

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

AND

IN THE MATTER OF ANDREW PAUL RUDENSKY

AND

**IN THE MATTER OF A DECISION OF A HEARING PANEL OF THE INVESTMENT
INDUSTRY REGULATORY ORGANIZATION OF CANADA DATED JULY 23, 2018
AND OCTOBER 17, 2018**

**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, Andrew Paul Rudensky (“Rudensky”), 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 on the merits of the Hearing Panel dated July 23, 2018, *In the Matter of Andrew Paul Rudensky* (the “Merits Decision”), and the decision on sanctions of the Hearing Panel dated October 17, 2018, *In the Matter of Andrew Paul Rudensky* (the “Sanction Decision”).

A. ORDER SOUGHT

The Applicant respectfully requests that the Commission make the following orders:

1. An order setting aside the Merits Decision and the Sanction Decision and dismissing the allegations against the Applicant as set out in the Notice of Hearing and Statement of Allegations, dated November 2, 2017.

2. In the alternative, an order setting aside the Merits Decision and the Sanction Decision and substituting the decision of the Commission.
3. 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:

1. Rudensky was a Registered Representative with Richardson GMP (“RGMP”) from November 2009 until September 8, 2015.
2. In February 2015, Rudensky entered into a loan with JJR Private Capital Inc. (“JJR”), a company run by a client of RGMP (the “Client” or “RS”) who was not a direct client of Rudensky, in order to allow Rudensky to participate in a hung bought deal involving shares of Cenvous Energy Inc. (the “First Loan”). Rudensky and RS negotiated the First Loan, including granting security over Rudensky’s condominium if the First Loan was not paid back within the few days agreed to.
3. The First Loan and the associated transaction proceeded as planned and no concerns were raised by RGMP at the time. No allegations were brought by IIROC Staff with respect to the First Loan.
4. In April 2015, Rudensky entered into a nearly identical loan as the First Loan in order to allow Rudensky to participate in a hung bought deal involving shares of Brookfield Asset

Management Inc. (“BAM.A”) (the “Second Loan”). The only differences between the First Loan and the Second Loan were that:

- (a) The Second Loan was for \$3 million instead of \$1 million;
 - (b) The interest and fees payable were 70 percent of the gross profit instead of 65 percent; and
 - (c) RS decided, on his own, to make the Second Loan in his name instead of his company JJR.
5. On April 24, 2015, Rudensky was asked by his branch manager about the source of the funds he used to participate in the BAM.A transaction. This was not part of an investigation. Rudensky advised that the funds were obtained through a loan which was collateralized by his condominium. Rudensky’s branch manager asked nothing further other than to ask Rudensky to send him an email advising of same, which Rudensky did.
6. On November 2, 2017, IIROC Staff issued a Notice of Hearing and Statement of Allegations, which contained the following two allegations against Rudensky:
 - (a) In April 2015, Rudensky engaged in personal financial dealings with a client of his Dealer Member contrary to Dealer Member Rule 43; and
 - (b) In April 2015, Rudensky made a false and misleading representation to his Dealer Member contrary to Dealer Member Rule 29.1.
7. The proceeding was heard by an IIROC Hearing Panel on May 7, 8, and 9, 2018.

8. On July 23, 2018, the Hearing Panel released its Merits Decision which found that the Second Loan constituted personal financial dealings of Rudensky with a client of RGMP, contrary to Rule 43. However, the Hearing Panel found that the breach of Rule 43 was only “technical” in nature as the Client was a sophisticated lender who did not require the protections that Rule 43 is intended to provide.
9. The Hearing Panel also found that Rudensky’s failure to provide a full and complete answer when asked by his branch manager about the source of the Second Loan constituted business conduct and practice which was unbecoming or detrimental to the public interest contrary to Rule 29.1.
10. On October 17, 2018, the Hearing Panel released its Sanction Decision which imposed the following sanctions on Rudensky:
 - (a) a suspension from registration with IIROC for two years commencing on the date of the Decision on the Merits;
 - (b) a fine of \$5,000 for the contravention of Rule 43;
 - (c) a fine of \$25,000 for the contravention of Rule 29.1;
 - (d) a fine of \$25,923 representing disgorgement of the net profits Rudensky gained from his personal financial dealings with a client;
 - (e) a requirement to rewrite and pass the Conduct and Practices Handbook course prior to any reregistration with IIROC; and
 - (f) payment of costs to IIROC Staff in the amount of \$24,500.

11. In reaching its conclusions on the Merits Decision, the Hearing Panel erred in law and proceeded on incorrect principles in:
- (a) finding that Rudensky breached Rule 43;
 - (b) failing to interpret Rule 43 in a flexible manner which reflects the intention of Rule 43;
 - (c) finding that Rule 43 prohibits financial dealings with clients of a Dealer Member who are not clients of the Registered Representative;
 - (d) finding that a Registered Representative's knowledge of whether someone is a client of a Dealer Member is irrelevant to a determination of a breach of Rule 43;
 - (e) finding that Rudensky admitted that he knew that the Client was a client of RGMP when he entered into the Second Loan;
 - (f) finding that the Second Loan was not collateralized by Rudensky's condominium;
 - (g) and also failed to consider material evidence by finding that RGMP's allowance of a cross-guarantee by a client on the accounts of a Registered Representative in similar circumstances was not relevant to its determination;
 - (h) finding that IIROC Staff was permitted to proceed with an enforcement hearing commenced after September 1, 2016 under Rule 29.1, which was repealed as of September 1, 2016. The accompanying Transitional Rules did not state that Rule 29.1 could or would continue to be in force for a proceeding such as this one and

no other rule was created to overcome the clear common law provision that upon repeal, it is as though the rule never existed;

- (i) finding that Rudensky breached Rule 29.1;
 - (j) finding that Rule 29.1 requires a Registered Representative to provide a full and complete answer to ordinary and everyday questions asked by a branch manager at a registered firm; and
 - (k) finding that Rudensky's answer to RGMP about the source of the Second Loan was false and misleading.
12. In reaching its conclusions on the Sanction Decision, the Hearing Panel erred in law and proceeded on incorrect principles in:
- (a) imposing a \$5,000 fine, together with a disgorgement of \$25,923, for a technical contravention of Rule 43 which was disproportionate to Rudensky's conduct and more than necessary to accomplish the public interest objectives sought to be furthered by the imposition of penalty;
 - (b) imposing a \$25,000 fine for a contravention of Rule 29.1 which was disproportionate to Rudensky's conduct and more than necessary to accomplish the public interest objectives sought to be furthered by the imposition of penalty;
 - (c) imposing a \$25,000 fine for a contravention of Rule 29.1 in circumstances where previous decisions had not considered or concluded that there was a requirement to provide a full and complete answer to every question asked by a branch manager;

- (d) imposing a two-year suspension which was disproportionate to Rudensky's conduct and more than necessary to accomplish the public interest objectives sought to be furthered by the imposition of penalty;
- (e) finding that the two-year suspension should commence on the date of the Merits Decision;
- (f) finding that Rudensky's conduct was detrimental to the reputation of the industry;
- (g) finding that the Respondent should pay costs in the amount of \$24,500 to IIROC Staff.

13. Section 8 and 21.7 of the Act.

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

15. 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:

1. The record of the proceeding before the Hearing Panel including, in particular:
 - (a) the Notice of Hearing and Statement of Allegations, dated November 2, 2017;
 - (b) the documentary evidence marked as exhibits by the Hearing Panel;
 - (c) the transcripts of the oral evidence before the Hearing Panel;

(d) the Merits Decision; and

(e) the Sanction Decision.

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

November 16, 2018

GROIA & COMPANY

Professional Corporation

Wildeboer Dellelce Place

365 Bay Street, 11th Floor

Toronto, Ontario M5H 2V1

Tel: (416) 203-2115

Fax: (416) 203-9231

Kevin Richard (LSO #43160P)

Martin Mendelzon (LSO #61622T)

Lawyers for the Applicant,

Andrew Paul Rudensky