



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Re Rotstein, 2017 ONSEC 10
Date: 2017-04-11

**IN THE MATTER OF THE *SECURITIES ACT*,
RSO 1990, c S.5**

- AND -

**IN THE MATTER OF
MARK STEVEN ROTSTEIN AND
EQUILIBRIUM PARTNERS INC.**

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

Hearing: April 11, 2017

Decision: April 11, 2017

Panel: Timothy Moseley - Chair of the Panel
Monica Kowal - Vice-Chair
AnneMarie Ryan - Commissioner

Appearances: Yvonne B. Chisholm - For Staff of the Commission
Evan Rankin (Student-at-law)

Larry Ritchie - For the Respondents
Geoffrey Grove
Alexis Beale

ORAL REASONS AND DECISION

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record.

- [1] Mr. Rotstein has admitted that he and his company Equilibrium Partners Inc. contravened subsections 25(1) and 25(3) of the *Securities Act*, RSO 1990, c S.5, by engaging in the business of trading in securities, and advising with respect to securities, without being registered.
- [2] While the parties have reached an agreement as to the sanctions that ought to be imposed, our obligation is to consider whether to approve the agreement, which is the product of negotiation between Staff and the Respondents.
- [3] We must still be satisfied that the agreed-upon sanctions are appropriate in the circumstances, and that it would be in the public interest to approve the settlement and issue the order contemplated by the agreement. For the reasons that follow, we find that it is in the public interest to approve the settlement and to issue the requested order.
- [4] The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties. This panel had the opportunity to meet with counsel for Staff and for the Respondents in a confidential conference. We reviewed the settlement agreement and we considered submissions from counsel. We wish to highlight the following.
- [5] Mr. Rotstein had been registered under the Securities Act for more than 15 years, until 2014. This is his third regulatory settlement in five years. In 2012, he settled with the Investment Industry Regulatory Organization of Canada (**IIROC**), admitting that he had, for over a decade, signed client names on account and investment documents, and had passed the signatures off as those of the clients. In 2014, he again settled with IIROC, admitting that he had entered a trade for a client without the client's knowledge or authorization.
- [6] That brings us to the misconduct in this matter, which was serious. It brought the advising and trading that he and Equilibrium Partners Inc. conducted outside the protections of Ontario securities law. In addition, and like his past misconduct with respect to client signatures, Mr. Rotstein's conduct was dishonest, in that he impersonated some clients when dealing with registrants. Underlying this misconduct was Mr. Rotstein's mistaken assumption that he was doing his clients a favour. He wasn't. They will be inconvenienced, and they were placed at greater risk.
- [7] Mr. Rotstein's conduct over the years also suggests strongly that he saw the rules as an inconvenience, and that he has, or at least had, a clear disregard for securities regulation. That is an incorrect and dangerous attitude for anyone who wishes to participate in the capital markets, and it is especially concerning for someone who has had a career in those markets.
- [8] We do note that as it turned out, it does not appear that the respondents' clients suffered any losses as a result of the misconduct. We also note that the

respondents cooperated with Staff's investigation, and that Mr. Rotstein acknowledges the seriousness of his misconduct, and expresses remorse.

- [9] Had this matter proceeded to a contested hearing, the respondents might very well have been subject to greater sanctions than those called for by this agreement. It is not uncommon for registrants and former registrants to be permanently barred from the capital markets for repeated dishonest conduct. While we consider the agreed-upon sanctions to be at the low end of the reasonable range, we do acknowledge that this proposed settlement resolves the proceeding with certainty and in an efficient way, saving the costs that would be incurred in a contested hearing against the Respondents.
- [10] Staff and the respondents submit that this proposed settlement is in the public interest, and we agree. For all these reasons, we approve the settlement agreement as requested and we will issue an order substantially in the form of Schedule 'A' to that agreement.

Dated at Toronto this 11th day of April, 2017.

"Timothy Moseley"

Timothy Moseley

"Monica Kowal"

Monica Kowal

"AnneMarie Ryan"

AnneMarie Ryan