

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Michael Bond and Sesto DeLuca

**IN THE MATTER OF
THE UNIVERSAL MARKET INTEGRITY RULES**

AND

**IN THE MATTER OF
MICHAEL BOND AND SESTO DELUCA**

Hearing Panel: The Hon. John B. Webber, Q.C.
Ms. Brigitte J. Geisler
Mr. Guenther W. K. Kleberg

Hearing Date: May 22, 2007

Counsel for Market Regulation Services Inc.: Chilwin C. Cheng
Charles Corlett

Counsel for Sesto DeLuca: Ellen J. Bessner
James Camp

Michael Bond not attending.

**DECISION OF THE HEARING PANEL
RESPECTING PENALTY**

On March 7, 2007, this hearing panel found Michael Bond ("Bond") and Sesto DeLuca ("DeLuca") had contravened the requirements of UMIR Rules and Policies as alleged in the Notice of Hearing dated December 20, 2006. On May 22, 2007, we heard evidence and submissions respecting penalty.

Position of the Parties

Counsel for Market Regulations Services Inc. ("RS") suggested that the appropriate penalty should be as follows:

1. Bond

- i) a fine of \$100,000.00;
- ii) suspension of access to all marketplaces regulated by RS for a period of two (2) years; and
- iii) costs of \$71,000.00

2. DeLuca

- i) a fine of \$50,000;
- ii) a prohibition against acting in a trading supervision capacity for any Participant for a period of one (1) year, commencing on the date such order is made by the Hearing Panel; and
- iii) costs of \$71,000.00.

Counsel for DeLuca suggested that the appropriate penalty in this case would be a lesser monetary penalty, possibly a reprimand, no suspension of supervisory function and that there be no order as to costs or a minimal order as to costs.

Bond did not appear. We find that he was properly notified of this hearing. The proof of notice of the date of the hearing has been filed as Exhibit 1 in the penalty hearing. We received no submissions from Bond as to the penalty sought by RS.

It was Bond's trading activity that was the cause of the investigation and subsequent regulatory action brought by RS against himself and DeLuca. If Bond had not, on numerous occasions, entered day orders at or near the end of the daily trading sessions in an attempt to create an artificial bid price, this hearing would never have occurred .

We find that Bond's conduct in establishing an artificial bid price is very serious and impacts the integrity of the market place. The panel agrees with the monetary penalty proposed by counsel for RS at \$100,000. In addition, Bond will be suspended from access to all market places regulated by RS for a period of two (2) years from June 1, 2007. He will be required to contribute a portion of the expenses/costs, most of which were incurred to present evidence as to his contraventions. We assess those expenses/costs at \$25,000.00.

This award regarding costs is substantially different than that requested by RS. We take note of the IDA disciplinary decision dated November 14, 2006 involving *Credifinance Securities Limited* [IDA File No 0084/January/06]. At page 6 of that judgement that panel noted:

In recent years, there has been a trend to the awarding of quite substantial costs in these cases. We think that care should be exercised so that the fear of attracting an award of very large costs does not have the effect of inhibiting a Member, or an approved person, from advancing a defence which it thinks is meritorious. It is also worth keeping in mind, when thinking about costs, that a successful respondent cannot get its costs from the IDA. Since the power to award costs is one-sided, we think that a conservative approach to costs is not unwarranted.

With reference to DeLuca, we have directed ourselves to the *General Principles for Sanction Guidelines for RS Disciplinary Proceedings - August 2002*, which includes the following principles:

- a. ensure compliance with applicable securities legislation and requirements;
- b. prevent fraudulent and manipulative acts and practices and deter misconduct;
- c. promote just and equitable principles of trade for participants and open and fair business practices by access persons; and
- d. improve overall business standards in the securities industry.

The *RS General Principles* outline the general, aggravating and mitigating factors that a Panel may wish to consider in imposing appropriate sanctions and we have been guided by that outline in our decision, including any factors that may be considered as causing harm to the market place.

We do not accept that the fine requested or the prohibition against acting in a trading supervision capacity by DeLuca is proper or appropriate for these reasons:

1. DeLuca is not guilty of any dishonest actions.
2. He cooperated with RS in all respects.
3. He has no previous discipline issues or complaints about contraventions.
4. He made an effort to supervise the activities of his staff.

There was substantial evidence presented at the hearing with regard to the lack of a technological tool to detect artificial bids. We were advised that steps have been taken by W.D. Latimer to correct the inability to trace the closing bids of unfilled orders in daily reviews. RS conducted a trade desk review of W.D. Latimer shortly before the events that led to these proceedings. No deficiencies were noted in this area of review although other items were brought to the firm's attention. From time to time, the regulator will note a deficiency and give the firm an opportunity to remedy the deficiency, failing which, a disciplinary proceeding is commenced. There was a noticeable lack of direction here, even though it was acknowledged that monitoring of closing bids was not a simple task. We pause to observe that if this issue had been drawn to the attention of DeLuca by RS, steps could have been taken to solve the problem without the necessity of this hearing.

DeLuca was candid in testifying that he could not check unfilled orders and perform daily reviews because he had no technological tool. He was aware that this was a requirement and an issue not only for his firm, but also for the industry. Even though he was in fact wrong to excuse his failure to supervise for that reason, his candor is a mitigating factor. There was no

other evidence presented that would have shown DeLuca's abilities or performance of his compliance supervisory role to be lacking.

There were no red flags available to alert DeLuca to the problem that was identified. RS did not provide guidelines as to the necessity to include unfilled orders in the daily reviews. If RS had provided a clear reaction to the conduct of this aspect of his supervision, we believe that DeLuca would not be before us.

In determining a penalty, the Panel must have regard for specific deterrence. This would not appear to be necessary for DeLuca who acknowledged that this was an activity that should have been monitored. Specific deterrence is necessary in the case of Bond which is reflected by the substantial fine imposed in these reasons. With respect to DeLuca, there was no evidence that DeLuca intentionally ignored or was willfully blind to Bond's conduct. Had he been aware of the improper trading, we are assured that he would have taken steps to prohibit it.

With respect to general deterrence, the Panel considered that factor regarding Bond and it is reflected in the penalty imposed upon him. Under all of the circumstances, we do not believe it an appropriate consideration for DeLuca.

The Panel notes that there was no evidence presented of any impact on the market or complaints of loss caused by the actions of Bond which DeLuca should have supervised.

We recognize that the lack of these factors does not excuse the failure to supervise. We do observe, however, that it is undoubtedly clear that DeLuca has many serious supervisory functions for which he is responsible and respectfully suggest that the firm review its needs and obligations in these areas and provide additional resources, if necessary.

For all of the foregoing reasons, we find that the penalty suggested by counsel for RS to be punitive when the facts as we have found them are fully considered. Accordingly, the appropriate penalty is that of a reprimand.

COSTS

With respect to the issue of costs to be paid by DeLuca, the Panel adopts the comments from the Credifinance Securities Limited decision as quoted above, which are particularly appropriate. Since the Panel has determined that an appropriate sanction is a reprimand, to impose a costs award would be paramount to imposing a fine. We find, for the same reasons which we have expressed above as to the issue of a fine and a suspension, that costs should not be awarded against DeLuca.

DISPOSITION

This Hearing Panel orders that:

1. Michael Bond shall pay a fine of \$100,000.00;
2. Michael Bond shall be suspended from access to all market places regulated by the Market Regulation Services Inc. for a period of two years; and
3. Michael Bond shall pay costs of \$25,000.00.

The Hearing Panel further orders that Sesto DeLuca is hereby reprimanded.

Dated at Toronto, this 29th day of May, 2007.

The Hon. John B. Webber, Q.C.

Ms. Brigitte J. Geisler

Mr. Guenther W. K. Kleberg