



Ontario
Securities
Commission

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Citation: Debus (Re), 2020 ONSEC 13
Date: 2020-05-21
File No. 2019-16

IN THE MATTER OF JOSEPH DEBUS

REASONS AND DECISION

Hearing:	In writing	
Decision:	May 21, 2020	
Panel:	M. Cecilia Williams	Commissioner and Chair of the Panel
Submissions received from:	Stephen Chiu Mark Persaud	For Joseph Debus
	Kathryn Andrews Sally Kwon	For Staff of the Investment Industry Regulatory Organization of Canada
	Katrina Gustafson	For Staff of the Ontario Securities Commission

REASONS AND DECISION

I. OVERVIEW

- [1] These are the reasons for decision for an Order issued on May 8, 2020.
- [2] Joseph Debus has applied for a hearing and review of an Investment Industry Regulatory Organization of Canada (**IIROC**) decision, in which an IIROC panel found that Debus breached IIROC's business conduct, supervision of accounts, and suitability determination rules and imposed sanctions on him.¹ There have been several appearances before the Ontario Securities Commission (the **Commission**) to determine the date of the hearing and for the exchange of materials by the parties in advance of the hearing.
- [3] Debus is represented by the Persaud Law Group, principally by two lawyers of that firm, Mark Persaud and Stephen Chiu. Unfortunately, their ability to represent Debus was hampered by Persaud's health issues and the fact that as of May 15, 2020, Chiu would no longer be available to assist with this matter.
- [4] Debus was to have served his hearing brief, witness summaries, if any, and written submissions (**Materials**) by April 23, 2020. He failed to do so.
- [5] Debus now seeks the following:
- a. a 60-day extension of the time to serve his Materials to June 29, 2020;
 - b. a similar extension to the relevant deadlines for IIROC and OSC Staff hearing briefs, witness summaries, if any, and written submissions, and Debus' reply submissions; and
 - c. an adjournment of the hearing to a date to be set in September, 2020.
- [6] In an Order dated May 8, 2020, I granted an extension of the filing deadlines and set a new date for the hearing. These are the reasons for my decision.

II. BACKGROUND FACTS

- [7] IIROC provided Debus's counsel with an electronic copy of the transcripts and exhibits of the IIROC hearings that are the subject of the hearing and review (the **Record**) on August 23, 2019, September 4, 2019 and February 11, 2020. IIROC also delivered an electronic copy of the Record to Debus personally on September 4, 2019.
- [8] On August 21, 2019, I scheduled the hearing for March 23 and 24, 2020, and ordered Debus to serve and file his Materials by January 17, 2020.
- [9] On January 14, 2020, Debus requested a four-week extension to file his Materials due to Persaud's health issues. I granted an extension, on consent of the parties, to February 14, 2020.
- [10] At an attendance on February 24, 2020, Debus requested that I issue a summons to a third party for the delivery of certain documents. I asked the parties to provide written submissions with respect to that request.

¹*Debus (Re)*, 2019 IIROC 05; *Debus (Re)*, 2019 IIROC 18

- [11] Because of the need for submissions on the summons issue, I extended the deadline for Debus to deliver his Materials to April 23, 2020, and adjourned the hearing to May 21 and 22, 2020.
- [12] On April 9, 2020, having reviewed the parties' submissions regarding Debus's request for a summons, I communicated my decision to deny that request, for reasons that would follow and that would be included in my reasons following the hearing on the merits of Debus's principal application.
- [13] On April 24, 2020, IIROC Staff asked Debus's counsel by email about the status of Debus's Materials, which had not been delivered the previous day as ordered. Debus's counsel replied that they had inadvertently missed the date due to the firm having to work remotely and requested the extension of timelines and the adjournment now under consideration.
- [14] Debus's counsel also advised that they were awaiting my decision about the summons, so that they would know what additional material they might receive.
- [15] Debus cites the following reasons for adjournment:
- a. Debus's counsel have not been able to attend their office due to COVID-19 restrictions and therefore have not had access to the voluminous paper materials in this matter, which have been marked with notes and post-its;
 - b. Debus and his counsel have not been able to work collaboratively on the Materials; and
 - c. Persaud continues to experience personal health-related issues.
- [16] Chiu has also advised that he will no longer be available to work on this matter as of May 15, 2020, and that Persaud may not be able to return to work in May.
- [17] Debus also submits that:
- a. given his financial situation, he is unable to retain alternate counsel at this time; and
 - b. there are no valid public protection issues as he is under strict supervision and there have been no concerns expressed about his conduct since the IIROC hearing.
- [18] IIROC opposes Debus's request for the following reasons:
- a. IIROC provided counsel for Debus and Debus with an electronic copy of the Record on at least three occasions;
 - b. previous extensions and adjournments have been granted and Debus has failed to meet those new deadlines;
 - c. the closure of non-essential businesses by the Province of Ontario on March 24, 2020, has not required legal services to be discontinued;
 - d. IIROC believes Debus has had more than sufficient time to complete his materials; and
 - e. it is not in the public interest to leave this matter open indefinitely.
- [19] Staff of the Commission also opposes Debus's request for an adjournment.

III. ANALYSIS

- [20] Rule 29(1) of the Commission's *Rules of Procedures and Forms*² provides that every merits hearing shall proceed on the scheduled date unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment."
- [21] I must therefore decide whether Debus's counsel's unavailability constitutes exceptional circumstances justifying an adjournment of the hearing.
- [22] The Commission has ruled that the standard set out in Rule 29(1) is a "high bar" that reflects the important objective set out in Rule 1, that Commission proceedings be conducted in a "just, expeditious and cost-effective manner".³ This objective must be balanced against parties' ability to participate meaningfully in the hearing and present their case.⁴
- [23] The balancing of these objectives is necessarily fact-based and must take into account the circumstances of the parties and the manner in which they have conducted themselves in the proceeding.⁵
- [24] Prior to this request, I granted two extensions of the filing timelines in this matter and one adjournment. On January 14, 2020, I ordered the first extension due to Persaud's health issues. I consider the timing issues associated with this first extension a negative factor in my analysis of this request.
- [25] When Debus requested the first extension he had had more than four months to prepare for the hearing, which was scheduled to occur in just over two months. I expect that significant progress on Debus's Materials would have already been made by the date of the request, given that timing.
- [26] I ordered the second extension and the hearing adjournment to accommodate my request for written submissions on the summons issue and the timing for delivery of those submissions. I therefore consider the second extension and first hearing adjournment to be a neutral factor in my analysis.
- [27] One of Debus's reasons for this extension is that he was waiting for the decision on the summons issue to understand what additional material, if any, he might be able to access. While I acknowledge that any additional documentation could have had an impact on Debus's Materials, I do not accept that the core of Debus's Materials could not have been prepared in the original timeframes and modified, if required, after the decision. Had he been successful on the summons issue, Debus could have then sought an adjournment to consider the additional material and make appropriate changes to his Materials.
- [28] The restrictions introduced because of COVID-19 have presented unique challenges. However, they have not prevented the courts and tribunals, the Commission included, from continuing to operate, albeit on a remote basis to ensure adherence to public health guidance on social distancing.

² (2019) 42 OSCB 9714

³ *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 at para 28

⁴ *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40, (2020) 43 OSCB 35 (**Money Gate**) at para 54

⁵ *Money Gate* at para 54

- [29] Also, while many offices are closed under the COVID-19 guidelines they do not prohibit people from accessing their offices to obtain critical information or tools to support remote working arrangements. Technology has also proven critical to fostering and enabling remote collaboration.
- [30] Although Debus remains under strict supervision, this is not a full answer on the question of protecting the public interest. In the first place, several of the breaches IIROC found Debus to have committed occurred while Debus was under close or strict supervision. More particularly, there is a public interest in ensuring that proceedings before the Commission proceed in a timely manner. In instances such as these there is a public interest in persons found to have breached IIROC rules to be held accountable by requiring them to comply with the ordered sanctions on a timely basis, subject to exercising any rights for a hearing before the Commission.
- [31] Despite the above, I do find that the following combination of circumstances does meet the level of "exceptional" for the purposes of a further adjournment:
- a. Persaud's continuing health issues and the potential timing of his return to work;
 - b. Chiu's unavailability as of May 15, 2020; and
 - c. Debus's being unable to seek alternate counsel at this time.
- [32] While I find the exceptional circumstances warrant an adjournment, they do not support a delay of the hearing for approximately three and a half months to a date in September, 2020.
- [33] Allowing an adjournment for the delivery of the Materials for 60 days as requested by Debus but ensuring that the hearing proceeds within what would be a normal timeframe thereafter effectively balances the objectives of ensuring that Debus is able to participate meaningfully in the proceeding and present his case and ensuring that this matter proceeds in a just, expeditious and cost-effective manner.

IV. CONCLUSION

- [34] Therefore, I grant an extension of time for the delivery of Debus's Materials to June 22, 2020, being 60 days from April 23, 2020, the date originally ordered for delivery of his Materials in the February 24, 2020, order.
- [35] IIROC shall serve and file its hearing brief, witness summaries, if any, and responding written submissions by July 8, 2020.
- [36] Staff of the Commission shall serve and file any responding written submissions by July 15, 2020.
- [37] Debus shall serve and file any reply written submissions by July 22, 2020.

[38] The hearing is scheduled for July 29 and 30, 2020, commencing at 10:00 a.m. on each scheduled day, or on such other dates or times as may be agreed to by the parties and set by the Office of the Secretary.

Dated at Toronto this 21st day of May, 2020.

"M. Cecilia Williams"

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