
Citation: *Crandall v. Investment Industry Regulatory Organization of Canada*, 2018 NBFCST 1

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, c s-5.5

Date: 2018-01-19
Docket: SE-001-2017

BETWEEN:

Robert A. Crandall,

Applicant,

-and-

Investment Industry Regulatory Organization of Canada,

Respondent.

ORDER

Restriction on publication: This Order has been anonymized to comply with the *Right to Information and Protection of Privacy Act*, S.N.B. 2009, c. R-10.6.

WHEREAS:

1. During a pre-hearing conference in this matter, held on September 21, 2017, the Tribunal raised a preliminary motion regarding the production of documents by the National Bank Financial Inc. to Robert Crandall;
2. The hearing of the motion was held on December 15, 2017;
3. As pertains to the hearing of the motion, a Summons to Witness was issued to Mr. C,

Manager of the Moncton Branch of National Bank Financial Inc., ordering him to appear before the Tribunal on December 15, 2017 and to bring the following documents:

- a) personal and work notes and note pads of Robert Crandall from 2006 to July 1, 2012,
 - b) trade tickets pertaining to the Complainant or the Complainant's Holding Company with notes inscribed thereon by Robert Crandall from 2006 to July 1, 2012,
 - c) telephone notepads showing all incoming and outgoing phone calls between Robert Crandall and the Complainant and the Complainant's Holding Company from 2006 to July 1, 2012,
 - d) e-mails exchanged between Robert Crandall and the Complainant or the Complainant's Holding Company from 2006 to July 1, 2012,
 - e) a copy of all recorded incoming and outgoing mail between Robert Crandall and the Complainant or the Complainant's Holding Company from 2006 to July 1, 2012, and
 - f) all correspondence to the Complainant or the Complainant's Holding Company regarding quarterly reviews from 2006 to July 1, 2012,
4. In response to the motion, Mr. C filed an Affidavit on December 8, 2017;
 5. A further Affidavit was also filed by Yu Chen, an investigator with the Investment Industry Regulatory Organization of Canada, on December 8, 2017;
 6. Mr. C appeared at the December 15, 2017 motion, but did not produce any of the documents indicated in the Summons to Witness;
 7. Mr. Crandall alleges that the documents mentioned in paragraph 3 above exist and that they are essential to his ability to defend the allegations in the disciplinary proceedings against him instituted by the Investment Industry Regulatory Organization of Canada. He states the following as a ground for review in his Request for Hearing filed on January 23, 2017:

1. Human rights- I should be assumed innocent until proven guilty. Despite repeated requests to National Bank by myself and my former lawyer, Steve Barnett, I was denied the privilege of having access to my documents, statements, personal notes, telephone records despite the fact that my former administrative assistant has re-confirmed that she was specifically asked to have everything boxed up and sent to storage with bar codes for each box to identify contents for access as needed. This information was critical in my defense and I was not allowed access to any of this to properly defend myself. I AM CONFIDENT that, IF I had been given access to this information, it would be easy for the panel to determine that I was NOT guilty of the accusations.

8. Mr. Crandall alleges that his ground for review as set out in paragraph 7 goes to his ability to know the case and reply.
9. Having considered the Record of the decision-making process filed on April 15, 2017, the Affidavit of Mr. Chen, the Affidavit of Mr. C. together with the oral evidence of Mr. C. at the December 15, 2017 hearing of the motion, the Tribunal is of the opinion that a full hearing on the merits of Mr. Crandall's ground for review as set out in paragraph 7 above is required.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Mr. Crandall's ground for review, as set out in paragraph 7 above, is severed from the remaining grounds for review set out in Mr. Crandall's Request for Hearing and will proceed to a hearing before the remaining grounds of review;
2. The parties may, during the hearing on the ground set out in paragraph 7 above, introduce evidence in addition to that found in the Record of the decision-making process, which evidence may include documentary evidence and the testimony of witnesses; and
3. The remaining grounds for the review will proceed to a further hearing, if required.

DATED at the City of Saint John this 19th day of January, 2018.

Judith Keating, Q.C.

Judith Keating, Q.C.
Tribunal Chair

Raoul Boudreau

Raoul Boudreau
Tribunal Member

Gerry Legere

Gerry Legere
Tribunal Member