Re Steinhoff

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada

and

Carolann Steinhoff

2012 IIROC 39

Investment Industry Regulatory Organization of Canada
Hearing Panel (Pacific District Council)

Heard: February 23, 2012 at Victoria, BC
Decision: July 4, 2012

Hearing Panel:
Stephen D. Gill (Chair), Brian Field, Barbara E. Fraser
Appearances:
Paul J. B. Smith, for IIROC Staff
Gregory N. Harney, for the Respondent

DECISION

INTRODUCTION

¶ 1 After a lengthy hearing, this Panel issued a Decision (Re Steinhoff, [2011]IIROC No. 54) that the Investment Industry Regulatory Organization of Canada ("IIROC") had proven, based on clear, convincing and cogent evidence five of seven counts alleged in the Notice of Hearing dated April 8, 2010. At the hearing on penalty, both counsel for IIROC and counsel for Mrs. Steinhoff (also the "Respondent") presented written outlines, with authorities, and made oral submissions with respect to penalty.

¶ 2 Counsel for IIROC submitted that the appropriate penalty should be:

a) an 18 month suspension;

b) a $100,000 fine;

c) disgorgement of $6,813 in commissions the Respondent earned on the trades;

d) a requirement that the Respondent repeat the Conduct and Practices Handbook Course ("CPH") before she is re-registered;

e) a requirement that the Respondent be subject to strict supervision for 12 months upon her re-registration and thereafter a further 6 months of close supervision; and

f) payment of IIROC's investigative and prosecutorial costs in the amount of $20,000.

¶ 3 Counsel for Mrs. Steinhoff submitted that this was not a case which merited a permanent ban, nor was it a case which merited any suspension. On instructions, during submissions Mr. Harney submitted that there should be no penalty at all. Later in his submissions, and in his written submissions, counsel for the Respondent

submitted that if there was a penalty it should be a minimum fine, namely $10,000 to $15,000. He submitted that there was no basis for an award of costs against the Respondent.

SUMMARY OF FINDINGS

¶ 4 The allegations that were found to be proved by the Panel were:

Count 3

On or about June 26, 2008 and subsequently on July 8, 2008 the Respondent entered orders in the joint account of her clients, CK and AK, to purchase 12 different securities totalling approximately $240,000 without first obtaining approval from the clients as to the specific securities to be purchased, the amount of each security to be purchased, or the price at which the security would be purchased, when the account was not a discretionary account and thereby acted contrary to IIROC Dealer Member Rules 29.1 and /or 1300.4.

Count 4

On or about June 26, 2008 and subsequently on July 8, 2008 the Respondent entered orders in the joint account of her clients, CK and AK, to purchase 12 different securities totalling approximately $240,000 when approximately $120,000 of the money used to purchase the securities was borrowed on margin and when use of margin to that extent was inconsistent with the clients' investment objectives for the account. The Respondent thereby acted contrary to IIROC Dealer Member Rules 29.1 and / or 1300.1(p) and (q).

Count 5

On or about June 26, 2008 and subsequently on July 8, 2008 the Respondent recommended and constructed a portfolio of investments for her clients CK and AK, in their joint account consisting of 12 different securities totalling approximately $240,000 and approximately $120,000 of margin debt which was not suitable for the clients and inconsistent with the clients' objectives for the account, which was to ensure that a certain sum invested was available approximately four months later for the down payment on their new home. The Respondent thereby acted contrary to IIROC Dealer Member Rules 29.1 and / or 1300.1 (p) and (q).

Count 6

On or about August 26, 2008, the Respondent recommended that her clients CK and AK continue with previously purchased investments in their joint account when that portfolio was not suitable for her clients and inconsistent with their investment objectives. The Respondent thereby acted contrary to IIROC Dealer Member Rules 29.1 and / or 1300.1(q).

Count 7

On or about November 28, 2008, the Respondent made a false statement in response to an inquiry from her firm's Chief Compliance Officer, and Chief Regulatory Counsel, who had requested information from her after receiving a written client complaint from her clients CK and AK. The Respondent stated, in an email, that "Margin and leverage were brought up by (CK)" when in fact the Respondent knew that was not true. The Respondent thereby acted contrary to IIROC Dealer Member Rule 29.1.

¶ 5 The genesis of the Notice of Hearing was described in the "Introduction" of this Panel's earlier decision:

"INTRODUCTION

A young married couple in their early 30's each had a modest RSP account with their investment advisor. In the spring of 2008 they sold their first home, and then entered into an agreement to purchase a new home that was to be constructed. Their initial completion date was the end of September. After making a deposit on the new home, they had $125,000

> which was their down payment on the new home. In June, they consulted their investment advisor with respect to investing these funds. The funds were invested in the market, in stocks, utilizing significant margin. When the account was sold out on or about October 1st/08 it netted approximately $55,000."

¶ 6 The Panel's power with respect to the imposition of sanctions on approved persons is IIROC Member Rule 20.33 (2) and permits a panel to impose a penalty, or a range of penalties including a reprimand; a fine of up to $1 million per contravention (or perhaps more); suspension of approval for any period of time and upon any conditions or terms, and including a revocation of approval or permanent ban. Further, Rule 20.49 permits a Panel in addition to imposing any of the penalties set out in Rule 20.33, to assess and order any Corporation Staff investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

¶ 7 Counsel for both parties in their submissions made extensive reference to the Dealer Member Disciplinary Sanction Guidelines (the "Guidelines") including detailed reference to the General Principles, and the Key Considerations outlined in the Guidelines in some fourteen subparagraphs. The submissions of the Respondent strongly disagreed with the submissions on behalf of IIROC in respect of the factors to be considered when determining sanctions.

¶ 8 Counsel for IIROC and counsel for the Respondent also referred us to a number of authorities said to bear upon the imposition of penalties in this case. Both agreed that each case depended upon its particular facts, and that many of the authorities were distinguishable. Counsel for IIROC submitted that the decision *Re Gareau* [2011] IIROC No. 72 had a number of parallels to the present case, and the sanctions imposed in that case were appropriate here. In that case the Panel, based on their findings of fact and the allegations found to be proved, imposed a suspension of one year; a fine of $100,000; disgorgement of commissions of $47,383; ordered the Respondent successfully retake the CPH examination prior to re-registration; in the event the Respondent was re-registered, be subject to strict supervision for one year subsequent to re-registration and followed by another six months of close supervision; and pay costs of $20,000.

¶ 9 Counsel for the Respondent submitted that the *Gareau* decision was only marginally applicable and involved misconduct far more serious than in the present case. He submitted that the Panel found the facts in *Gareau*'s case fit all the criteria for a suspension except the element of criminality; and submitted that none of the elements applied in this case. Counsel urged that this case be decided on its own particular facts.

¶ 10 We attach as Appendix "A" to this decision, the authorities cited by counsel for IIROC, and the authorities cited by counsel for the Respondent.

¶ 11 Counsel for IIROC also submitted a Bill of Costs (Ex. 22) in relation to the prosecution of this matter. The Bill of Costs broke down the total investigative hours ($4,455), the total prosecution hours ($19,370) and expenses paid (approximately $2,000) for a total of $25,886. This did not include the fees and expenses of the Panel, cost of court reporters, premises rental, etc. IIROC claimed costs of $20,000.

ANALYSIS

¶ 12 In determining an appropriate penalty in cases such as this, the hearing Panel's main concerns are the protection of the investing public; protection of the IIROC membership; protection of the integrity of the IIROC process; protection of the integrity of the securities markets; and prevention of a repetition of conduct of the type under consideration. Penalties are to be based on the misconduct found in the specific case, and should address specific and general deterrence.

¶ 13 In the *Gareau*[1] penalty decision, the Panel stated the following, with which we agree:

> 12 IIROC has published a detailed set of Disciplinary Sanction Guidelines to assist hearing panels in determining appropriate penalties. The publication of sanction guidelines is an approach that has been adopted by other regulatory bodies. The goal is that hearing panels treat such guidelines as indicative of industry expectations and as relevant to a

[1] 2011 IIROC 72 (Jan. 2, 2012)

penalty determination, although they are neither exhaustive nor determinative. The guidelines do not prescribe specific results but set out factors that panels should take into account in determining penalties. The guidelines are careful to preserve the individualization of sanctions and not suggest a blanket approach. In Part 2 of the Sanction Guidelines at page 8 it states:

> Sanctions should be based on the circumstances of the particular misconduct by a Respondent with an aim at general deterrence.

Emphasis is placed on investor protection and market integrity. The guidelines say:

> Registrants who choose to act in ways that threaten the integrity of the capital markets must have the expectation that they will be held accountable through enforcement action by regulators.

Thus, in addition to the individual circumstances of a Registrant who is subject to sanctions, there is an overall public policy goal and objective that must be taken into account by panels when they are fashioning disciplinary sanctions for infractions by IIROC 's regulations and by-laws. The balancing of these to interests underscores the very difficult task that a panel, such as the present one, must undertake." (para 12.)

¶ 14 The Guidelines, in addressing penalties as a deterrent state:

> "Registrants and Dealer Member firms have significant responsibilities that they must meet if investors are to be protected and market integrity maintained. Registrants who choose to act in ways that threaten the integrity of the capital markets must have the expectation that they will be held accountable through enforcement action by regulators. Sanctions should be based on the circumstance of the particular misconduct by a respondent with an aim at general deterrence.
>
> General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations. As was observed by the Hearing Panel in *Re Mills* [2001] 1. D.A.C.D. No. 7 April 17, 2001, at p. 3:
>
> > Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goal of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment.
>
> (Guidelines, p. 8)

¶ 15 This case is also somewhat unique because of the academic background, education in securities industry related matters, and experience in the securities industry of Mrs. Steinhoff. At all material times Mrs. Steinhoff was an investment advisor with Wellington West Capital Inc. ("WW") in Victoria. She was not only employed, but was an investor in WW, and she was interim Branch Manager, and co-manager of the Victoria office. She had an extensive academic background, and obtained her Certified Financial Planner certification in April 2004. She had taken numerous securities courses including the CSI Branch Managers course (April 2004), a two year course for Canadian Investment Managers, and had completed the Partners, Directors and Senior Officers qualifying exam. She has taken many other courses according to her CV.

¶ 16 In terms of her securities industry work experience, from 1988 to May 1999 she was an investment advisor, director, and senior vice-president at Scotia McLeod Inc.; May 1999 to January 2004 she was a senior investment advisor with United Capital Securities Inc.; January 2004 to 2009 she was an investment advisor,

partner, and senior vice-president with WW; from 2009 to the hearing she was an investment advisor and senior vice-president with Queensbury Securities Inc. In total, Mrs. Steinhoff has 24 years experience in the securities industry, and has held very responsible positions.

¶ 17 Conversely, CK (husband) and AK (wife) while they had graduated from university and were both employed at the time they sought advice from Mrs. Steinhoff, they had no prior investment accounts with any other financial advisor before the Respondent. All their dealings with the Respondent up to the time of the investment of their down payment for their home had been in relation to their RSP accounts, and they simply accepted the advice of Mrs. Steinhoff when considering investments for their accounts. On an annual basis there were very few changes in their accounts, and they did not understand most of the types of investments Mrs. Steinhoff was recommending. They simply accepted her advice.

¶ 18 Apart from the first page, the New Client Application Form ("NCAF") for the joint account used to invest Mr. and Mrs. Ks house down payment funds was, according to the Ks, primarily completed when they first saw it; there were stickies placed to denote where their signatures were required. In reviewing that NCAF it indicates the Ks investment knowledge is "good"; this was a misrepresentation; at best their investment knowledge was "limited", but more likely it was in fact "poor".

¶ 19 Further, under Investment Objects and Tolerance, the "growth" target mix was ticked, which is also a misrepresentation given the Ks need for their funds in approximately three months. The risk level was indicated at 70% medium and 30% high, which is completely contrary to the objectives of Mr. and Mrs. K, which was to have 100% of their funds available in approximately three months. Further, there was no explanation by Mrs. Steinhoff, and no real agreement by Mr. and Mrs. K, to the opening of a margin account.

¶ 20 The Guidelines set out fourteen key considerations that panels may consider when assessing the gravity of the conduct in a specific case. The list is not exhaustive. As counsel for both parties addressed most of these points, the Panel will comment on those which we feel are significant.

HARM TO CLIENTS, EMPLOYER AND/OR THE SECURITIES MARKET

¶ 21 Mrs. Steinhoff's conduct caused very significant harm to her clients. She recommended and constructed a portfolio of investments consisting of twelve different securities, totalling approximately $240,000. Of that sum, approximately $120,000 was based on margin, which debt was not suitable for the clients, and was inconsistent with her clients objectives for the account, which was to ensure that they had their down payment funds available at the closing of their home purchase in approximately three months. Further, Mrs. Steinhoff, when the market did decline, did not recommend that the clients liquidate, in the very early going, when the loss would have been minimal. She wrongly encouraged them to stay the course when she knew they had a deadline when they had to produce the funds for their down payment. They did not have any other cash (except liquidating their rather minimal RSP accounts) with which to make up any losses. The down payment funds she invested were essentially their net worth.

¶ 22 When the account had to be liquidated in order to meet the clients' home purchase date, the value of the account was approximately $55,000. This was a huge loss to clients who had told Mrs. Steinhoff, their investment advisor, that they could not afford to lose any of their down payment. In our view they were wrongfully pressured into conceding they could afford even a $10,000 loss.

¶ 23 The potential disaster of insufficient funds for the down payment for the purchase of their home was only averted through fortuitous intervention by Mrs. K's parents, who found the means to borrow sufficient funds to permit the Ks to purchase their home. It is clear on the evidence before this Panel that Mr. and Mrs. K suffered extreme stress as a result of the purchase of the twelve securities, and the use of margin, which was totally inconsistent with the clients' objectives.

¶ 24 In monetary terms, the $70,000 loss here is less than the $600,000 in *Gareau*[2], the $240,000 in *Wilson*[3],

[2] *Gareau* [2011] IIROC 72 (Jan,.2, 2012
[3] *Wilson* [2011] IIROC 47

or the $150,000 in *Harding*[4]. However, it amounted to 56% of the clients' account; the down payment was essentially the bulk of their net worth.

¶ 25 Further, Mrs. Steinhoff was only able to affect the initial purchases of securities because she did not properly or fully explain to Mr. and Mrs. K the use of margin. In our view it is clear from the evidence that neither Mr. or Mrs. K agreed to borrow any funds on margin, let alone $120,000. This fact alone caused very significant stress to Mr. and Mrs. K.

¶ 26 In *Gareau*, the Panel stated at paragraph 15, which statements apply here:

> "The core duty and responsibility of an investment advisor is to make suitable recommendations in accordance with the objectives and risk factors, and to properly obtain instructions before implementing trades. **Where almost total reliance is placed upon the investment advisor, as it was in the present case, the responsibility to make suitable investments is heightened.**" (emph. added)

¶ 27 In our view, the facts of this case will have resulted in harm to Mrs. Steinhoff's employer, and has harmed the reputation of the Canadian securities industry.

¶ 28 Taken as a whole, we view Mrs. Steinhoff's conduct as egregious. Her conduct resulted in significant harm to her clients; her employer WW; and to the securities market.

VULNERABILITY OF VICTIM

¶ 29 We find on the evidence that Mr. and Mrs. K were both unsophisticated investors. Quite properly they viewed Mrs. Steinhoff as a highly experienced investment advisor and they put their complete trust in her. Further, when their investment account had suffered significant losses, and they told Mrs. Steinhoff that they were extremely stressed about their financial situation, she gave Mr. and Mrs. K a false sense of security with the representation that she would give them a cheque when clearly she knew (or ought to have known) that she could not lend money to a client without pre-approval.

¶ 30 Further, their vulnerability is established by the fact that notwithstanding this was their total down payment, and they could not afford to lose any money, they put the utmost faith in Mrs. Steinhoff's ability and gave her carte blanche to invest the funds as she saw fit. They had no experience with margin, or short term investments.

BLAMEWORTHINESS

¶ 31 The Guidelines state:

> In appropriate cases, distinction should be drawn between conduct that was unintentional or negligent, and conduct that involves manipulative, fraudulent or deceptive conduct. Distinction should also be drawn between isolated incidents and repeated, pervasive or systemic contraventions of the Dealer Member rules."

In this case, in our view, there was a very high degree of blameworthiness attached to Mrs. Steinhoff's conduct. She failed to advise the clients of the unsuitability of the investments, or of the risks. She concealed from them the use of margin in setting up the account, and in the initial purchases for the account.

¶ 32 Further, in our view, the NCAF form for the joint account was signed due to the manipulation and deception of Mrs. Steinhoff both in the manner in which it was filled out, the manner in which she explained it, and the use of stickies to indicate only signatures were required. Her conduct as aforesaid caused Mr. and Mrs. K to not carefully read the forms, or ask questions in respect of their contents. It was clearly deception for Mrs. Steinhoff to advise them that this NCAF form was just like what they signed before for their RRSPs. The NCAF had been modified by (or on behalf of) Mrs. Steinhoff to indicate the Ks were experienced investors so the new account would be approved by her firm.

[4] *Harding* [2011] IIROC 65

¶ 33 Further, in our view it was a serious misrepresentation to Mrs. Steinhoff's firm not to advise them that the funds being deposited into the joint account were the clients' down payment for a home purchase, and the funds would be required in about three months. In our opinion she knew that had she done so, serious questions would have been raised by her firm about suitability, margin, etc.

¶ 34 We also find on the evidence that Mrs. Steinhoff tacitly persuaded Mr. and Mrs. K to give her discretion over the joint account without ever identifying or explaining it. She sold them on her ability to take their funds and make a good return for them in the time available. The problem was she did not explain to them discretionary accounts, margin, how she intended to do it, exactly what she intended to purchase, or what the risks were. She ignored suitability. She ignored the rules and regulations governing discretionary accounts.

¶ 35 The individual Guidelines with respect to Discretionary Trading and Dealer Member Rule 1300.4 and 1300.5 state in part:

> "It should be noted, however, that in cases where the client has provided verbal authority, the contravention should not be viewed simply as a paper violation. Obtaining proper approval to designate an account as discretionary or manage is not automatic. The process of approval is required to ensure that only properly qualified registrants trade in the accounts. These designated accounts are also subject to greater supervision. Discretionary trading without the proper authorization is therefore not subject to the safeguards that form part of the approval process, and puts the clients' accounts at greater risk." (Guidelines, para. 36, p. 33)

¶ 36 Subsequently, when the market declined, and the account did not recover, but continued to decline in value, and the day of reckoning was at hand, Mrs. Steinhoff falsely alleged the clients were the cause of their own misfortune; that margin was their idea; and any losses were thus their fault. Consequently, Mrs. Steinhoff gave a false answer to her member firm regarding margin, during the firm's investigation, in a conscious and deliberate attempt to deflect responsibility to the clients.

DEGREE OF PARTICIPATION

¶ 37 Mrs. Steinhoff, a very experienced securities advisor, was the sole perpetrator of the scheme and is solely responsible for her misconduct.

¶ 38 With respect to her firm, because of the deception and non-disclosure of material facts, there was nothing in the New Client Application Form or communicated by email, etc., or elsewhere to indicate to the member firm that the down payment funds were required in approximately three months. Further, Mrs. Steinhoff did not advise the firm of the true state of affairs with respect to the opening of Mr. and Mrs. K's joint account. She instructed her staff to "neutralize" messages to hide the facts. In our view she misled and deceived the member firm. She was under supervision at the time, which calls for increased surveillance, approvals and review. We find it unusual that the firm did not scrutinize this account opening and subsequent transactions more closely.

THE EXTENT TO WHICH THE RESPONDENT WAS ENRICHED BY THE MISCONDUCT

¶ 39 On the evidence, Mrs. Steinhoff earned commissions of $6,813 as a result of the discretionary trades and purchase and sale of unsuitable investments.

ACCEPTANCE OF RESPONSIBILITIES, ACKNOWLEDGMENT OF MISCONDUCT AND REMORSE

¶ 40 Mrs. Steinhoff does not acknowledge she was guilty of any misconduct, and thus does not accept any responsibility. She has not expressed any remorse as that term is used in the decided cases. Her counsel submitted that the Panel should consider her offer to write the clients a cheque to permit them to make their down payment was a mitigating factor. However in our view that was a hollow offer and done simply to persuade them to continue to stay the course.

CREDIT FOR COOPERATION

¶ 41 In our view there is nothing in this case that would qualify as a mitigating factor under this heading.

PLANNING AND ORGANIZATION

¶ 42 The Guidelines state that evidence of planning and premeditation are aggravating factors, and the hearing panel should consider the degree of organization and planning associated with the misconduct along with the number, size and character of the transactions. In this case we are of the view on the evidence that the conduct of Mrs. Steinhoff was planned, and deliberate. She may have believed that with her experience, in the timeframe permitted, and by the use of margin, she could earn a reasonable return for Mr. and Mrs. K. However, we find that she completely ignored the applicable member rules and regulations governing her activities in order to carry out her plan. She wilfully disregarded her obligations as a registrant and member of the securities industry.

¶ 43 Further, when the clients had lost a significant amount of money, and sought Mrs. Steinhoff's advice on whether they should sell, she persuaded them to stay the course on the hope that the market would recover. She did not explain the risks of a further decline in the market; she did not give a balanced presentation.

MULTIPLE INCIDENTS OF MISCONDUCT OVER AN EXTENDED PERIOD OF TIME

¶ 44 In our view this is not a situation of an isolated event. Mrs. Steinhoff, through careful planning and organization, and a significant degree of misrepresentation, persuaded her clients to make unsuitable investments, and she failed to explain the risks. Through deception, she had them sign the NCAF for the joint account so the appearance to the member firm would be that these were clients with good investment experience who were wishing to open a margin account and a short account. Neither client understood these accounts, and Mrs. Steinhoff did not give a full and proper explanation. Although there was a time span of some six months in total, there was sufficient time, and incidents, to qualify in this category.

¶ 45 Further, there was the purchase of Volga Resources shares more than a week after the initial unsuitable discretionary purchases. On the evidence, the clients were not asked to approve the trade in Volga Resources; did not know the price, did not know the quantity, did not know what the company was engaged in.

¶ 46 When the clients received the first statements on the joint account, and raised serious questions, Mrs. Steinhoff failed to advise them and give a full explanation of her strategy, the use of margin, the interest cost, the commission cost for buys and sells, etc. The clients were unsophisticated investors, and trusted in her advice, and she abused that trust.

¶ 47 In November, when Mrs. Steinhoff's member firm asked her for an explanation in writing about the margin account, the Respondent made a false and misleading statement that "margin and leverage were brought up by (CK)". Later, in the interview of Mrs. Steinhoff conducted by the IIROC investigators, Mrs. Steinhoff stated that it was "nobody's" idea to open a margin account and utilize leverage, but that she probably would have put the idea on the table. The truth is she never explained the use of margin to the clients until after the purchases were made, and even then she glossed over the true situation, the risks, and the potential consequences.

SUSPENSION

¶ 48 The Guidelines state that a suspension may be appropriate where:

- "There have been numerous serious transgressions;
- there has been a pattern of misconduct;
- the respondent has a disciplinary history;
- the misconduct has a element of criminal or quasi criminal activity; or
- the misconduct in question has caused some measure of harm to the integrity of the securities industry as a whole."

¶ 49 The Respondent submitted that IIROC's recommendation of a suspension was excessive, and incongruent with the facts of this case, and that the case fit none of the aforesaid criteria. We do not agree.

¶ 50 In our view the evidence establishes that in this case there was a clear pattern of misconduct over a number of months in the Respondent's dealings with Mr. and Mrs. K, and her firm. Further, IIROC has proven numerous serious transgressions as per counts three to seven. It is our view that the misconduct of Mrs. Steinhoff in this case has indeed caused some measure of harm to the integrity of the securities industry as a whole. We would characterize this case as exhibiting very egregious conduct.

¶ 51 Under the more serious category of a Permanent Bar from Approval, the Guidelines suggest one criteria is where:

> "there is reason to believe that the respondent could not be trusted to act in an honest and fair manner in all their dealings with the public, their clients and the securities industry as a whole."
>
> (Guidelines, para. 4.3, p. 13)

Based on the evidence in this case, and the Respondent's conduct in her dealings with Mr. and Mrs. K; with her member firm (throughout the period, in respect to the opening of the Ks' joint account, her instructions to her staff, and when the firm was conducting its in-house investigation); and in the Respondent's testimony during the IIROC interviews, and during the Hearing; in our view there is substantial reason to believe that Mrs. Steinhoff could not be trusted to act in an honest and fair manner in her dealings with the public, her clients, and the securities industry as a whole. Her conduct in this case proves that she does not feel obliged to follow IIROC's rules and regulations. Mrs. Steinhoff did not deal with her member firm with candour, and in a fair and honest manner. Mrs. Steinhoff did not deal with Mr. and Mrs. K with candour, and in a fair, honest manner; and cannot be trusted to do so with the securities industry as a whole.

RECENTLY DECIDED REGULATORY CASES

¶ 52 Its clear that the Guidelines are designed to assist panels in coming to their decision on penalty, and that each panel has an overall discretion, and the penalty should fit the facts of the particular case. Recently decided regulatory cases do demonstrate how various panels have exercised their discretion in imposing penalties in serious cases. We view this as a very serious case, indeed as an egregious case. IIROC's counsel set forth in his written submission a summary of cases, which cases were of assistance to the Panel in the exercise of our discretion; we include the summary here:

> "14. The following recently decided regulatory cases will be referenced:
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> ***Gareau*** – Liability [2011] IIROC 53 – Penalty [2011] IIROC 72
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> An active RR who was represented at a five day contested hearing and who expressed remorse at his penalty hearing had his active registration removed and suspended for one year and was fined $100,000 for make unsuitable recommendations to two retired couples and for making one discretionary transaction for one of the couples. For one client losses were approximately $600,000 in a $1,200,000 account. For the other client the losses were not significant.
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> ***Harding*** [2011] IIROC 65
>
> A non active RR with no previous disciplinary history who did not appear at his disciplinary hearing to challenge the evidence called by IIROC was suspended for five years and fined $125,000 for unsuitable and discretionary transactions in the account of one unsophisticated, vulnerable and trusting client. $150,000 was lost in a portfolio the value of which is not entirely clear but which appears to be at least more than $300,000.
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> ***Phillips***: Liability [2011] IIROC 34; Penalty [2011] IIROC 60
>
> A non active RR who filed a response and made one appearance but who did not appear at the contested hearing to challenge evidence called by IIROC was suspended for three years and fined $290,000 for making unsuitable recommendations to two clients and discretionary trades for one of them. This case

included additional violations of preparing income tax returns for clients without the consent of her firm and filling one client's "Buy" order with a "Sell" order from her own account but the panel made clear the gravamen of the case was the unsuitable recommendations. Losses in two accounts combined were $238,000 on portfolios that started at combined $806,000.

Wilson [2011] IIROC 47

A non active RR who did not appear at his disciplinary hearing to challenge the evidence called by IIROC was suspended for five years and fined $75,000 for making unsuitable recommendations and discretionary trades. The client, although relatively young at 41 years, was vulnerable because she had minimal investment knowledge, did not have steady employment and the money she had was from the division of matrimonial assets after a divorce. $220,000 was lost in a $640,000 account.

Daubney: Liability (2008) 31 OSCB 4187; Penalty (2008) 31 OSCB 8185

An RR who was represented at a contested Ontario Securities Commission hearing, was permanently banned for unsuitable recommendations involving extensive use of margin for 6 clients.

Pugliese *v. Clark* 2008 BCCA 130

The British Columbia Court of Appeal upheld a decision to not allow a mortgage broker to re-register,. The facts of this case are not comparable. The case is relevant because the Court of Appeal acknowledged at paragraph 32 of its decision the importance of an individual being able to pursue employment but noted that in a similarly regulated field, that import could not prevail over the overriding duty of the regulator to protect the public interest and the integrity of the industry.

Balanko [2007] IDACD No. 10

A non active RR was suspended two years and fined $60,000 for making unsuitable recommendations for two unsophisticated clients and a total of 25 discretionary transactions. One client lost $19,000 (7% of the account value), another lost $1,300 (10% of the account value).

Yaniewicz [2006] IDACD No. 3

A non active RR, who did not appear at his disciplinary hearing was suspended for 6 months and fined $50,000 for unsuitable recommendations and discretionary transactions in one unsophisticated client's account. $42,000 was lost in an $182,000 account.

15. None of these cases are settlements. In each case an IIROC hearing panel decided the sanction. In *Harding, Phillips, Wilson, Balanko* and *Yaniewicz* the Respondent either did not appear or was unrepresented at the disciplinary hearing. In *Daubney*, the registrant was represented at his OSC hearing.

16. The case that stands out is *Gareau*, where the RR was both active and represented throughout his disciplinary hearing. The one year suspension imposed on him is significant because it brought his active registration to an immediate end."

(Staffs Outline, pp. 3-5)

¶ 53 Counsel for the Respondent in his written submissions from paragraph 78 to 86 made certain points, which we have noted, in distinguishing various features of these cases. We have carefully reviewed those submissions, and taken them into account when deciding penalty.

¶ 54 We turn now to consider the penalty which in our view is appropriate for the infractions of the IIROC Rules and By-laws as found by this Panel. We note that in the Guidelines which relate to specific offences, suspension is indicated as warranted in only the most egregious cases. We view this as an egregious case. However, we note that other panels have exercised their discretion, and imposed suspensions, on the particular facts of the case before them, even though those facts may not demonstrably fit precisely within the criteria of the Guidelines. We are of the view that a period of suspension is warranted in this case.

¶ 55 We are troubled by the fact a very experienced registrant, who apparently also is very busy, and successful, would completely ignore and breach the Rules and Regulations as has happened in this case. In our view the penalty in this case must be sufficient to bring home to Mrs. Steinhoff the gravity of her transgressions.

¶ 56 This Panel is also of the view that there has been significant harm to not only the clients, but to the member firm, and the securities industry. Based on the Guidelines, and authorities, we believe the industry would expect serious consequences, including a suspension and a fine.

¶ 57 We are also troubled by the fact that Mrs. Steinhoff attempted to deflect responsibility back on the clients when the portfolio had to be sold, and also lied to her member firm in her response to the question about who brought up the use of margin. She has not accepted responsibility. She has not demonstrated any remorse.

¶ 58 With respect to costs, we agree with the comments of the panel in *Re Van Hee* [2009] IIROC No. 34 (July 22, 2009) where they stated that an award of costs should not constitute an additional penalty against the Respondent but should reflect the time and effort expended by IIROC, and the panel's assessment of how much of those costs the Respondent should be asked to bear. Further, we agree with their analysis that a conservative approach should be taken with respect to costs, and in this case we have reviewed the Bill of Costs presented by IIROC and believe it is reasonable. This was a hard fought case. IIROC succeeded in respect of five counts, but failed in two others. The Respondent brought a motion at the commencement of this matter for an order prohibiting the publication or release of information relating to this proceeding, in particular the Notice of Hearing and Particulars; significant affidavit evidence was submitted, and the motion was fully argued. The application was dismissed. Following the delivery of the Decision in this matter the Respondent brought an application to adjourn the hearing of penalty submissions on the basis, amongst others, that the Respondent intended to commence an action in the B.C. Supreme Court seeking an order quashing the hearing Panel decision. The motion was denied. Further, there was a lengthy hearing on the merits, and extensive written arguments, both as to liability, and penalty, was submitted by both parties. Also, as previously noted, the Bill of Costs did not include the costs of the Panel, the hearing rooms, court reporter, transcripts, exhibits, etc.

ORDER

¶ 59 Based on the foregoing, the Panel orders that the Respondent Carolann Steinhoff:

a) be suspended for a period of twelve months starting July 13, 2012 and ending July 12, 2013;

b) upon the expiry of the twelve month suspension aforesaid, on re-registration be subject to strict supervision for a period of twelve months, and a further period of twelve months of close supervision for a total period of twenty-four months supervision;

c) pay a fine of $100,000;

d) pay disgorgement of commissions of $6,813;

e) pay costs of $20,000;

f) effective July 13, 2012 be deemed to have resigned any position that she now holds as a director or officer of a Member and for a period of five years from July 13, 2012, be prohibited from holding any such position;

g) be ineligible for reinstatement until she has paid the fine and disgorgement and costs;

h) be ineligible for reinstatement until she has rewritten and passed the Partners, Directors and Officers course and the Branch Managers course.

This Decision may be signed in counterpart.

DATED at Vancouver, British Columbia this 4th day of July, 2012.

Stephen D. Gill, Chair

Brian Field

Barbara E. Fraser

APPENDIX "A"

IIROC'S AUTHORITIES

1. IIROC *re: Gareau*, [2011] IIROC No. 53 Decision and Reasons
2. IIROC *re: Gareau*, 2011 IIROC No. 72 Penalty Decision
3. IIROC *re: Phillips*, [2011] IIROC No. 34 Decision and Reasons
4. IIROC *re: Phillips*, 2011 IIROC 60 Decision and Reasons – Penalty
5. IIROC *re: Harding*, 2011 IIROC 65 Reasons for Decision
6. IIROC *re: Wilson*, [2011] IIROC No. 47 Hearing Panel Decision
7. Ontario Securities Commission *re: Daubney and Littler*, 2008 LNONOSC 338 Reasons and Decision
8. Ontario Securities Commission *re: Daubney and Littler*, 2008 LNONOSC 613 Reasons and Decision Sanctions and Costs
9. *Pugliese v. Clark*, 2008 BCCA 130 (C.A.)
10. Investment Dealers Association of Canada *re: Balanko*, [2007] I.D.A.C.D. No. 10 –Bulletin No. 3617
11. Investment Dealers Association of Canada (Enforcement Division) *re: Janiewicz*, [2006] I.D.A.C.D. No. 3 Bulletin No. 3518

RESPONDENT'S AUTHORITIES

1. IIROC *re: Van Hee*, [2009] IIROC No. 34
2. Investment Dealers Association of Canada and *Derivative Services Inc. and Kyle* – Penalty Decision of the Ont. District Council
3. IIROC *re: Harding*, 2011 IIROC 65 Reasons for Decision
4. IIROC *re: Gareau*, 2011 IIROC No. 72 Penalty Decision
5. IIROC *re: Phillips*, 2011 IIROC 60 Decision and Reasons – Penalty
6. Investment Dealers Association of Canada (Enforcement Division) *re: Janiewicz*, [2006] I.D.A.C.D. No. 3 Bulletin No. 3518
7. *Clifford & Associates Consulting Ltd. v. Clifford*, [1996] B.C.J. No. 2197
8. Investment Dealers Association of Canada *re: Mills*, [2001] I.D.A.C.D. No. 7, Bulletin No. 2842