respect of whom Ricci made misrepresentations as an aggravating factor. Instead, the Panel identified as aggravating factors that Ricci engaged in a pattern of deliberate conduct that was designed to circumvent his firm's policies and to go undetected, and that his conduct persisted for 16 months and only ceased when Ricci was confronted by his firm.

[67] Finally, Ricci's relative youth was noted by the Panel as part of its conclusion that a permanent ban was not appropriate (para. 24).

V. CONCLUSION

[68] I conclude that the Panel did not overlook material evidence, proceed on an incorrect principle, err in law, or impose a suspension that was unfit and in excess of what the public interest requires. Accordingly, the Application is hereby dismissed.

Dated at Toronto this 6th day of March, 2015.

"*Christopher Portner*"

Christopher Portner