

**IN THE MATTER OF DISCIPLINE PURSUANT TO BY-LAW 20 OF THE
INVESTMENT DEALERS ASSOCIATION OF CANADA**

RE: BRIAN DAVID GRUSON

THE INVESTMENT DEALERS ASSOCIATION OF CANADA

APPLICANT

- and -

BRIAN DAVID GRUSON

RESPONDENT

RULING OF THE ONTARIO DISTRICT COURT

HEARING: DECEMBER 13, 2004

DECISION RELEASED: DECEMBER 24, 2004

District Counsel: The Hon. J. W. O'Brien, Chair
David W. Kerr, CFA
Stephen Ellis

Counsel:

Kathryn Andrews, Natalija Popovic
For the Applicant, The Investment Dealers Association of Canada

Allan Sternberg, Esq.
For the Respondent.

This hearing was convened pursuant to a Notice of Hearing dated August 27th, 2004.

There have been preliminary hearings dealing with scheduling and production of documents.

There were two matters considered at this hearing:

1. A preliminary motion by the Respondent dealing with jurisdiction of this panel as constituted.
2. The Applicant's motion requiring the Respondent, David Gruson to attend an IDA interview where a representative of the United States Securities and Exchange Commission (SEC) will attend and participate.

1. **The Preliminary Motion**

Respondent's counsel submitted this panel as constituted was without jurisdiction. The submission was that a prior panel chaired by the Honourable Robert Montgomery and consisting of David W. Kerr and Robert Guilday was seized of the subject matter of this notice.

The panel had ruled on the 16th day of November that letters exchanged between the IDA and the SEC involving the Respondent Gruson, were privileged and were not to be produced in this matter.

Respondent counsel argued that by reason of that ruling, only the prior panel had jurisdiction to deal with this matter.

We were advised that scheduling problems lead to changing the composition of this hearing panel.

RULING:

We held that the ruling of the prior panel was a preliminary matter relating to the hearing, did not involve the merits of the matter in question and was therefore not a "hearing". We also concluded the Respondent had not shown any significant prejudice relating to the continuation of this hearing by this panel. We were of the view that the Association's public interest in an expeditious hearing was also a matter to be considered.

2. The Applicant's Motion requiring Respondent to attend joint IDA-SEC Interview

We dismissed that motion.

We accepted submissions of Respondent's counsel that a representative of the SEC should not be allowed to attend or take part in the Respondent's interview with the IDA.

We accepted his argument that there were legitimate concerns as to what use the SEC, or other courts or tribunals in the United States, might make of evidence obtained by the SEC's participation in that interview.

Respondent's concern was related to what proceedings might be taken against him in the United States. He referred us to an Immunity Agreement offered by the SEC and also a Proffer Agreement offered to the Respondent by the United States Attorney for the Southern District of New York. Those documents raised legitimate questions as to what use would be made of evidence obtained by SEC attendance at the interview and, also what rights of protection under the Fifth Amendment would be available at the IDA interview and later in possible proceedings in the United States.

Applicant's counsel argued that a broad interpretation of IDA by-laws would require Respondent's attendance at a joint IDA and SEC interview.

We concluded that no such broad interpretation should be made in this case.

Throughout prior steps in this matter, Respondent's counsel had indicated an intention to co-operate fully with an IDA interview to be held without SEC involvement. He reiterated that position at this hearing.

Given that position, which we have accepted, we conclude no fine is appropriate for Respondent's failure to attend the proposed joint SEC-IDA interview.

We considered making an order that the Respondent attend an IDA interview within 60 days of our oral decision given December 13, 2004. However, counsel for both parties made further submissions and agreed with the terms of the following Order:

The Respondent, David Gruson is to attend an interview with IDA representatives only. That interview is to be held within 90 days of this oral order made December 13, 2004.

If David Gruson fails to attend that interview, and the reason is failure to co-operative, there will be a fine fixed at \$50,000.00, costs of \$5,000.00 and a permanent ban on his registration.

Counsel further agreed that the IDA bulletin of these proceedings would indicate our findings that the Respondent was justified in his refusal to attend an interview with both IDA and SEC representatives and that the fine and ban proposed would be incurred only if there was a failure to attend an interview to be arranged within 90 days. Counsel indicated there would be no problem in their agreeing to the wording of such bulletin.

Written decision dated this 23rd day of December, 2004.

J.W. O'Brien, Q.C., Chair

David W. Kerr, Member

Stephen H. Ellis, Member