

Re Locke

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada**

and

Shirley A. Locke

2020 IIROC 27

Investment Industry Regulatory Organization of Canada
Hearing Panel (Nova Scotia District)

Heard: July 20, 2020

Decision: July 20, 2020

Reasons for Decision: August 8, 2020

Hearing Panel:

R. Scott Peacock, Chair, Roland Coffill and Thomas Kostandoff

Appearance:

Kathryn Andrews, Senior Enforcement Counsel

April Engelberg, Enforcement Counsel

Kevin Kiley for Shirley A. Locke

Thomas Keeler for Shirley A. Locke

Shirley A. Locke (present))

PENALTY DECISION

INTRODUCTION

¶ 1 This matter came before the Panel for a hearing on the merits commencing December 16, 2019 and was adjourned on December 20, 2019. The hearing resumed on March 2, 2020 and concluded on March 5, 2020. The Decision on the Merits was rendered on May 5, 2020. The Panel held a Penalty Hearing on July 20, 2020 receiving evidence and submissions from the parties. Enforcement Counsel tendered as exhibit number 21 an affidavit of the IIROC Enforcement Investigator setting out the costs of the investigation at \$ 341,367.10 without disbursements. Mr. Kiley called Mr. Christopher Enright to give *viva voce* evidence on behalf of Ms. Locke. Mr. Kiley also provided letters in support of Ms. Locke. Counsel made written and oral submissions which have been considered by the Panel.

BACKGROUND

¶ 2 The allegations against Ms. Locke were contained in a Notice of Hearing and Statement of Allegations dated July 3, 2019; subsequently amended. It was alleged that:

Contravention 1 Between January 2010 and September 2014, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to clients GR, JF, F Limited and EH,

contrary to Dealer Member Rule 1300.1(a).

Contravention 2 Between January 2010 and September 2014, the Respondent failed to use due diligence to ensure that recommendations made for clients GR, JF and F Limited were suitable for them, based on their investment objectives and risk tolerance, contrary to Dealer Member Rule 1300.1(q).

Contravention 3 Between January 2010 and September 2014, the Respondent effected trades in the accounts of clients EH and AH that were not within the bounds of good business practice, contrary to Dealer Member Rule 1300.1(o).

Contravention 4 Between January 2010 and September 2014, the Respondent conducted unauthorized trades in the accounts of clients GR, JF, and EH contrary to Dealer Member Rule 29.1.

Contravention 5 Between January 2015 and December 2017, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to client LG, contrary to Dealer Member Rule 1300.1(a).

Contravention 6 Between January 2015 and December 2017, the Respondent failed to use due diligence to ensure that recommendations made for client LG were suitable for her, based on her investment objectives and risk tolerance, contrary to Dealer Member Rule 1300.1(q).¹

¶ 3 The Panel heard evidence over nine days in respect to the allegations and, received and considered voluminous exhibits. Upon due deliberation of the evidence before it, the Panel concluded in a written decision on May 5, 2020 that all but one of the allegations had been made out. The Panel found that:

157. The panel is satisfied upon the preponderance of *viva voce* and documentary evidence having considered the credibility and reliability of the evidence in all the relevant circumstances that Staff has met its burden of proof in respect to Contraventions 1,2,4,5 and 6 in all respects.

158. Regarding Contravention 3, the Panel finds Staff has met its burden in respect to client EH but not client AH.

159. Therefore, the Panel finds that Ms. Shirley A Locke has contravened IIROC Dealer Member Rules as alleged and set out in this conclusion.²

¶ 4 A Penalty Hearing was held on 20 July 2020 via WebEx to hear from the parties in respect to an appropriate penalty to be imposed given the proven allegations.

¶ 5 Ms. Andrews made submissions seeking penalties under Rule 20.33 being:

- 1) A two-year suspension
- 2) \$25,000 fine in respect to Contraventions 1 and 5
- 3) \$25,000 fine in respect to Contraventions 2 and 6
- 4) \$20,000 fine in respect to Contravention 3
- 5) \$20,000 fine in respect to Contravention 4
- 6) Disgorgement of commissions in the amount of \$21,600 in relation to Contravention 4
- 7) Six months of close supervision upon re-registration
- 8) Rewrite and pass the Conduct and Practices examination within six months of re-registration

¹ Notice of Hearing and Statement of Allegation, July 3 2019

² Decision on the Merits, May 5, 2020

9) Costs in the amount of \$40,000.

¶ 6 Ms. Andrews emphasised the principle of general and specific deterrence, measures to ensure the public confidence in the securities market and IIROC procedures, and the principle of proportionality. Ms. Andrews drew the Panel's attention to the fact that the violations occurred over several years and were not isolated events. The length of time and number of clients showed a pattern of misconduct. The number of unauthorized trades demonstrated a pervasive misconduct unbecoming a registrant of Ms. Locke's lengthy experience.

¶ 7 Ms. Andrews referred the Panel to the case of *Re Cartaway*³ in support of the proposition of giving weight to considering the importance of general deterrence in reaching an appropriate disposition.

¶ 8 Ms. Andrews also referred the Panel to *Re Pariak-Lukic*⁴ in support of her submissions that the embarrassment and costs to the Respondent were not mitigating factors in respect to a proposed period of suspension. Further, that beyond the issue of integrity, a lack of proficiency would warrant a period of suspension.

¶ 9 Ms. Andrews advocated for a balancing of interest in determining an appropriate disposition as set out in *Re Wood*⁵. Ms. Andrews called for a proportionate and preventative disposition as outlined in her written submissions.

¶ 10 Mr. Kiley called Mr. Christopher Enright, UDP of Aligned Capital Partners Inc., Ms. Locke's employer. Mr. Enright provided evidence in respect to his faith in Ms. Locke, describing her as a wonderful and reliable person, with a host of loyal clients, who describe her as a nice person. Mr. Enright also gave evidence on the compliance regimen at Aligned Capital Partners and how Ms. Locke would be supervised if she were to re-register after a period of suspension, if imposed.

¶ 11 Mr. Kiley also provided six letters of support for Ms. Locke from industry participants and clients. Mr. Kiley referred to *Re Cartaway* and asked the Panel to consider several factors to reach a "textured and nuanced" disposition in providing specific deterrence as required to rehabilitate Ms. Locke's professional practice. Mr. Kiley referred the Panel to *Re Steinhoff*⁶ and *Re Jones* in support of his submission:

... Taking these factors into consideration we do not think that the penalty should be so strident as to from a practical point of view cause Ms. Jones not to be able to practise her profession again...⁷

¶ 12 Mr. Kiley urged the Panel to consider the issue of disgorgement with caution. He submitted that clear and cogent evidence was required on specific transactions to which commissions apply.

¶ 13 It was proposed by Mr. Kiley that an appropriate disposition on the facts found in the Decision on the Merits would be:

- 1) A six-month suspension
- 2) A \$25,000 fine in respect to the Know Your Client and suitability allegations
- 3) A \$5,000 fine in respect to the business practices allegation
- 4) A \$20,000 fine in respect to the unauthorized trading allegations
- 5) Close supervision for six months
- 6) Re-write and pass the Conduct and Practices examination

³ [2004] 1 SCR 672

⁴ 2015 LNONOSC 357

⁵ (2016) LNIROC 49

⁶ (2014) BCSECOM 23

⁷ (2014) IIROC 15

7) Costs in the amount of \$ 15,000.

ANALYSIS

¶ 14 The Panel was referred to several precedents by counsel citing dispositions for various violations of the Rules and by-laws. These cases are of some utility to the Panel in arriving at an appropriate penalty. However, each case must be decided on its own merits and underlying facts in accordance with the applicable general principles set forth in governing Rules, by-laws, regulations, and statutes. The Panel takes guidance from the decisions of courts, provincial regulators, and panels of self-regulating organizations. These broad general principles provide a required degree of continuity, proportionality, and uniformity of general and specific deterrence.

¶ 15 Bearing these principles in mind, the Panel considered that *Re Cartaway* sets forth an overarching principle in determining an appropriate penalty:

...it is reasonable to view general deterrence as an appropriate and perhaps necessary consideration in making orders that are both protective and preventative.

[Citing Ryan J.A. in her dissent in BCCA] “The notion of general deterrence is neither preventative nor remedial. A penalty that is meant to generally deter is a penalty designed to discourage or hinder like behaviour in others”.⁸

¶ 16 Ms. Locke, during the relevant period, was a very experienced registrant who had held senior supervisory positions for several dealers. Her misconduct occurred over several years and demonstrated a blatant disregard for her professional regulatory and ethical obligations to her clients, dealer and the industry. Given her position and experience, it is essential to provide sufficient general deterrence that like minded and situated registrants be deterred from such conduct. To do less would be to condone and excuse such misconduct.

¶ 17 Mr. Kiley, in his written submissions, also referred the Panel to *Re Cartaway*⁹, more particularly:

...unreasonable weight given to a particular factor, including general deterrence will render the order itself unreasonable.

¶ 18 Mr. Kiley pressed upon the Panel that Ms. Locke had no prior disciplinary record; she had over forty years of experience in the industry, and the proceedings themselves provided a significant deterrence both general and specific. In that regard Mr. Kiley cited the Ontario Court of Appeal for the principle that defending the allegations with its incumbent proceeding is not a relevant consideration in determining an appropriate penalty¹⁰.

¶ 19 The Panel in its penalty deliberations has considered all the submissions and precedents presented by counsel and applied them considering the facts established in the proceedings. The Panel is mindful of the obligations to reach a fair and balanced disposition that serves the objectives of protection of the investing public, the maintenance of fair and efficient capital markets, and the public interest generally. Both counsel referred to the Sanction Guidelines published by IIROC. The Panel bore those Guidelines in mind in reaching its determination but, was particularly mindful to the facts in Ms. Locke’s case:

...The guidelines do not prescribe specific results but set out factors that panels should take into account in determining penalties...

...Sanctions should be based on the circumstances of the particular misconduct of the Respondent with

⁸ *Supra* note 3 at para 60

⁹ *Supra* note 3 at para 64

¹⁰ *College of Physicians and Surgeons of Ontario v Gillen*, (1990) 1 OR (3d) 710 (Ont. CA)

an aim at general deterrence.¹¹

Notwithstanding the adverse findings of the Panel as to Ms. Locke's professional misfeasance failure of regulatory obligations and duty to her clients; no findings were made of malice or malfeasance.

CONCLUSION

¶ 20 Considering all the evidence, precedents and submissions, the Panel had determined and orders the following penalties:

- 1.) A fine of \$25,000 in respect to Contraventions 1 and 5 inclusive
- 2.) A fine of \$25,000 in respect to Contraventions 2 and 6 inclusive
- 3.) A fine of \$20,000 in respect to Contravention 3
- 4.) A fine of \$20,000 in respect to Contravention 4
- 5.) Costs in the amount of \$30,000
- 6.) A nine-month suspension commencing July 20, 2020
- 7.) Six months of close supervision upon re-registration including trade approvals
- 8.) Re-write and pass the Conduct and Practices examination within six months of re-registration.

Dated at Halifax, Nova Scotia this 8 day of August 2020.

R. Scott Peacock

Roland Coffill

Thomas Kostandoff

Copyright © 2020 Investment Industry Regulatory Organization of Canada. All Rights Reserved

¹¹ *Re Garneau* 2011 IIROC 53 at para 12