

ONTARIO SECURITIES COMMISSION

**IN THE MATTER OF AN APPLICATION FOR A HEARING AND REVIEW OF
A DECISION OF THE ONTARIO DISTRICT COUNCIL OF THE INVESTMENT
INDUSTRY REGULATORY ORGANIZATION OF CANADA PURSUANT TO
SECTION 21.7 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF DISCIPLINE PROCEEDINGS PURSUANT TO THE BY-
LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA AND
THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY
REGULATORY ORGANIZATION OF CANADA**

BETWEEN

**STAFF OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION
OF CANADA**

- AND -

**GEORGES BENARROCH, LINDA KENT, MARJORIE ANN GLOVER AND
CREDIFINANCE SECURITIES LIMITED**

NOTICE OF REQUEST FOR A HEARING AND REVIEW

TAKE NOTICE THAT Georges Benarroch, Linda Kent, Marjorie Ann Glover and Credifinance Securities Limited (collectively “the Applicants”), request a hearing and review by the Ontario Securities Commission (the “Commission”) pursuant to s. 21.7 of the Ontario *Securities Act*, of the Decision and Reasons of the Ontario District Council (“District Council”) dated April 13, 2010, imposing sanctions on the Applicants pursuant to IDA By-laws 20.23 and 20.24.

THE APPLICANTS RESPECTFULLY REQUEST:

1. An Order setting aside the Decision and Reasons of a Hearing Panel of the District Council (the "Sanctions Panel") dated April 13, 2010 ("the Decision") and substituting the decision of the Commission respecting the appropriate sanction to be imposed on each of the Applicants;
2. In the alternative, an Order setting aside the Decision and remitting the matter to a newly constituted Hearing Panel of the District Council for a re-hearing; and,
3. Such further and other relief as counsel may request and the Commission deems just.

THE GROUNDS FOR THE REQUEST ARE:

1. By way of a Notice of Hearing dated November 11, 2008, the Investment Industry Organization of Canada ("the IIROC") commenced a disciplinary proceeding against the Applicants.
2. The Applicants agreed to admit to certain infractions, and the facts pertaining to those infractions. The parties were not able to reach agreement on the appropriate sanction for any of the Applicants.
3. On March 3rd, 2010, a 1-day hearing was conducted before the Sanctions Panel on the basis of an "Agreed Statement of Facts and Violations", in order to determine the appropriate sanction for each of the Applicants.

4. The Sanctions Panel issued the Decision on April 13, 2010. At the conclusion of the Decision, the Sanctions Panel imposed the following sanctions on the Applicants:

- (a) Georges Benarroch was suspended for life, fined \$250,000, and ordered to disgorge all profits from the transactions in issue;
- (b) Linda Kent was suspended for 10 years, fined \$50,000, and ordered to disgorge all profits from the transactions in issue;
- (c) Marjorie Ann Glover was suspended for 5 years and fined \$50,000;
- (d) Credifinance Securities Limited ("Credifinance") was fined \$50,000 and "expelled forever".
- (e) Costs of \$100,000 were ordered against the four Respondents, jointly and severally.

5. With the exception of the costs award, these sanctions substantially exceeded the sanctions that even the IIROC sought at the hearing.

6. In reaching its conclusion the Sanctions Panel erred in two significant respects:

- (a) The Sanctions Panel erred in law by failing to consider or apply any sanctions principles or other factors relevant to the determination of the sanctions it imposed on the Applicants;
- (b) The Sanctions Panel failed to provide adequate reasons for its Decision, thereby denying the Applicants their entitlement to procedural fairness through a meaningful appellate review.

Failure to Consider or Apply Sanctions Principles

7. At the sanctions hearing, submissions were made by counsel the IIROC and counsel for the Applicants concerning sanctions principles, as well as an array of other factors relevant to the determination of the appropriate sanction for each of the Applicants.

8. The relevant sanctions principles and other factors that were submitted to the Sanctions Panel included, but were not limited to:

- (a) The fact that the Applicants admitted the infractions and allegations made against them, thereby avoiding the necessity of a lengthy hearing;
- (b) The fact that the Applicants were wholly co-operative throughout the four-year investigation in this matter;
- (c) The history of the related proceedings brought by the Investment Dealers Association (“IDA”) against Credifinance during the investigation in this case, in which Credifinance ultimately prevailed. In that matter the Hearing Panel found that the IDA had “manifestly misused” its investigative authority, and had made allegations against the Applicants that were “grossly unfair” and “defamatory”;
- (d) The applicable IIROC sanctions guidelines, including those submitted to the Sanctions Panel by the IIROC’s own counsel such as the

acceptance of responsibility, prior disciplinary record, harm to clients, and blameworthiness;

- (e) The various precedent decisions provided to the Sanctions Panel by IIROC counsel;
- (f) Specific deterrence;
- (g) General deterrence;
- (h) The specific circumstances of the individual Respondents, particularly, that they have all resigned from the industry.

9. A review of the Decision discloses no indication that any of these principles or factors was applied, or even considered, by the Sanctions Panel. There is simply no reference to any of them.

10. The Sanctions Panel erred in law in failing to consider and apply any relevant principles pertaining to sanctions, before imposing sanctions on the Applicants.

Inadequate Reasons

11. Where there is a right of appeal, reasons must provide a sufficient basis for the decision to permit meaningful appellate review. The Decision provides no trace of the Sanctions Panel's reasoning process, or why it reached the conclusions it did. The substance of the Decision consists almost entirely of a copied rendering of facts and allegations, followed by a few conclusory paragraphs. It contains no factual or legal analysis, and no reference to any sanctions principles.

12. By rendering its Decision in this fashion, the Sanctions Panel mischaracterized the issues before it.

13. Excluding the five short paragraphs imposing sanctions and costs against the Applicants, the Decision is forty-five paragraphs in length. Thirty-six paragraphs are simply copied from the Notice of Hearing and the Agreed Statement of Facts and Violations. Only the remaining nine paragraphs were written by the Sanctions Panel.

14. Three of the nine paragraphs pertain to simple “housekeeping” points.

15. A fourth paragraph erroneously states that “All of the conduct complained about falls within, and is contrary to, By-Law 29.1 of the IDA, which provides... [quotation of By-Law 29.1 omitted]”. This statement is incorrect. Only a specific subsection of By-Law 29.1 formed the basis of the complaint against the Applicants. The Sanctions Panel was specifically informed of this point.

16. A fifth paragraph indicates that the Sanctions Panel omitted a chart from its copying of certain parts of the Agreed Statement of Facts and Violations, and includes a reference to a failure to perform gatekeeper responsibilities.

17. Finally, there are four paragraphs that appear near the end of the Decision, immediately before the section that imposes the sanctions. Concerning those four paragraphs:

- (a) The first refers to the “Know Your Client” rule, which was not in issue in the proceeding;

- (b) The next two are a brief gloss on some of the admitted facts, and conclude with the sentence "It appears as if these may have been illegal distributions of securities, but we hasten to say that there is no sufficient evidence for us to reach that conclusion." There was no such allegation or admission before the Sanctions Panel. The Sanctions Panel was not even required to entertain that question.
- (c) The fourth and final paragraph concludes that the Applicants all engaged in a "self-serving and a contumacious disregard of their duties... over a protracted period of time."

18. There was no evidence to support the finding that the Applicants conduct was contumacious, and no reference was made to the inferences that the Sanctions Panel must have drawn to make that finding.

19. Thus, aside from three housekeeping paragraphs, five out of the six remaining paragraphs written by the Sanctions Panel contain assertions that are erroneous, or irrelevant, or unsupported by the facts. None of those paragraphs refers to sanctions principles, or precedent. None provides a reasoned basis for the sanctions that were ultimately imposed on the Applicants.

20. Concerning the thirty-six paragraphs that were copied, the Sanctions Panel erroneously included a paragraph from the Notice of Hearing that defined the purpose of the hearing as being to determine whether the named Respondents had committed the various contraventions alleged by Staff. This was clearly wrong. Violations were admitted. The Sanctions Panel was asked only to determine sanctions.

21. In erroneously defining the purpose of the hearing the Sanctions Panel also incorporated into its Decision a paragraph from the Notice of Hearing setting out a "Count" against Mr. Benarroch that had been dropped by the IIROC.

22. During the course of submissions by the IIROC's counsel, and before any submissions had been made on behalf of the Applicants, the Chair of the Sanctions Panel openly characterized the Applicants' conduct as "out and out fraud". Nothing approaching this level of wrongdoing was alleged by the IIROC, or referenced in the Agreed Statement of Facts and Violations.

23. Taken with the comment by the Chair of the Sanctions Panel, the Decision makes it clear that the Sanctions Panel was occupied with an aggressive analysis of the Applicants' culpability, (although this was admitted) instead of analyzing the sanctions issues before it. The Decision contains virtually no indication that the Sanctions Panel engaged in a proper consideration of sanctions principles, precedents, or other relevant factors, before it imposed the prescribed sanctions on each of the Applicants.

24. Section 8 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5.

25. Section 21.7 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5.

26. Section 12 of the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22.

27. Such further grounds as the Commission may deem just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the review:

28. Notice of Hearing, dated November 11, 2008;

29. The Agreed Statement of Facts and Violations;
30. The transcript of the sanctions hearing on March 3, 2010;
31. The documentary and sanctions materials filed at the sanctions hearing;
32. The Decision of the Sanctions Panel dated April 13, 2010; and,
33. Such further evidence as counsel may suggest and the Commission may allow.

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