
CANADA / JUDGMENT

Movassaghi v. Harbourfront Wealth Management Inc.

2020 BCSC 579

COURT

Supreme Court of British Columbia

DECIDED

17 April 2020

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2020 BCSC 579 Movassaghi v. Harbourfront Wealth Management Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Movassaghi v. Harbourfront Wealth Management Inc.,

2020 BCSC 579

Date: 20200417

Docket: S178698

Registry: Vancouver

Between:

Mo Movassaghi

Plaintiff

And

Harbourfront Wealth Management Inc. and HF Investment Holdings Inc.

Defendants

Before: The Honourable Madam Justice Norell

Reasons for Judgment

Counsel for Plaintiff:

S. Barker

S. Sloane, Articled Student

Counsel for Defendants:

L. Gaudin

G. Christie

Place and Date of Trial:

Vancouver, B.C.

October 28-31, November 1, 2019;

and February 14, 2020

Place and Date of Judgment:

Vancouver, B.C.

April 17, 2020

Introduction

- [1] The plaintiff Mr. Movassaghi claims damages for wrongful dismissal. Harbourfront Wealth Management Inc. ("Harbourfront") and its parent company HF Investment Holdings Inc. ("HIH") counterclaim for funds advanced to and on behalf of Mr. Movassaghi but not earned.
- [2] In July and August 2016, Mr. Movassaghi was a certified investment consultant licensed to sell mutual funds and insurance products, and was in the process of being licensed as an investment advisor. He was then 38 years old. On August 10, 2016, Mr. Movassaghi forged the signature of a client, Dr. Ogilvie, on documents that liquidated and transferred Dr. Ogilvie's accounts at Investors Group ("Investors"), where Mr. Movassaghi had previously worked, to Harbourfront, where Mr. Movassaghi had just recently been hired. Dr. Ogilvie had indicated to Mr. Movassaghi that she intended to follow him to Harbourfront and transfer her accounts there. However, she had not yet signed the documents to effect the transfer. For reasons that Mr. Movassaghi thought justified him doing so, he forged Dr. Ogilvie's signature to liquidate and transfer her accounts at a time when he could not reach her.
- [3] During the course of the trial, the claims were narrowed. Mr. Movassaghi's notice of civil claim originally included an oppression claim pursuant to s. 227 of the Business Corporations Act, S.B.C. 2002, c. 57 with respect to shares he had been issued in HIH. He abandoned that claim and I dismiss it. Harbourfront's counterclaim originally included a claim for money it had paid to settle a complaint of another client. Mr. Movassaghi denied the complaint of that client. Harbourfront abandoned that claim and I dismiss it.
- [4] The issues are:
- a) Did Harbourfront have just cause to summarily dismiss Mr. Movassaghi?
 - b) If Harbourfront did not have just cause to dismiss Mr. Movassaghi:

- i. What was the period of notice required? This includes a consideration of whether Mr. Movassaghi is bound by a notice period in the employment contract;
- ii. Did Mr. Movassaghi fail to mitigate?
- (c) Is Mr. Movassaghi entitled to punitive damages? and
- d) Have Harbourfront and HIH established the counterclaim for the amounts alleged to be owing by Mr. Movassaghi?

Did Harbourfront have just cause for summary dismissal?

Law

- [5] As the employer, Harbourfront has the burden of establishing just cause for dismissal on a balance of probabilities: *F.H. v. McDougall*, 2008 SCC 53 at para. 49; *Staley v. Squirrel Systems of Canada Ltd.*, 2013 BCCA 201 at para. 19.
- [6] The courts have recognized that employment is important and that proportionality underlies the assessment of whether misconduct is severe enough to warrant just cause for dismissal. In *McKinley v. BC Tel*, 2001 SCC 38 [McKinley], the Court stated:

53 Underlying the approach I propose is the principle of proportionality. An effective balance must be struck between the severity of an employee's misconduct and the sanction imposed. The importance of this balance is better understood by considering the sense of identity and self-worth individuals frequently derive from their employment, a concept that was explored in *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, where Dickson C.J. (writing in dissent) stated at p. 368:

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

This passage was subsequently cited with approval by this Court in *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at p. 1002, and in *Wallace*, supra, at para. 95. In *Wallace*, the majority added to this notion by stating that not only is work itself fundamental to an individual's identity, but "the manner in which employment can be terminated is equally important".

- [7] In *McKinley*, the Court considered whether any dishonesty of an employee, in and of itself, necessarily gives rise to just cause for dismissal. The Court held that the proper approach in determining whether dismissal is justified is contextual:

48 In light of the foregoing analysis, I am of the view that whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically, the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed

in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer.

49 In accordance with this test, a trial judge must instruct the jury to determine: (1) whether the evidence established the employee's deceitful conduct on a balance of probabilities; and (2) if so, whether the nature and degree of the dishonesty warranted dismissal.

[8] In *Steel v. Coast Capital Savings Credit Union*, 2015 BCCA 127 [Steel] at para. 26, Mr. Justice Goepel noted that McKinley reflected a "watershed change" in the law governing just cause for dismissal. He went on to state:

[28] The governing principle from McKinley is that a trial judge is tasked with determining whether, in the totality of the circumstances, the alleged misconduct was such that the employment relationship could no longer viably subsist: McKinley at paras. 56-57. However, the inherent value of the job to the employee need not be expressly considered in determining whether there was just cause to dismiss. Put differently, the trial judge is not obligated to formally balance the length and quality of service with the nature and severity of the misconduct in determining whether there was just cause to dismiss, though it may be appropriate on the facts of a particular case to engage in just such an analysis.

[29] The framework adopted by the Court in McKinley focuses on the nature and severity of the misconduct in relation to its impact on the employment relationship; it is not a balancing exercise between the value of the employment to the individual and the severity of the misconduct. As a result, considerations that underpin the value of the employment to the individual simply go to the fact-specific understanding of the particular employment relationship against which the impact of the misconduct is determined. All of this is done to determine whether, as a matter of fact, the employment relationship has irrevocably broken down. The Court explains:

57 I favour an analytical framework that examines each case on its own particular facts and circumstances, and considers the nature and seriousness of the dishonesty in order to assess whether it is reconcilable with sustaining the employment relationship. Such an approach mitigates the possibility that an employee will be unduly punished by the strict application of an unequivocal rule that equates all forms of dishonest behaviour with just cause for dismissal. At the same time, it would properly emphasize that dishonesty going to the core of the employment relationship carries the potential to warrant dismissal for just cause.

[30] Misconduct "going to the core of the employment relationship" includes, as the Court explains at para. 48, behaviour that "violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer." In a case where the employee admits to having engaged in the misconduct, the sole issue for the trial judge to consider is whether that conduct caused a breakdown in the employment relationship.

Therefore, whether the length of service or the quality of service is a relevant factor that mitigates the effect of the misconduct on the employment relationship is a question for the trial judge to determine based on the specific facts and circumstances of a particular case.

- [9] As part of the contextual analysis, an employer must consider the suitability of alternative disciplinary measures to dismissal: *George v. Cowichan Tribes*, 2015 BCSC 513 at para. 115. However, there will be circumstances where a contextual analysis indicates that an employee's dishonesty is so serious that it irreparably fractures the employment relationship and dismissal is justified.

Evidence

- [10] Mr. Movassaghi testified. Harbourfront called Mr. Daniel Popescu, Ms. Lynn Stibbard, Ms. Maryann Delfin, and Mr. Wes Ashton, who were all involved in the decision to terminate Mr. Movassaghi. Mr. Popescu is the president and chief executive officer of Harbourfront; Ms. Stibbard is the chief financial and operating officer; Ms. Delfin is no longer employed by Harbourfront but was the chief compliance officer; and Mr. Ashton was at the time the national sales manager. Harbourfront also called Dr. Ogilvie whose signature was forged by Mr. Movassaghi. Other than a conflict in the evidence regarding part of what was said by Mr. Popescu during the meeting where Mr. Movassaghi was terminated, there is very little dispute in the evidence regarding the facts. In addition, the parties filed an agreed statement of facts and a document agreement admitting some documents for their truth.
- [11] Harbourfront was at the time of the events of this lawsuit a small full-service financial services firm that provided wealth management services. It is a dealer member of the Investment Industry Regulatory Organization of Canada ("IIROC") and thus subject to regulatory oversight and compliance standards. HIH is a holding company and owns 100% of the shares of Harbourfront. All shareholders of HIH, except one director, are employees of Harbourfront or one of other related companies. HIH was a defendant in this action because of the oppression claim.
- [12] Mr. Movassaghi has a Bachelors of Economics and a Masters of Business Administration. He was a private investment consultant starting in 1998 in addition to working in other businesses, one of which he established. From June 2012 to April 2013 he was a financial consultant at Raymond James. From April 2013 to July 2016 he was a certified investment consultant with Investors. By the time he left Investors in July 2016, he had 153 clients and was managing assets of approximately \$20 million. He received several awards while at Investors recognizing his work. Since 2008, Mr. Movassaghi has owned two rental properties. Dr. Ogilvie and Mr. Movassaghi met in October 2013 when she became a tenant of one of those properties. Dr. Ogilvie became a financial client of Mr. Movassaghi in early 2014 while he was at Investors.

- [13] In mid-April 2016, Mr. Movassaghi contacted Mr. Popescu to canvass potential employment with Harbourfront. In May 2016, Harbourfront made an offer of employment to Mr. Movassaghi as an investment advisor. Mr. Movassaghi was required to take training and pass exams with IIROC to become an investment advisor. Mr. Movassaghi commenced that training after he started work with Harbourfront, and wrote exams in mid-August 2016 which he passed. An investment advisor cannot work without a sponsoring firm, which in this case was Harbourfront.
- [14] Mr. Movassaghi and Mr. Popescu had discussions regarding the terms of remuneration. Harbourfront offered something different from many other investment firms. Mr. Movassaghi could become a shareholder of HIH instead of being paid a lump sum for his book of business. Almost all of Harbourfront's investment advisors opt for this rather than being paid a lump sum at the beginning of the employment relationship. Mr. Movassaghi did that as well. Mr. Movassaghi liked the idea of having a vote, and thought that in the long term the shares would be worth more.
- [15] Mr. Movassaghi brought to Harbourfront his associate Ms. Kindle Blythe, also a licensed salesperson. Ms. Blythe had nothing at all to do with the forgery, and up until the time it was discovered, had no knowledge of it.
- [16] In preparation for starting work on July 11, 2016, Mr. Movassaghi and Ms. Blythe attended training at Harbourfront's office on June 20, 2016. The training included instruction on account transfer and opening documents. Mr. Ashton also testified regarding the 90-day training program which Mr. Movassaghi and Ms. Blythe were required to complete. Mr. Ashton said whether a person is licensed as a mutual fund salesperson or an investment advisor, a person must follow the same core principles of being a fiduciary, acting in the best interest of clients, and not doing anything illegal. Mr. Popescu testified that it is "bare bones" knowledge of an investment advisor that a client must consent to trades.
- [17] On July 6, 2016, Mr. Movassaghi and Harbourfront signed an Advisor Employment Agreement (the "Employment Agreement") for employment starting July 11, 2016. HIH was also party to the Employment Agreement, but only with respect to its obligation to grant Mr. Movassaghi the right to purchase its shares. The Employment Agreement contains terms requiring Mr. Movassaghi to:
- a) subject to all necessary consents from clients, make best efforts to transfer his business to Harbourfront (clause 5.1.1);
 - b) become and remain registered in good standing as an investment advisor pursuant to the Securities Act; (clause 5.1.2);
 - c) comply with Harbourfront's rules and policies including Harbourfront's Business Practices and Conduct Manual (clause 5.1.3);

- d) maintain a high standard of business conduct, act in the best interests of clients and prospective clients, and comply with applicable legislative and regulatory requirements (clause 5.1.5); and
 - e) report to Harbourfront and regulatory authorities all outside business activity (clause 5.1.7).
- [18] Mr. Movassaghi was granted an option, which he exercised, to purchase shares in HIIH in the value of \$27,000 for the sum of \$1 (clause 3.1 and Schedule B).
- [19] The Employment Agreement also contains clauses on termination, permitting Harbourfront to:
- a) terminate the employment without notice if there was any "material breach" of the agreement, or the employee's registration under the Securities Act or regulatory authority was suspended or revoked (clause 13.1.1); or for any reason "whatsoever" with written notice or pay in lieu of notice, for a defined notice period. The notice period is one month for each completed year of service up to a maximum of two months, and prorated for a partial year of service (clauses 13.1.1 to 13.3); and
 - b) set off against amounts payable to an employee any liability of the employee to Harbourfront (clause 14.6).
- [20] The Harbourfront Business Practices and Conduct Manual ("Conduct Manual") contains similar terms, and in addition, requiring Mr. Movassaghi to:
- a) report to Harbourfront within two business days if he believes he may be in contravention of regulatory rules and regulations (clause 3.5.1);
 - b) complete the new account application form ("NAAF") in a meeting or in a telephone conference with a prospective client. If a client completes the know-your-client information without the investment advisor, the advisor is required to contact the client to review and confirm the information prior to accepting an order (clause 7.1.1); and
 - c) transfer accounts to Harbourfront from another firm after the client has executed an authorization to transfer account form (clause 7.10.1).
- [21] The Conduct Manual also contains terms:
- a) requiring Harbourfront to conduct a fair and thorough investigation of a complaint, including due consideration of all facts and all relevant interests. Where there is a breach of a rule or policy, Harbourfront will take the necessary disciplinary action which will include reporting the matter to regulators, and may include increased supervision, letter of reprimand, fines, educational requirements or suspension or termination of employment (clause 4.18.9); and

- b) similar to the Employment Agreement with respect to termination. Just cause is defined as including failure to make full and complete disclosure when the employee is hired of all relevant information, and fraud, dishonesty or willful misconduct, breach of the Conduct Manual, or a violation of regulatory provisions (clause 21.3.1).
- [22] Mr. Popescu described oversight at Harbourfront. At the "front end", an investment advisor has autonomy to run his or her own practice, obtain clients, and make his or her own hours. At the "back end", Harbourfront has a compliance department that reviews trades, accounts, and conducts audits.
- [23] Mr. Movassaghi agreed he received and read the Employment Agreement and Conduct Manual. Mr. Movassaghi completed a form disclosing all outside business interests. He disclosed that he owned two rental units but testified he did not disclose that Dr. Ogilvie was a tenant because at the time he filled out the form he did not know if she would transfer to Harbourfront.
- [24] Mr. Movassaghi started employment with Harbourfront on July 11, 2016 and he and Ms. Blythe began taking steps that day to transfer their business. On July 11, 2016, Ms. Blythe sent an email to Dr. Ogilvie advising that with "respect to a previous conversation we had, our team has now moved from Investors Group to Harbourfront". The email went on to state:

We wish to continue managing your finances, and will look to initiate a transfer of assets to our new firm upon receiving your consent.

- [25] The "previous conversation" was a phone call Mr. Movassaghi and Dr. Ogilvie had on June 20, 2016 during which Mr. Movassaghi told Dr. Ogilvie he was planning to move to Harbourfront and wanted her to transfer her accounts there. Dr. Ogilvie testified that she had for some time been contemplating terminating her business relationship with Mr. Movassaghi. She initially thought she received good advice but was feeling pressure from him to invest. Despite her discomfort, she did not move to another financial consultant at Investors because she did not think she could stay at Investors with a different consultant. Further, she thought it would be uncomfortable when Mr. Movassaghi was her landlord. She thought it would be difficult to terminate her relationship with Mr. Movassaghi unless she gave him a concrete reason to do so. She thought this was her opportunity. She did not say anything about this to Mr. Movassaghi.

- [26] On July 15, 2016, Dr. Ogilvie responded to Ms. Blythe's email of July 11, 2016:

Thanks for your message, hope you are happy in your new home!

I do have a few questions :)

For the movement of the funds over to Harbourfront Wealth, are the investments being cashed out and reinvested or just transferred? Is there a fee for this and if so, who covers the fee? I see the \$\$ for July was already drawn out - when do you anticipate the changeover to occur? Do I need to sign paperwork for this?

This is also an online portal with the company where I can look at the investments? I look at the IG ones once a month!

[27] Dr. Ogilvie testified that when she wrote this email she had no intention of transferring to Harbourfront and she knew Mr. Movassaghi would likely try to keep her as a client. She wanted a black and white reason to give to Mr. Movassaghi why she was terminating their relationship because she did not think he would accept anything else. She knew there would be fees but this is why she asked about them. She agreed the email did not give any indication she was not going to transfer her accounts.

[28] On or about July 15, 2016 Mr. Movassaghi and Dr. Ogilvie spoke on the phone. Dr. Ogilvie advised Mr. Movassaghi she would be purchasing a home and she would be ending her tenancy either at the end of August or September 2016. Mr. Movassaghi testified Dr. Ogilvie told him she needed about half the money invested to use toward her down payment. Dr. Ogilvie does not recall if she told Mr. Movassaghi she would need to cash her investments but it is "within the realm" of possibility. Dr. Ogilvie testified that in the conversation she sensed Mr. Movassaghi had some urgency and she felt pressure. Mr. Movassaghi asked if she had bought a condominium and asked about a loan and mentioned he knew a mortgage broker. They talked about fees. Dr. Ogilvie said she did not intend to move to Harbourfront, but she thought a face-to-face meeting was reasonable to have. She did not want anything to be misconstrued.

[29] On July 18, 2016, Dr. Ogilvie responded by email to a message from Ms. Blythe:

Thanks for your message - yes - Mo did call me on Friday! All questions answered!

Just a quick FYI - I am away July 30 - August 10 with no email - so I am happy to sign papers before or after I'm back (no rush!)

Mo asked me to send a copy of my drivers license - please don't mind the mug shot

[picture of driver's licence embedded]

[30] On July 18, 2016, Dr. Ogilvie sent a copy of her driver's license to Ms. Blythe. She wanted Mr. Movassaghi to leave her alone and was busy planning her trip away. Dr. Ogilvie said that when she wrote that she was "happy to sign papers" she assumed she would have to sign documents to transfer her accounts. She did not intend to sign the documents. She said this email did not give anyone permission to sign for her. She agrees the email was misleading. She said she "keeps her cards close" if she is in an uncomfortable position.

- [31] Dr. Ogilvie was away from July 30 to August 10, 2016 in a remote area of Honduras, without email access. At some point an appointment between Dr. Ogilvie and Mr. Movassaghi was set for August 22, 2016 and later moved to August 30, 2016. Dr. Ogilvie agreed that prior to August 30, 2016 she never said or wrote to Mr. Movassaghi that she did not want to transfer her accounts to Harbourfront. She said she felt "smothered by him" and without a good concrete reason, he would find a reason for her not to stay at Investors.
- [32] On August 10, 2016, Mr. Movassaghi forged Dr. Ogilvie's signature on several forms to liquidate her accounts at Investors and transfer them to Harbourfront. The forms included two NAAF's, three transfer forms and two other forms. Because Investors has proprietary investments, the assets could not be transferred in kind. The forgery triggered trades so that the investments would be transferred in cash.
- [33] Mr. Movassaghi testified Dr. Ogilvie was invested in a mutual fund that held precious metals which were now falling in value. Mr. Movassaghi said he could not call Investors to make changes to Dr. Ogilvie's account and to the best of his knowledge there was no advisor yet assigned to Dr. Ogilvie's account at Investors. It was a "time-sensitive" issue and he made a mistake that he regrets. He thought he was acting in Dr. Ogilvie's best interest to liquidate her investments and have that cash transferred over to Harbourfront. He thought he was helping Dr. Ogilvie and mitigating against a downside risk, knowing she would be purchasing property where she needed half the money. He intended to tell Dr. Ogilvie what had happened when he next met with her. He had no personal stake in the transaction. He did not make any money from the transfer or start earning fees on the money transferred to Harbourfront because no advisory fee contract had been signed.
- [34] When asked why he did not wait until August 11, 2016 when Dr. Ogilvie would return, he said a month had gone by since he had spoken to her and they were still waiting to meet to sign documents, and sometimes Dr. Ogilvie cancelled meetings. Mr. Movassaghi was asked whether he agreed that on August 10, 2016 he understood he was breaching his professional and ethical obligations when he forged Dr. Ogilvie's signature. He said that was "not how it entered my mindset". He agreed it was the wrong thing to do.
- [35] When Dr. Ogilvie returned to Canada, she received an email from Investors advising that Mr. Movassaghi was no longer with Investors and she had been assigned a new advisor and asking to set up a meeting. The email had been sent August 3, 2016 but she received it on August 11 or 12 once she had email access.
- [36] Dr. Ogilvie had been looking for a condominium to purchase before and after her trip. On August 15, 2016, she sent an email to Investors asking for her TFSA to be cashed. She would need this money for a down payment. On August 17, 2016, Investors sent her a message advising the transaction was completed. On August 18, 2016, she received another email from Investors saying the transfer to Harbourfront had completed and wishing her luck at Harbourfront. She was completely perplexed and bewildered, and not sure what had happened. Dr. Ogilvie called Investors. This was when Dr. Ogilvie learned the transfer of her

accounts had taken place. That afternoon, she viewed a condominium and made an offer which was accepted the next day. The date to remove the conditions on her offer was August 20, 2016 and she required money for the down payment that day. She was very frustrated.

- [37] When asked why she waited until August 30, 2016 to complain to Harbourfront, Dr. Ogilvie stated she knew something "not right" had happened, but she does not like conflict and she did not want to accuse when she was not sure what had happened. She wondered if someone had signed on her behalf. She felt embarrassed this had happened to her as she is a smart person. She did not share what had happened with anyone. She started to do some research on her own to try to figure out what had happened. She spoke to a friend who worked at Investors to confirm that she would have had to sign to have the accounts transferred. The friend recommended she speak to the regional manager. Dr. Ogilvie waited another 24 hours and then contacted the manager at Investors. The manager confirmed the transfer documents had to be signed and said she would get the documents. The manager subsequently told her they had a signed document.
- [38] At 9:35 a.m. on August 30, 2016, Dr. Ogilvie sent a complaint email to Mr. Popescu. She copied the B.C. Securities Commission, the Financial Planners Association and the Mutual Fund Dealers Association because she knew those bodies existed from her research, and she wanted Harbourfront to know this was serious. Dr. Ogilvie cancelled the meeting that morning with Mr. Movassaghi and Ms. Blythe. The email states the transfer document is a forgery, and resulted in her RRSP, TFSA and corporate investments being transferred without her written consent. Dr. Ogilvie expressed her extreme displeasure and other than confirmation of receipt of the email, stated she did not wish to be contacted by any employee of Harbourfront.
- [39] Mr. Popescu said he was in Abbotsford when he received this email and he forwarded it to Ms. Stibbard. At about noon the same day Mr. Movassaghi telephoned him. The next day Mr. Popescu sent an email to himself with his recollection of the telephone call. The note included:

During my call with Mo, he stated that he "messed up" and that he forged the client's signature on the account documentation. While he recognized there was no excuse, he provided an explanation and stated that he had a close relationship with the client. She was his tenant in the condominium unit he owns. He stated that the client was in Honduras but that he was in contact with her via email/text and that she said for him to do whatever he sees fit with the account. He stated that due to the account being opened at Harbourfront and the transfer from Investors Group having taken place, he saved the client money as he had felt it was time to liquidate her holding in the precious metals sectors from which he had made significant gains for the client. He stated that he had the best intentions for the client and his actions were meant to help her situation and have not caused her any loss.

- [40] On August 30, 2016, Mr. Popescu, Ms. Stibbard and Ms. Delfin discussed what to do. As the compliance officer, Ms. Delfin started an investigation. She sent Mr. Movassaghi and Ms. Blythe home, and asked them to attend an interview the following day. She made a report of the complaint to IIROC as required, restricted access to Dr. Ogilvie's file, and gathered documents and correspondence. Harbourfront sought legal advice. Harbourfront did not interview Dr. Ogilvie because she said she did not want to be contacted and Mr. Movassaghi admitted the forgery. Ms. Delfin produced an investigation report detailing the steps taken in the investigation.
- [41] On August 31, 2016, Ms. Stibbard, Mr. Ashton and Ms. Delfin interviewed Mr. Movassaghi and Ms. Blythe separately. The interview of Mr. Movassaghi was about one hour. Everyone who was at the meeting testified. There is very little disagreement about what was said. Ms. Stibbard created a memo of what Mr. Movassaghi told them and it accords with his evidence at trial as to his thought process and mitigating factors. She noted Mr. Movassaghi seemed very contrite and remorseful, but cognizant of the seriousness of his action and said he knew what he did was illegal. Mr. Movassaghi testified that although everyone was respectful and professional, he did not think what he said "registered with them". Ms. Delfin told him that IIROC does not consider mitigating circumstances. Ms. Delfin testified she does not recall if she said that.
- [42] On September 1, 2016, Mr. Movassaghi texted Mr. Popescu with an IIROC publication on forgery. He said he did this because of Ms. Delfin's comment that IIROC does not consider mitigating factors, and the publication showed this was incorrect. The IIROC publication describes forgery and states:

Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. The trust and confidence between the registrant and the client is very often destroyed by the deceptive conduct on the part of the registrant. Forgery harms the Dealer Member firm as well. As a result, forgery often attracts severe sanctions. While there is no such thing as a "minor case" of forgery, Hearing Panels may distinguish between more and less egregious examples of forgery.

- [43] The publication goes on to list mitigating factors IIROC will consider in sanctioning a registrant for forgery. In the email to Mr. Popescu, Mr. Movassaghi reiterated what he thought were the mitigating factors in his case. He stated Dr. Ogilvie had agreed to sign documents in advance of the forgery, she benefitted \$4,000 from the liquidation, he had altruistic intention, received no personal benefit and did not attempt to conceal what happened.
- [44] Meanwhile, on August 30, 2016 Mr. Movassaghi tried to call Dr. Ogilvie and could not reach her. Dr. Ogilvie said Mr. Movassaghi repeatedly tried to call her and within an hour of her sending the complaint email, Ms. Blythe knocked on her door to give her an apology card. Mr. Movassaghi had given Ms. Blythe a key fob to get into the building where Dr. Ogilvie was a tenant. Dr. Ogilvie found this very upsetting and moved out of the property that day. On

September 3, 2016 Mr. Movassaghi sent another email to Dr. Ogilvie again apologizing, reiterating his justification and saying he acted on "our previous verbal discussion" and Dr. Ogilvie's "presumed consent" and telling her he had been fired and stripped of his licence. Dr. Ogilvie said she never gave him implied consent to sign her name.

[45] On September 1, 2016, Mr. Popescu, Ms. Stibbard, Ms. Delfin, and Mr. Ashton decided to terminate Mr. Movassaghi. In a memo dated September 2, 2016, Ms. Stibbard recorded the decision:

MM contends that his act was done in the client's best interest and with no financial or other gain to himself, which may or may not be the case. (Increased client assets do normally result in financial gain to the IA). At best, those mitigating circumstances could result in less severe disciplinary action if MM was to be suspended or fined by the firm.

Forgery is a criminal act, and a serious regulatory matter that reflects on the trustworthiness of the registrant, and the firm that sponsors him or her. Harbourfront's position is zero tolerance for criminal acts and acts that cause harm to the firm, its client and the industry. MM acted in contravention of his employment contract and the terms of his registration with Harbourfront.

Harbourfront representatives contacted legal professionals, and reviewed IIROC and other documentation to assess appropriate action and, after consideration of options, determined that the most appropriate way to deal with the matter and protect the best interests of the firm and its clients was to terminate MM for cause. MM was terminated on September 2, 2016.

[46] All four people who made the decision testified. All of them mentioned their conclusion this was a criminal act. I pause here to note there was no evidence Mr. Movassaghi has ever been charged with a criminal offence and nothing in these reasons should be interpreted as a determination by this court of criminal guilt. This was the conclusion of Harbourfront employees as part of their decision to terminate, and their evidence should be viewed in that manner only. Their evidence as to their reasons were as follows:

- a) Mr. Popescu: This was a criminal act, Mr. Movassaghi falsified a document that included information without asking those questions of Dr. Ogilvie, and he forged signatures to open the account and to transfer funds. Mr. Movassaghi breached the employment agreement to act in the best interest of the client, IIROC Rules and their own trust. They took the IIROC publication and Mr. Movassaghi's stated justification into account but "unfortunately we didn't believe it".
- b) Ms. Stibbard: Mr. Movassaghi admitted to forgery and did not tell Harbourfront until Dr. Ogilvie told them. She googled whether forgery was a criminal offence and got professional advice. The overriding reason was that financial services are based on trust and nothing is done without consent and instructions. There is a fiduciary responsibility to clients. They listened to Mr. Movassaghi's position and considered that he was a bright and enthusiastic man, and he said he made a mistake and would never do it again. They considered this, but ultimately they are a wealth management firm and they had to be sure employees will not do

illegal acts and ensure clients can trust their firm. She no longer trusted Mr. Movassaghi. Harbourfront did not know him well as he had only been with Harbourfront seven weeks.

- c) Ms. Delfin: This was a criminal offence, and they had zero tolerance for criminal behaviour. It was a breach of Harbourfront policies and procedures and IIROC rules, and there was risk to the firm.
 - d) Mr. Ashton: They looked at the situation from every angle and decided to terminate because forgery is a criminal offence, it is dishonest, the industry is built on trust, there was reputational risk, and this was something that was not teachable or coachable, such as taking better notes. It was "pretty black or white whether it is right or wrong". He no longer trusted Mr. Movassaghi.
- [47] On September 2, 2016, at the request of Harbourfront, Mr. Movassaghi attended its offices and was given a termination letter. He met with Mr. Popescu, Ms. Stibbard and Mr. Ashton. The meeting was about 20 minutes. Mr. Popescu outlined their reasons for terminating him. There is very little difference in the evidence as to what was said except for one sentence. Mr. Movassaghi testified that Mr. Popescu advised Mr. Movassaghi he was terminated because he forged Dr. Ogilvie's signature and because of the potential harm to the reputation of Harbourfront. Mr. Popescu told him that IIROC would expect Harbourfront to terminate him. Mr. Popescu offered to make phone calls to other investment firms on his behalf. Mr. Popescu told him that "once this blows over and IIROC figures out what they're going to do, come talk to me next year". This is the sentence which is in issue.
- [48] Mr. Popescu testified that he explained their decision and that they could not tolerate such behaviour. Mr. Movassaghi was upset and tried to convince them this was a one-time incident and that he did this because it was in the best interests of Dr. Ogilvie. Mr. Popescu described Mr. Movassaghi as being "obviously optimistic" that he could get this corrected with the regulators in a month. They told him it could sometimes take two to three years. Harbourfront had no intention of bringing him back. He offered to send some emails to other firms for Mr. Movassaghi. He did not tell Mr. Movassaghi that Harbourfront would take him back or consider reemployment options once the IIROC matter resolved. Harbourfront was willing to allow Mr. Movassaghi to transfer his book of business and told Mr. Movassaghi so.
- [49] Ms. Stibbard testified that Mr. Popescu told Mr. Movassaghi that he would try to help him find employment with another firm that could handle "something of this nature". Mr. Ashton did not recall either way whether there was anything said about a future with Harbourfront.
- [50] On September 2, 2016, Harbourfront advised regulatory authorities, as required, that Mr. Movassaghi's employment was terminated. As Mr. Movassaghi no longer had a sponsoring employer, he could not work as an investment advisor unless he found another sponsoring firm. IIROC commenced an investigation into Mr. Movassaghi's conduct.

- [51] Mr. Movassaghi testified that he contacted each client for whom he had contact information and told them what happened. He said he told them the truth and he was not sure if or when he was coming back to Harbourfront. His expectation at the time was that he would return to Harbourfront. He did not know this because it depended on the IIROC investigation. At the time Mr. Movassaghi was terminated, \$8.6 million of assets he managed had been transferred from Investors to Harbourfront. Of the clients he had heard from by the time he left Harbourfront, only three or four clients with a total of less than \$100,000 in investments, had indicated they were not coming to Harbourfront.
- [52] On September 6, 2016, Mr. Movassaghi and Mr. Popescu exchanged email messages and spoke on the telephone. Mr. Popescu testified he knows there are firms who in the past have been willing to take on investment advisors with a compliance history, but very few firms do, and Harbourfront was not willing to take that risk. He said he emailed two individuals at other investment firms because he "did not want to ruin Mr. Movassaghi's life". This was not a personal matter for him. Mr. Movassaghi breached their trust. Mr. Popescu subsequently spoke to the individuals he contacted. He testified he was upfront and told the individuals that Mr. Movassaghi was dynamic from a business point of view but from an ethical perspective Harbourfront wished to cut ties. He said that maybe this was a one-time incident; that was up to further investigation by IIROC. In one of the texts to Mr. Movassaghi, Mr. Popescu said "I wrote a good 3 paragraphs and sold you well". Mr. Popescu said he does not recall what he said other than Mr. Movassaghi had talent from a business point of view. He denied he reached out to these individuals because he felt he should not have terminated Mr. Movassaghi. He never provided a job reference for Mr. Movassaghi. In his view, a job reference is quite formal. When asked if his purpose was to help Mr. Movassaghi find a job, he answered "not really". Mr. Movassaghi was a pushy, aggressive person and Mr. Popescu said he would send the emails but he was "pretty certain" these other firms would say no. He was able to demonstrate to Mr. Movassaghi he sent the emails and did what he could and "let's part ways".
- [53] Mr. Movassaghi testified he "self-reported" to IIROC about a week after he was terminated from Harbourfront, and after he had retained counsel. He did not self-report to IIROC immediately after committing the forgery. Mr. Movassaghi contacted the two investment firms Mr. Popescu had contacted for him. He had interviews at both of the firms, but they did not offer him a position.
- [54] The September 2, 2016 termination letter advised Mr. Movassaghi that his termination was a "trigger event" for repurchase of his HIH shares and Ms. Stibbard would be writing to him further with respect to this. In a subsequent undated letter to Mr. Movassaghi, Ms. Stibbard explained Mr. Movassaghi's two options under the HIH shareholders agreement. One option was to sign a release and client transition agreement (which is a non-competition agreement where Mr. Movassaghi's business would stay at Harbourfront) and have his shares purchased at the internal share price, which was approximately \$30,000. The other option was to not sign those documents and have the shares repurchased at one cent per share.

- [55] On November 9 and 10, 2016, Ms. Stibbard and Ms. Movassaghi had a further exchange of emails. Ms. Stibbard had provided him with an accounting of funds Mr. Movassaghi owed to Harbourfront as a result of advances to him exceeding commissions. Mr. Movassaghi suggested his termination might not be a "trigger event", thought the IIROC outcome would be known within a month, and wondered if a repayment schedule could be incorporated within a future employment contract with the firm depending on the IIROC outcome. Ms. Stibbard responded that this was a "trigger event" and did not respond to his suggestion that he might be employed again by Harbourfront. Ms. Stibbard asked him to make the election for which option by November 18, 2016. Subsequently, at the request of Mr. Movassaghi, Ms. Stibbard agreed to extend that to December 2, 2016 and then to the last week of December 2016.
- [56] On November 30, 2016, Mr. Movassaghi met with Mr. Popescu and Ms. Stibbard. Mr. Movassaghi said they met to discuss the shares at HHH and to provide an update on the IIROC investigation. Mr. Movassaghi was scheduled to have an interview with IIROC in mid-December and he said Mr. Popescu and Ms. Stibbard were surprised he was able to secure an interview so quickly. Mr. Movassaghi testified he was told by Mr. Popescu and Ms. Stibbard to keep them posted on how things were going in the investigation. They "expressed positivity" that the investigation would be resolved sooner rather than later. Mr. Movassaghi interpreted this as hopefully future employment.
- [57] Mr. Movassaghi never made the election with respect to the shares. On February 3, 2017, Ms. Stibbard wrote to Mr. Movassaghi advising that as Harbourfront had not heard from him, they considered he had elected not to execute the client transition agreement. On February 10, 2017, Mr. Movassaghi emailed Ms. Stibbard asking her not to liquidate his shares as he was hoping to come to a settlement with IIROC by the first week of March, 2017. If he could not reach a settlement with IIROC on the terms he proposed then he would exit the investment industry. Otherwise, he would elect having his shares purchased at last year's market value according to the shareholders agreement to offset the debt he owed to Harbourfront. On February 14, 2017, Ms. Stibbard responded by email stating that Harbourfront had already extended the timeline and now considered Mr. Movassaghi to have elected not to execute the documents. She requested payment of the outstanding amounts.
- [58] The IIROC interview took place in December 2016 and Mr. Movassaghi understood that it would take IIROC a couple of months to make a decision. He thought he would know something definitive by March 2017, and then he could make a decision on the share election and hoped he could come back to Harbourfront depending on what happened with IIROC. In his mind, the IIROC investigation and his termination from Harbourfront went hand in hand. He thought he could possibly come back to Harbourfront based on Mr. Popescu's statement at the September 2, 2016 meeting to come back to see him after the IIROC matter had resolved. Mr. Popescu had told him that his book of clients was still there, and Ms. Blythe was still employed by Harbourfront.

- [59] Mr. Movassaghi testified that he had one more meeting with Mr. Popescu and Ms. Stibbard in mid-April 2017. Mr. Movassaghi was accompanied by his lawyer, who was representing him in the IIROC investigation. The primary purpose of the meeting was for the lawyer to provide an update on the IIROC investigation which Mr. Movassaghi thought was close to settlement, and to discuss the shares and expenses and commissions owing. At that meeting, Mr. Movassaghi said he learned that his shares had already been repurchased and he knew at that point he would not be returning to Harbourfront. He asked Mr. Popescu to reconsider hiring him. The same day Mr. Popescu sent him a lengthy text message explaining why they would not do that.
- [60] Mr. Popescu does not recall the November 30, 2016 meeting but does recall the meeting with the lawyer. Mr. Popescu testified that Mr. Movassaghi approached him to come back to Harbourfront almost every time he spoke with him. Mr. Popescu again described Mr. Movassaghi as being "obviously optimistic". Mr. Movassaghi continued to be very pushy and try to make his way back in to Harbourfront. At the meeting with the lawyer, Mr. Movassaghi suggested Harbourfront was excited they had his book of business. Mr. Popescu told him he was welcome to have the clients transferred and they would be happy to assist. Mr. Movassaghi was surprised. Mr. Popescu said that in the long term many of the clients that transferred with Mr. Movassaghi have left Harbourfront.
- [61] On June 28, 2017, a Hearing Panel of IIROC accepted a settlement agreement between IIROC staff and Mr. Movassaghi. Mr. Movassaghi admitted to the following violations:
- a) In August 2016, he forged a client's signature on various forms, contrary to IIROC Dealer Member Rule 29.1 (now Consolidated Rule 1400).
 - b) In July 2016, he failed to inform his employer of an outside business activity, contrary to IIROC Dealer Member Rule 42.
- [62] The outside business activity was Mr. Movassaghi's relationship with Dr. Ogilvie as her landlord. Mr. Movassaghi agreed to a fine of \$27,000, a prohibition from applying for registration in any capacity with IIROC for a period of eight months, upon re-approval a 12-month period of close supervision, and payment of costs of \$2,500. Mr. Movassaghi agreed that the suspension was in addition to the time he had already not worked after termination.
- [63] In September 2017, Mr. Movassaghi commenced employment with his present employer, a renovation contractor. He is now employed there as a vice president.

Analysis

- [64] Given that Mr. Movassaghi immediately admitted the forgery, the first question in McKinley is met; the evidence establishes the forgery on a balance of probabilities. The second question is whether the nature and degree of the dishonesty in all of the circumstances of this case warranted dismissal.

- [65] Both counsel referred to numerous case authorities where there had been dishonesty or a breach of financial or privacy rules. Many of these cases pre-date McKinley, decided in 2001, so must be considered with that in mind. I will briefly review each of the authorities cited by counsel as being analogous cases supporting their respective clients' positions.
- [66] Mr. Movassaghi cites the following cases where just cause was not found:
- a) *Clendenning v. Lowndes Lambert (B.C.) Ltd.*, 2000 BCCA 644 [Clendenning]. The employee had signed a mortgage application and offer to purchase form in blank. Another person subsequently used these fraudulently. This was an isolated incident. There was no evidence signing the blank documents harmed the defendant's business. This part of the trial decision was upheld on appeal (para. 30).
 - b) *Leitner v. Wyeht Canada*, 2010 ONSC 579 [Leitner]. The nine-year employee submitted three business expense claims, in total less than \$500, but which were not legitimate or properly supported. The employee had an otherwise "long and distinguished service" to the employer.
 - c) *Fedele v. Windsor Teachers Credit Union Ltd.*, [2000] O.J. No. 2755 (S.C.J.) [Fedele]. The plaintiff was a 20-year employee of a credit union. On six occasions she had signed her mother's name on withdrawal slips. The mother had verbally authorized the plaintiff to sign her name. The court found this was not a forgery.
 - d) *Lau v. Royal Bank of Canada*, 2015 BCSC 1639 [Lau]; aff'd except for aggravated damages at 2017 BCCA 253. The five-year employee was an account manager and licenced mutual fund advisor. He had recorded existing money as new money on 10 occasions; with the result his sales figures appeared larger. The employee believed that one of the two computer programs used would accurately reflect the true nature of the funds. The employer had not proven that the money was tracked this way to bolster the employee's sales.
 - e) *Petit v. Insurance Corp. of British Columbia*, [1995] B.C.J. No. 1521 (S.C.) [Petit]. The 18-year employee had accessed the personal driving record of another employee in a database after he saw the employee driving dangerously in his employer's vehicle. The employee thought he had obtained consent to access from a supervisor. When confronted the employee initially lied, but took immediate steps to correct the lie.
- [67] Harbourfront cites the following cases in which just cause for summary dismissal was found:
- a) *Steel*. The 21-year employee had accessed a private document on the employer's computer network contrary to the privacy policy. The employee was an IT Helpdesk Analyst.
 - b) *Denhamer v. RBC Dominion Securities Inc.*, 2000 ABQB 651 [Denhamer]. The 18-year employee was an investment advisor. The employee had failed to carry out trade instructions on behalf of a client although he repaid the client, and did not report a letter of complaint, tried to cover up the error, and lied to his employer regarding the events.

- c) *Agostino v. Gary Bean Securities Ltd.*, 2013 ONSC 6918 [Agostino]. The four-year employee was an investment advisor. The employee had engaged in unauthorized discretionary trading, lied to a client and mislead his employer.
 - d) *Rochette v. Office Equipment of Canada Inc.*, 1997 CarswellOnt 5393 (C.J. (Gen. Div.)) [Rochette]. The nine-year employee signed client signatures on client service contracts after purchase or lease of equipment by clients.
 - e) *Lovelock v. Dupont Canada Inc.*, [1998] O.J. No. 4971 (C.J. (Gen. Div.)) [Lovelock]. The 16-year employee forged the signature of a supervisor approving expense accounts to attend a convention. The expenses claimed were likely legitimate. The court noted that if the employee had admitted his dishonesty, the case might have been decided otherwise.
 - f) *Ahmed v. RBC Dominion Securities Inc.*, [1998] B.C.J. No. 1729 (S.C.) [Ahmed]. The employee investment advisor was trading on a discretionary basis in a number of clients' accounts, without authorization. The employee alleged the market was volatile and she did the trades in her clients' best interests and did not obtain consent because there was a very narrow window of opportunity.
 - g) *Dowling v. Ontario (Workplace Safety and Insurance Board)*, (2004), 135 A.C.W.S. (3d) 424 (Ont. C.A.) [Dowling]. The dedicated twenty-five year employee, who was a supervisor, used his position to obtain a direct monetary benefit that in part related to the discharge of his employment responsibilities, lied, and prepared a misleading document.
- [68] Although this case must be considered within its own contextual analysis, the case authorities provide guidance of factors that may indicate whether dismissal is warranted. Three cases addressed signatures (Clendenning, Fedele, and Rochette). In the cases where there was no just cause for dismissal, the employee signed her own name or was authorized to sign the name of a family member. In the case that upheld dismissal, the employee signed a client's name. Two cases (Agostino and Ahmed) addressed unauthorized discretionary trading, which is what took place in this case, and the court upheld the dismissal. Another case (Denhamer) concerned failure to carry out a client's instructions for a trade, and the court upheld the dismissal. Four cases (Leitner, Lau, Lovelock and Dowling) involved dishonesty toward the employer with respect to expenses or income. In two of these cases, summary dismissal was not justified, and in the remaining cases, dismissal was justified. The cases where dismissal was not justified are distinguishable from this case with respect to the seriousness of the conduct and because they concerned dishonesty toward the employer as opposed to a client. Finally, in the two cases that concerned breach of privacy (Petit and Steel), the one employee who was wrongfully dismissed thought he had a supervisor's consent, while the employee who was not wrongfully dismissed knew the conduct was wrong and trust was a core component of her employment.

[69] Mr. Movassaghi argues this was an error in judgment and summary dismissal is not justified for a number of reasons, which together suggest the employment relationship was not irreparably fractured. I will address each of these in order.

Mr. Movassaghi's conduct was not motivated by personal gain

[70] Mr. Movassaghi said he gained no personal advantage from the trade. That is true in the short term, but he would benefit in the long term from managing Dr. Ogilvie's investments.

[71] Mr. Movassaghi said he forged the signature because the investments were falling in value, but Dr. Ogilvie was returning a day later. Further, it is difficult to see how effecting a discretionary trade on behalf of Dr. Ogilvie is in her best interest. Making the trade without her consent took away Dr. Ogilvie's right to decide which investments she has. Dr. Ogilvie may have wished to keep that particular investment. Further, as demonstrated in this case, she needed funds on a particular day to use as a down payment on property.

Mr. Movassaghi had every indication, short of express consent, that the Client was planning on moving her assets to Harbourfront

[72] In the emails, Dr. Ogilvie did indicate that she would be transferring to Harbourfront and signing documents; however, she did not consent at that time. Her emails are nothing more than stated intention. To hold this as consent would mean she had no right to change her mind.

[73] I accept Dr. Ogilvie's evidence that despite her emails to Mr. Movassaghi, she did not intend to move with Mr. Movassaghi to Harbourfront. Dr. Ogilvie's evidence of the investigation she undertook prior to making an accusation, and the steps she took even after she knew of the forgery, indicates she does not like conflict. I find that whether or not Mr. Movassaghi was actually pressuring her, she felt pressure and wanted to ready herself to be able to say to Mr. Movassaghi that she would not be transferring her assets. Her emails were a way of easing the pressure she felt until she could meet with Mr. Movassaghi. Mr. Movassaghi appears to be someone who is confident and assertive in pursuing matters. Mr. Popescu's description of Mr. Movassaghi was consistent with this.

Mr. Movassaghi did not try to conceal or deny the allegations made against him

[74] Mr. Movassaghi immediately admitted the forgery once Dr. Ogilvie complained. While this is a mitigating factor, the admission was made after Mr. Movassaghi was caught. Mr. Movassaghi had nearly three weeks to reconsider what he had done after he forged the signature. Although he self-reported to IIROC, this was after the complaint was already made and after he had been fired.

Mr. Movassaghi cooperated with the investigation

[75] This is true and is a mitigating factor.

Mr. Popescu testified he felt this may have been just a lapse in judgment

- [76] Mr. Popescu did testify he considered this was a possibility. However, he also said that he considered but did not accept the mitigating reasons put forth by Mr. Movassaghi, this was a criminal offence, it put Harbourfront at risk, and that it is "bare bones" knowledge that an investment advisor only acts with the consent of a client. Ms. Stibbard also testified that Mr. Movassaghi had only been with Harbourfront seven weeks and they did not know him well.
- [77] In my view, this was not simply an error of judgment. It was something Mr. Movassaghi thought about, and the circumstances of his decision to forge Dr. Ogilvie's signature do not give rise to a grey area in judgment.

This was an isolated incident

- [78] There is no other admissible evidence of a forgery which was relied upon by Harbourfront to justify dismissal.

The investigation into the complaint was abbreviated

- [79] I do not accede to this argument. Given that Mr. Movassaghi admitted to the forgery, there was nothing else to investigate. Mr. Movassaghi did not suggest that there was some fact not known to Harbourfront. He was able to explain to Harbourfront what he thought were the mitigating circumstances.

Mr. Movassaghi was provided with little support in the transition process from Investors to Harbourfront

- [80] Evidence was lead at trial concerning the training program at Harbourfront. There is no need to detail the evidence. An investment advisor should not have to be told that forgery is wrong. There was no evidence that Mr. Movassaghi made the decision in a rushed situation. He gave evidence this was a decision made after he considered that Dr. Ogilvie's portfolio was falling in value.

Representation was made regarding the possibility of Mr. Movassaghi's continued employment once the IIROC investigation was complete

- [81] I find that Mr. Popescu told Mr. Movassaghi that he would contact a couple of people he knew in the industry who might consider hiring Mr. Movassaghi. I find that Mr. Popescu had no intention to hire Mr. Movassaghi again nor did he say that he would consider re-hiring him. I accept Mr. Popescu's evidence that he was not prepared to accept the risk of an employee who had forged a document, but there may be other firms who would although he thought that unlikely. As he said, he did not want to ruin Mr. Movassaghi's life. Ms. Stibbard's contemporaneous memo details the decision to terminate and there is no mention of possibly re-hiring Mr. Movassaghi after the IIROC decision. The termination letter sets out plainly that Mr. Movassaghi is terminated and his shares will be repurchased. Mr. Popescu's offer to contact two others in the industry is consistent with him not wanting to ruin Mr.

Movassaghi.

- [82] I find that Mr. Movassaghi was optimistic he could expeditiously resolve the investigation at IIROC and he could convince Mr. Popescu to re-hire him. I accept Mr. Popescu said words to the effect to let him know how the investigation turns out, but this was not intended, nor in all the circumstances would someone reasonably conclude, that Harbourfront was willing to re-employ Mr. Movassaghi. I find that in his worry and enthusiasm, Mr. Movassaghi misinterpreted Mr. Popescu's words.

Mr. Movassaghi was provided with positive references

- [83] Mr. Movassaghi's counsel refers to *Vernon v. British Columbia (Liquor Distribution Branch)*, 2012 BCSC 133 at para. 387 where aggravated and punitive damages were in issue in a wrongful dismissal case. The court stated:
- [386] In this case, I have made an award of aggravated damages arising out of the insensitive manner in which Ms. Vernon was terminated. To award punitive damages for the same conduct would lead to double punishment for the same acts.
- [387] There is, however, one exception. At the termination meeting of April 19, Ms. Ferrara told Ms. Vernon that if she agreed to resign, the LDB would provide her with a reference letter. While an employer is under no obligation to give a reference letter (*Shinn v. TBC Teletheatre B.C.*, 2001 BCCA 83, 85 B.C.L.R. (3d) 75), to offer Ms. Vernon a reference letter, conditional on her resignation, was reprehensible and departed to a marked degree from ordinary standards of decent behaviour. If Ms. Vernon's conduct was sufficiently serious that the LDB had the right to summarily dismiss her without notice, it would have been improper for the LDB to give her a reference letter. To offer a reference letter as a carrot to resign, is, in my opinion, conduct which is properly the subject matter of retribution, deterrence and denunciation.
- [84] The quote is distinguishable from the facts of this case. No reference letter was held out to Mr. Movassaghi as a condition of resignation. Further, Mr. Popescu stated that he told the two people he contacted what had happened, but that Mr. Movassaghi had business talent. There is nothing deceptive or reprehensible in that offer, nor anything inconsistent between what Mr. Popescu stated to others, and Harbourfront's position in this trial.

No decisive action was taken for five-and-a-half months regarding Mr. Movassaghi's shares in HIH

- [85] I do not accept this argument. As detailed in the evidence above, any delay in repurchasing Mr. Movassaghi's shares was at his request.

Conclusion

- [86] Using the various formulations of the test at para. 48 of McKinley: Did Mr. Movassaghi's actions go to the core of the employment relationship? Did they violate an essential condition of the employment contract? Did they breach the faith inherent to the work relationship? Were the actions fundamentally or directly inconsistent with Mr. Movassaghi's obligations to Harbourfront? I conclude that the answer to all of the questions is yes.
- [87] Harbourfront operates in the financial services industry. Cornerstones of that industry are trust and acting with a client's consent. Forging a client's signature is fundamentally inconsistent with both of those. Not reporting the forgery until after the client complained is inconsistent with both of those. In an industry where clients put their trust in financial services firms, Harbourfront must be able to put trust in its employees. Harbourfront employees are given autonomy on the "front end" to run their practices. Autonomy requires trust. The terms of the Employment Agreement, the terms of the Conduct Manual, and the published position of IIROC on forgery all attest to the importance of obtaining consent of a client and the seriousness with which forgery is viewed.
- [88] At the time of his termination, Mr. Movassaghi had transferred to Harbourfront \$8.6 million of assets to manage, and I find would likely have brought other assets. When Harbourfront terminated Mr. Movassaghi's employment, Mr. Movassaghi could no longer work as an investment advisor unless he found another firm willing to sponsor him, and was at risk of losing his client base. However, these were not the result of Harbourfront's actions, but the result of Mr. Movassaghi's forgery. He eventually was barred from registration for eight months, and he agreed that sanction took into consideration the time he had already not been employed as an investment advisor.
- [89] Given that Mr. Movassaghi could not work as an investment advisor and was at risk of losing his client base, should Harbourfront have continued to employ him, and thus be responsible for someone who has forged a client's signature? In my view that answer is no. The employment relationship was irreparably fractured. In my view, Harbourfront did what it could to assist Mr. Movassaghi. Mr. Popescu contacted two individuals for Mr. Movassaghi. He testified they would have helped Mr. Movassaghi transfer his clients to another firm. Mr. Movassaghi could have elected to have his shares in HIH repurchased at the internal share price of approximately \$30,000. Instead, because Mr. Movassaghi mistakenly thought he could resolve the IIROC matter within a very short period of time, he failed to make an election after extensions of time granted by Harbourfront.
- [90] It follows that I dismiss Mr. Movassaghi's claim for wrongful dismissal. I therefore need not address the quantum of damages in lieu of notice or mitigation.

- [91] Mr. Movassaghi also argues that Harbourfront's allegation of just cause in circumstances where its own conduct suggested the employment relationship had not been irreparably fractured amounts to bad faith: *Honda Canada Inc. v. Keays*, 2008 SCC 39, at paras. 57, 59 and 62. On this basis, Mr. Movassaghi seeks punitive damages.
- [92] As discussed previously, I find the employment relationship was irreparably fractured and Mr. Popescu's offer to contact a couple of firms was not inconsistent with this. There is nothing in the conduct of Harbourfront that was done in bad faith or that could be characterized as reprehensible: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18. I dismiss Mr. Movassaghi's claim for punitive damages.

Counterclaim

- [93] The Employment Agreement contained the following:

2.2 Harbourfront will provide the Employee with advances against future commission earnings in the amount of \$5,000 per month for three months such loan amounts to be repaid by the Employee

- [94] Mr. Movassaghi does not dispute the payment of the \$5,000 advance nor does he dispute the amount of expenses claimed by Harbourfront in the amount of \$8,587.54, for a claim of \$13,587.54.
- [95] Harbourfront has consistently advised Mr. Movassaghi that there is another \$6,696.79 of insurance commissions which were earned, and indicated that, absent his express direction otherwise, it would apply that amount to the above sum owing. However, Harbourfront has not done this because it appears the commissions may have related to Ms. Blythe's family and some or all of the commissions may be payable to her. There is therefore some uncertainty as to whether the commissions should be deducted.
- [96] It is not clear if part or all of the insurance commissions should be offset or paid to Ms. Blythe. I order that by April 30, 2020, Mr. Movassaghi confirm in writing to counsel for Harbourfront, in a form acceptable to counsel, his position with respect to who - he or Ms. Blythe - is entitled to those funds. As the court has not heard from Ms. Blythe, there is insufficient evidence to order that those funds are offset against the amount owing to Harbourfront.
- [97] Mr. Movassaghi argues that the revenue Harbourfront earned from assets transferred to Harbourfront offsets any debt. I do not accept this argument. Mr. Movassaghi could have elected to be paid for the shares, but he did not do so. He did not earn those fees by managing the assets; someone else at Harbourfront did.

- [98] Finally, Harbourfront claims \$1,163.20 for payment of Mr. Movassaghi's contribution to CPP it was required to pay when it issued shares to Mr. Movassaghi in 2016, but could not later recover because he was terminated. Harbourfront refers to *Avante Furniture MFG v. Lang*, 2002 BCPC 476, where an employer successfully claimed for EI and CPP employee premiums it had to pay after the employee successfully alleged he was an employee rather than an independent.
- [99] Mr. Movassaghi argues he should not have to pay this as there was an unjust enrichment to Harbourfront because Mr. Movassaghi did not receive the benefit of those shares. As discussed previously, Mr. Movassaghi did not receive the benefit of those shares because of his own actions. In my view, Mr. Movassaghi has been enriched by this payment on his behalf, Harbourfront has been deprived of those funds, and there is no juristic reason why Mr. Movassaghi should be able to retain the benefit of those payments made on his behalf.
- [100] Harbourfront will have judgment against Mr. Movassaghi for \$13,587.54 plus \$1,163.20 for a total of \$14,750.74, subject to the possible set-off of \$6,696.79.

Costs

- [101] Unless there are settlement offers that may affect an award of costs, Mr. Movassaghi shall pay to Harbourfront the assessable costs of this action at Scale B. If the parties do have submissions on costs, they may arrange through Trial Scheduling within the next 30 days to speak to the matter.

"Norell J."

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