

November 6, 2014

Ontario Securities Commission Confirms Its Power to Undo Manifestly Unfair Settlements

The Ontario Securities Commission has vacated a 2007 settlement agreement reached between Marc McQuillen and Regulation Services (now the Investment Industry Regulation Organization of Canada (IIROC))

The Ontario Securities Commission has vacated a 2007 settlement agreement reached between Marc McQuillen and Regulation Services (now the Investment Industry Regulation Organization of Canada ("IIROC")) [*In Re McQuillen*]. In February 2007, IIROC charged McQuillen and his superior at Scotia Capital, David Berry, with violations of sections 6.4 (off-market trading) and 7.7(5) (soliciting client orders of new issue shares) of the Universal Market Integrity Rules. In February 2007, McQuillen entered into a settlement agreement with IIROC, which included a fine of \$25,000.

Berry fought IIROC's allegation through to a contested hearing that took place on the fall of 2012. On January 14, 2013, a hearing panel found that Berry had not breached sections 6.4 and 7.7(5) of Universal Market Integrity Rules.

McQuillen filed a request to re-open his settlement in light of the findings made by the Berry hearing panel. The conduct ascribed to McQuillen by IIROC was virtually identical to the allegations made against Berry. IIROC declined to consider the matter, and McQuillen sought review from the Ontario Securities Commission.

The Ontario Securities Commission confirmed its power under sections 8.3 and 21.7 of the *Securities Act* to reverse settlements made by IIROC. This power arises where it can be shown that the settlement is manifestly unfair.

The Commission found that it would be manifestly unfair to McQuillen, an administrative assistant to Berry, to be sanctioned when Berry was acquitted of the same conduct. Furthermore, the Commission found that McQuillen himself had not profited from the impugned conduct, and had realistically little choice to agree to a settlement rather than face the expense of a hearing on the merits. As a result, McQuillen's disciplinary record was ordered expunged and the fine of \$25,000 was ordered returned to McQuillen.

(Note: Lenczner Slaght was counsel to Berry in proceedings before IIROC, and acted for McQuillen in his application to the have his settlement vacated).