

Re Pariak-Lukic

IN THE MATTER OF:

The By-Laws of the Investment Dealers Association of Canada

and

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

and

Lucy Marie Pariak-Lukic

2014 IIROC 01

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District)

Heard: October 23, 24, 25, 28, 29, 2013 and December 11, 2013 in Toronto, Ontario
Decision: January 2, 2014

Hearing Panel:

Paul M. Moore, Q.C., Chair, Brigitte J. Geisler, Colleen Wright

Appearances:

Robert DelFrate, Enforcement Counsel
Diana Iannetta, Enforcement Counsel
Kevin Richard, Respondent Counsel
David Sischy, Respondent Counsel
Lucy Marie Pariak-Lukic, Respondent

DECISION ON THE MERITS

Part I – INTRODUCTION

The allegation

¶ 1 By notice of hearing dated February 6, 2013, IIROC commenced this matter against Ms. Lukic. The notice of hearing contained the following single allegation, subsequently amended to read as follows:

"Between 2006 and 2008, Pariak-Lukic recommended and/or facilitated off-book investments for clients

- (a) without the knowledge or approval of her employer firm; and
- (b) without ensuring that a prospectus had been filed for the investment or that distribution properly qualified for a prospectus exemption;

contrary to IDA by-law 29.1."

The respondent

¶ 2 The respondent, Ms. Lukic, was a registered representative with yourCFO Advisory Group Inc.

¶ 3 She advised clients regarding specific investments and also acted as a financial planner for clients,

advising as to appropriate asset-mix allocations, the use of leverage, and other wealth-management and investment strategies relevant to a broad range of asset, and not necessarily just securities on which she advised.

The conduct in question

¶ 4 Ms. Lukic provided information and suggestions to certain clients about investment opportunities in second mortgages through Lakepoint, a single purpose private company set up to lend money to Trinity, an unrelated private company investing in second mortgages. The promoter and owner of Lakepoint was Ms. Lukic's husband. This fact and his remuneration were disclosed to the clients.

¶ 5 Ms. Lukic did not advise yourCFO about Lakepoint or the fact that she was providing information and making suggestions to her clients about Lakepoint as a possible investment. As yourCFO was unaware of the Lakepoint product, they did not give their approval for Ms. Lukic to address this product with her clients.

¶ 6 When Lakepoint was established, Ms. Lukic's husband received advice from the lawyer acting for Lakepoint that the securities issued by Lakepoint would not be required to be qualified by prospectus because of the availability of a prospectus exemption under securities laws.

¶ 7 The clients invested in securities of Lakepoint; and Lakepoint invested in Trinity through loans to Trinity; and Trinity invested in second mortgages.

¶ 8 Lakepoint raised approximately \$3 million from 18 investors, all of whom, with one exception, were the respondent, her husband, a relative or clients of Ms. Lukic at yourCFO. The one exception had opened an account at yourCFO but never made a deposit into the account.

The fallout

¶ 9 Trinity defaulted on its obligations to Lakepoint in October, 2010 and faced bankruptcy. Lakepoint has no significant assets other than its investments in Trinity, and it is unlikely that the clients will recover their investments in Lakepoint.

The issues

¶ 10 The issues we had to decide were:

1. Did the provision of information, the making of suggestions and other communications by Ms. Lukic to the clients, the introductions and meetings arranged by her, and the completion and transmission of documents by her relating to Lakepoint (together, the "facilitations") constitute recommendations to the clients so that Ms. Lukic should have informed yourCFO and obtained its approval?
2. If the answer to issue 1 is yes, did Ms. Lukic fail to make reasonable inquiries to ensure that the issue of securities of Lakepoint to the clients could be completed without a prospectus because of an exemption under securities law?
3. If the answer to issues 1 and 2 are yes, does her conduct constitute conduct unbecoming and not in the public interest contrary to by-law 29.1?

Decision

¶ 11 We determined that Ms. Lukic did make recommendations to the clients concerning their investments in Lakepoint; that she did not make reasonable inquiries to satisfy herself that the issue of the securities of Lakepoint to the clients was exempt from prospectus requirements under securities laws; and that this constituted conduct unbecoming and not in the public interest contrary to by-law 29.1.

Part II – THE FACTS

Staff's witnesses and evidence

¶ 12 Staff produced 5 witnesses, one of whom was a staff investigator, 3 of whom were former clients of Ms. Lukic who had invested in securities of Lakepoint and were involved in litigation against Ms. Lukic and her

husband, and one of whom was also a former client of Ms. Lukic but who was not pursuing litigation against Ms. Lukic and her husband.

¶ 13 Staff also introduced in evidence excerpts from the transcript of an examination by staff of another client of Ms. Lukic who had invested in Lakepoint; however, the client did not appear as a witness which did not allow for cross-examination of the client by the respondent, nor the opportunity to answer questions from the panel. Nonetheless, in argument, the respondent established several inconsistencies in the excerpts with documentary evidence and the notes of Ms. Lukic.

¶ 14 Staff also took us through relevant documents, including shareholders agreements between clients and Lakepoint, cheques for funds invested in Lakepoint, and other relevant documents establishing the times and dates, and in some instances the places, that various events occurred. In addition, staff introduced summaries of financial position of clients prepared by Ms. Lukic on letterhead of yourCFO, which summaries included investments in Lakepoint

Respondent's witnesses and evidence

¶ 15 The respondent produced 3 witnesses who were, and continued to be, clients of Ms. Lukic who had invested in Lakepoint. In addition, Ms. Lukic and her husband testified.

¶ 16 Ms. Lukic kept meticulous and impressively full notes made more or less contemporaneously with events as they occurred giving details of meetings, suggestions made, possible motivations of the players, and disclaimers and cautions given by her to the clients regarding her not being licensed to deal in second mortgages. In many cases she noted suggestions by her or her husband that the clients seek independent legal advice.

Weighing the Evidence

¶ 17 The standard of proof in this matter was proof on a balance of probabilities based on clear, convincing and cogent evidence. The onus of proof was on staff to prove its allegation on this standard.

¶ 18 The evidence of the first client witness for staff is discussed more fully as an example of discrepancies arising from his testimony, whereas the evidence of the remaining witnesses is summarized.

¶ 19 The first client-witness for staff appeared less than truthful and selective in his remembrance of events. He lied in a letter to CIBC sent after Ms. Lukic had left CIBC that Ms. Lukic had not solicited him for business when she was at her new employer "because she couldn't take over my accounts if the CIBC found out she solicited me." He down-played his social relationship with Ms. Lukic and her husband, but in cross-examination it became clear that he, and occasionally his girlfriend, attended dinners and barbeques with Ms. Lukic and her husband. He was adamant that he had not signed a participation agreement for his second investment in Lakepoint for \$90,000, stating that his signature on the photocopy of the agreement in evidence must have been copied. When the original copy of the agreement was produced we determined that his signature was indeed original and the one from which the photocopy had been made.

¶ 20 There were many inconsistencies between the evidence from Ms. Lukic and her husband, and the evidence from to the 3 client-witnesses of staff who are in litigation with Ms. Lukic and her husband and the client who did not appear as a witness. The inconsistencies were on details of what Ms. Lukic and her husband said and did regarding Lakepoint and the role that Ms. Lukic played in making introductions to her husband, facilitating and attending meetings with or without her husband and social engagements and relationships.

¶ 21 Through cross-examination, the respondent established several internal inconsistencies in the testimony or recollection of the first 3 client-witnesses of staff and the transcript of testimony of the non-appearing client. In addition, the first 3 client-witnesses of staff and the non-appearing client took firm positions as to the happening of certain facts, however, we believe credible evidence from other sources established that their positions were incorrect.

¶ 22 Ms. Lukic's notes were more or less made contemporaneously with events as they occurred. These were not modified subsequently as the fallout from Trinity's default unfolded, and as the matter before us and other

litigation loomed. They were not challenged by staff. Indeed, staff also relied on them.

¶ 23 Ms. Lukic was forthright and straightforward in her testimony in chief and in cross-examination. She did not appear to attempt to put a gloss on her recollection of events or on her notes that would normally be expected from a person facing the allegation in this matter and other litigation.

¶ 24 Her husband was also forthright and straightforward in his testimony in chief and in cross-examination.

¶ 25 Consequently, where there were discrepancies in the evidence of events from the first 3 client-witnesses of staff and the non-appearing client with the evidence of events from Ms. Lukic and her husband, we accepted as fact the evidence of events of Ms. Lukic and her husband.

¶ 26 There were a large number of inconsistencies in the evidence given by witnesses presented by staff. These inconsistencies would normally cause the panel to view this evidence with scepticism; however, the inconsistencies were over details that were not critical to our findings of fact. The inconsistencies arose from dates and places of meetings and the execution of documents. In finding the facts on which to make our decision, we relied on evidence that was consistent with that of all the witnesses and the documentary evidence.

Findings of Fact

¶ 27 We found the following as facts:

¶ 28 Most of the clients were long standing clients of Ms. Lukic at the time of the events in question.

¶ 29 Ms. Lukic's husband had recently sold his restaurant business and was looking for investments other than in the stock market.

¶ 30 Two neighbours of Ms. Lukic and her husband had investments in second mortgages for several years and had found those investments to be very profitable. The investments were made through private companies the two neighbours had caused to be incorporated which lent money they raised to Trinity, which invested in second mortgages.

¶ 31 Ms. Lukic's husband invested \$300,000 in securities of one of the private companies of the two neighbours that in turn lent the funds to Trinity.

¶ 32 Prior to establishing Lakepoint, Ms. Lukic and her husband had another \$100,000 they wanted to invest but were told that there was no more room in the neighbours' private companies to take funds.

¶ 33 The two neighbours introduced Ms. Lukic and her husband to the promoter of Trinity who told them about Trinity's investment in second mortgages.

¶ 34 The promoter told them they could invest directly in Trinity as individuals for a minimum investment of \$1 million. Otherwise, they would have to invest through a private company formed for the purpose of investing in Trinity. He told Ms. Lukic's husband that he (the husband) could form a private company to invest in Trinity and insisted that if he did, he use the two neighbours to manage the company and its loans to Trinity.

¶ 35 He also strongly suggested that Ms. Lukic's husband use a particular lawyer who had acted for the two neighbours and their companies and was familiar with how the whole investment process would work.

¶ 36 The promoter of Trinity wanted Ms. Lukic's husband to use the two neighbours and the lawyer because the process for investment in second mortgages was working well and he did not want variations that might cause hiccups in the process.

¶ 37 Ms. Lukic's husband met separately with the lawyer who prepared all the documentation for Lakepoint, including the forms for a shareholder agreement to be signed by each investor, participation agreements and other documents.

¶ 38 The lawyer told Ms. Lukic's husband that the issue of securities to investors in Lakepoint was not required to be qualified by prospectus because of an exemption under securities laws.

¶ 39 The lawyer purported to be an expert in securities law. He told Ms. Lukic's husband that to qualify for

the exemption Lakepoint could not raise more than \$3 million, could not have more than 35 investors and that none of them could be members of the public. There could be no pamphlets or other advertising prepared for public distribution.

¶ 40 Ms. Lukic's husband met with the lawyer just twice. He did not ask for a written opinion. He thought the lawyer was acting for Mr. Lukic's husband and Lakepoint and knew he was also acting for the two neighbours and their companies. He did not believe at the time that the lawyer also acted for Trinity and its promoter.

¶ 41 Ms. Lukic's husband told Ms. Lukic what the lawyer had said. Ms. Lukic did not ask for a copy of an opinion from the lawyer. She did not make independent inquiries about the lawyer or his opinion and she did not seek independent advice for herself as an investor in Lakepoint or for the clients who invested in Lakepoint.

¶ 42 Ms. Lukic mentioned to her clients that she and her husband were investors in second mortgages and suggested to them that such an investment had certain advantages – they were not the stock market; they were secured by real estate in the GTA; they were on residential and not commercial properties; that homeowners are unlikely to jeopardize their home ownership by not paying their mortgages; and that the return on the investment was 8 percent.

¶ 43 She told the clients that she was not licensed to deal in second mortgages, and that they should look to her husband who had a mortgage broker's licence. Her husband, however, was not registered or otherwise licensed to advise or deal in securities, as Ms. Lukic was.

¶ 44 She and/or her husband advised the clients that they should get independent legal advice.

¶ 45 Several of the clients requested Ms. Lukic to include their investments in Lakepoint in periodic statements of financial position that she prepared for purposes of discussing with them their investments and financial planning.

¶ 46 These statements were prepared by her on letterhead of yourCFO because it was a requirement of yourCFO that any statement of assets provided to yourCFO clients by one of its registered representatives had to be on its letterhead. Therefore, the investments in Lakepoint were included on such statements even though they were not on the books of yourCFO, and in Ms. Lukic's view, were not managed by her. These amended statements were not in the possession of yourCFO. She did this so that the statements reflected all the investments of the clients of which she was aware.

¶ 47 Ms. Lukic introduced the clients to her husband. Ms. Lukic often was present at meetings when her husband explained investment opportunities in Lakepoint to the clients and reviewed with them the Lakepoint documents. She sometimes assisted clients in completing and signing documentation and cheques relating to Lakepoint.

¶ 48 Ms. Lukic knew that the clients were aware that her husband was her husband; that he was a mortgage broker; that he was the owner, promoter and a director of Lakepoint; that he would earn 1% per annum for managing Lakepoint; that the two neighbours would earn a management fee of 1.5% from Lakepoint; and that the gross return from Trinity to Lakepoint before deducting his 1% fee and the neighbours' 1.5% management fee was 10.5%. This was all reflected in the documentation provided to the clients.

¶ 49 Ms. Lukic received no compensation for these activities or any benefit from the clients' investing in Lakepoint. We found that the benefit her husband received from the Lakepoint investments of her clients, which was disclosed to them, was not a personal benefit to her. We also determined that the addition of other investors into Lakepoint following Ms. Lukic and her husband's investment of \$100,000 was not an indirect personal benefit to Ms. Lukic.

¶ 50 Some of the clients, certainly those in litigation with Ms. Lukic and her husband, maintained that they relied on Ms. Lukic as to whether their investment in Lakepoint was a good investment. All the witnesses took comfort in the fact that Ms. Lukic and her husband had invested in Lakepoint, and that Ms. Lukic and her husband were enthusiastic about investing in Lakepoint.

¶ 51 Most of the clients knew that Ms. Lukic's husband was the principal behind Lakepoint; several described Lakepoint as the husband's "show".

¶ 52 The advice given to Ms. Lukic's husband was that he could seek investors from family, friends and associates, but not otherwise market the investment through flyers or presentations.

¶ 53 Although there was some social intercourse between Ms. Lukic and many of the clients, not all of them were close personal friends or associates of Ms. Lukic's husband. In particular, two of the staff witnesses had only met Ms. Lukic's husband for the purpose of making the investment in Lakepoint. Not all of the investors had adequate access to important information concerning Lakepoint and its investments and activities, obviating the need for the protection of a prospectus under securities law. Consequently, many, if not all of them, were members of the public.

¶ 54 The respondent did not establish that, regardless of the validity of the advice of the lawyer as to the availability of a prospectus exemption for the issue of securities of Lakepoint to the clients, there had been, in fact, an exemption available, and that, in fact, the conditions for its use had been complied with.

No findings on evidence irrelevant to the allegation

¶ 55 The allegation consists of one count and is quite specific. It does not raise any other issues, such as suitability, or of due diligence relating to Trinity and its promoter. Accordingly, we did not consider the evidence or make any finding relative to such non-issues.

PART III – RECOMMENDING OR FACILITATING

Providing information

¶ 56 The respondent argued that Ms. Lukic was just providing information, being helpful, and that she was not remunerated for this.

¶ 57 In *Kustom Design Financial Services Inc (Re)* the Alberta Securities Commission held that "the mere providing of factual information about a proposed investment does not constitute advising. Rather, advising involves a business of providing subjective views, opinions and recommendations on the merits of a specific investment or security to a person or company."

¶ 58 The respondent argued that merely providing factual information does not amount to engaging the business of advising. However, in the matter before us, Ms. Lukic did more than just provide factual information about Lakepoint. She discussed the opportunity to invest in Lakepoint during portfolio reviews with clients of their investments on the books of yourCFO. She shared her and her husband's enthusiasm for Lakepoint and second mortgages, informing clients that she and her husband had personally invested in them. She advised clients about the anticipated yield, cash flow and security of the investments in Lakepoint. She compared and contrasted Lakepoint to other investment options available to her clients, including REITS and principal protected products, GIC's and bonds with their low current yields, and her unfavourable views on the stock market at the time. She discussed possible sources of funds for investments in Lakepoint, such as a mortgage on a client's home, or selling securities held at yourCFO. This went beyond just providing factual information.

Ties to yourCFO

¶ 59 The inclusion of Lakepoint investments on periodic financial position reports, prepared by Ms. Lukic for clients – often at their request – in itself may not lead to the clear conclusion that she was advising on and managing the Lakepoint investments. But the fact that these periodic reports were prepared on yourCFO letterhead would incline a reasonable person to conclude that Lakepoint was among the investments she was advising on.

¶ 60 The respondent argued that she had no choice in the matter. Clients wanted all their assets, not just those managed by Ms. Lukic, to be included in such reports; and yourCFO required that registered representatives prepare all reports to its clients on yourCFO letterhead. It should have occurred to Ms. Lukic that using yourCFO letterhead indicated some kind of connection of the Lakepoint investment to yourCFO even

if she tried to make it clear to clients that no connection was intended. It should also have occurred to her that yourCFO's requirement that such reports to clients must be on yourCFO letterhead indicated that yourCFO would have wanted to know about all investments included under their letterhead.

¶ 61 Nevertheless, we determined that the fact these reports were on yourCFO letterhead, together with the facilitations, reasonably led some of the clients to believe, as testified by them, that they had, in fact, looked to Ms. Lukic as their advisor on their investments in Lakepoint, notwithstanding her disclaimers.

Recommending

¶ 62 The term "recommending" is not defined in securities law. The *Securities Act* defines "adviser" to mean "a person or company engaging in or holding himself, or herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities."

¶ 63 We determined that "recommending" meant giving advice as part of a business activity carried on by an adviser.

The business of advising

¶ 64 Accordingly, we determined that if the provision of information, the making of suggestions and the other facilitations by Ms. Lukic were aspects of her engaging in the business of advising, they would constitute recommending as alleged in the allegation.

¶ 65 We considered whether the facilitations, if not viewed as part of Ms. Lukic's regular business of advising with yourCFO, could be considered as part of an outside business activity. We decided they could not be an outside business activity on their own because she received no remuneration or other personal benefit from them apart from her regular business of advising with yourCFO. We considered that the benefit to her husband as promoter, owner and manager of Lakepoint was not a direct personal benefit to her in such determination.

¶ 66 We then considered whether the facilitations were incidental to her business of advising clients through her activities with yourCFO.

The disclaimers

¶ 67 In this regard we considered the effect of Ms. Lukic's disclaimers that she was not licensed to deal in second mortgages and her suggestions that the clients should get the information they needed from her husband, who was a licensed mortgage broker, and the advice from her husband that the clients should seek independent legal advice.

¶ 68 The subject matter of the disclaimers as recorded in Ms. Lukic's notes or as recollected by client-witnesses took various forms. The various disclaimers were not in writing. The disclaimer was the simple statement that she was not licensed to deal in second mortgages. She implied that the investment had to be completed with someone who had a mortgage broker's knowledge, which was not someone like herself qualified to advise in securities. She was "licensed" to advise in securities but not second mortgages. Her husband was licensed to sell second mortgages but not securities.

¶ 69 That the investments in Lakepoint were securities, not second mortgages, may not have been clear to Ms. Lukic when the possibility of investing in second mortgages first came up with Ms. Lukic and her husband. But after the meeting with the promoter of Trinity, it should have become clear to her. The investments were implemented with shareholder agreements and the issue of share certificates. She should have appreciated that this investment was a security and that all investments in securities must be made through yourCFO.

¶ 70 The relationship between Ms. Lukic and the clients was based in contract. She had a contract with each client to act as their adviser. Any changes to the contract could be made only by mutual agreement. None of the clients consented or agreed that the effect of the disclaimers was that Ms. Lukic was not acting as an adviser – that there was an effective carve out – in connection with the investments in Lakepoint. They did not sign or agree to be bound by any carve out which would have placed the Lakepoint investment outside of the relationship with Ms. Lukic in her role as a registered representative with yourCFO. The client-witnesses of

staff testified that they were relying on Ms. Lukic's suggestions concerning Lakepoint.

¶ 71 We determined that the disclaimers did not amount to a clear, unequivocal carve out of Ms. Lukic's duties and obligations as a registered representative giving advice to her clients of yourCFO as part of her normal business of advising.

¶ 72 We pondered whether Ms. Lukic, under the terms of her employment, could have effectively carved out her recommendations for Lakepoint from her business of advising since the investment was one in a security.

¶ 73 YourCFO's policies and procedures manual, by which Ms. Lukic was bound, provides

"Off-Book Transactions – 9.1.4 All client securities on which a yourCFO Agent advises upon must be transacted as held in nominee name on-book with one of yourCFO Advisory Group's carriers. Any off-book transactions and client securities where a yourCFO Agent is shown as the advisor is prohibited."

"1.3.5. Outside Business Activities - Agents wishing to engage in or carry on any business activity other than business conducted on behalf of yourCFO must have prior written approval by the CCO."

¶ 74 We did not decide whether Ms. Lukic had the ability - in light of the policies and procedures of yourCFO which were applicable to her – to contract out of a client relationship with the clients vis a vis their investments in and the distribution of securities, namely, the shares of Lakepoint. In light of Ms. Lukic's activities set out in paragraph 58 above, we determined that she did not successfully do so merely by her oral disclaimers and the suggestions to get independent legal advice.

¶ 75 We also asked ourselves the question whether the mere fact that the investment was in securities was in itself sufficient to require the facilitations to be disclosed to yourCFO, regardless of whether they were part of her business of advising, or an outside business activity. In view of our determination that the facilitations were part of her business of advising and constituted making recommendations, we did not have to decide this question.

PART IV – DUE DILIGENCE RE PROSPECTUS EXEMPTION

¶ 76 The respondent admitted in argument that the prospectus exemption that Lakepoint's lawyer had advised was available had been repealed before the events in question. The respondent argued, however, that another exemption may have been available. However, that other exemption required that the securities of Lakepoint not be distributed to anyone who was a member of the public. Nevertheless, Ms. Lukic did not know of this particular exemption and made no reasonable inquiry about it.

¶ 77 Ms. Lukic had the obligation as a registrant to take reasonable steps to ensure that investments in the securities of Lakepoint were properly qualified for sale by a prospectus or an exemption.

¶ 78 As set out in *Re Thomson*:

"We firmly believe that a registered representative is required to take reasonable precautions to ensure that the security in which he or she is trading complies fully with all applicable securities laws."

This applies to a registered representative recommending to clients an investment in the securities of a private company.

¶ 79 Ms. Lukic's husband met with the lawyer for Lakepoint. He was advised orally that there was an exemption from prospectus requirements available. He did not ascertain if the lawyer was independent from Trinity and its promoter, or if he was, as claimed, an expert in securities law. He did not ask for clarification of the advice he was given orally; and in this regard, he did not ask for or obtain a written legal opinion. He did not determine whether the investors in Lakepoint met the criteria necessary for a prospectus exemption.

¶ 80 His limited due diligence inquiries into the legal status of the distribution of securities of Lakepoint would not have been enough for him reasonably to conclude that the distribution was duly qualified for a prospectus exemption.

¶ 81 Lukic purported to rely second-handedly on oral legal advice to her husband, although her husband was

not qualified to deal in securities and did not have the experience or understanding that a securities registrant should have for a distribution of securities. She, not he, was more qualified to know what legal advice should be sought from a securities lawyer and what questions should be asked under the circumstances. However, Ms. Lukic made no independent inquiries of her own. This was not in keeping with her responsibilities as a registered representative; nor was it reasonable under the circumstances.

¶ 82 Accordingly, we determined that Ms. Lukic failed to take reasonable steps to ensure that a prospectus had been filed for the investments in Lakepoint by the clients or that the distribution of securities to the clients had been properly qualified for a prospectus exemption.

PART V – CONDUCT UNBECOMING

¶ 83 Under IDA by-law 29.1 and IIROC Dealer Member Rule 29.1, a registered representative has a duty, among other things, not to engage in business conduct or practice which is unbecoming or detrimental to the public interest.

¶ 84 Members have a duty to supervise their registered representatives and to ensure compliance on their part with securities law and the member's own policies and procedures. An important factor in this supervision is knowledge and approval of certain events.

¶ 85 Members, including yourCFO, require their registered representatives to notify the member of any outside business activity, and off-book transactions, and to obtain the member's approval with respect to both of these activities.

¶ 86 Because Ms. Lukic failed to notify yourCFO of her recommendations about the respondent's clients' investments in Lakepoint, yourCFO had no opportunity to satisfy itself that the investments were properly qualified for a prospectus exemption under securities laws. Indeed, yourCFO had no knowledge of the investments in Lakepoint and Ms. Lukic's recommendations, necessary for yourCFO to exercise proper supervision of Ms. Lukic's activities.

¶ 87 Guided by IDA and IIROC rules, the securities industry has established systems for supervision designed to protect both clients and the firms themselves. Supervision is required of investment advisors through the branch and head office systems. These systems attempt to detect inappropriate investments and other activity which may be contrary to the rules and the interests of clients and the firm, Crucial to this supervisory structure is that all securities transactions be recorded on the books and records of the firm. This matter was referred to in IDA Bulletin 0481, July 13, 2007. It clearly states that a firm involved in a customer transaction must record the trade on its books. A customer transaction is defined as: making a recommendation to a client, whether the transaction is the registered representative's idea or the client's; bringing the client's attention to a possible transaction; and arranging the transaction in any way. The reasons for this requirement are fairly straightforward: the firm must be aware of transactions in order that it can properly supervise them. It is harmful to the reputation of the investment industry when it appears that employees of members act on their own without supervision or control, possibly exposing clients to unknown risks.

¶ 88 In a discussion of the standard of conduct expected from registered representatives, the CPH notes by way of an example the danger in regards to investments in a private company introduced to clients by an advisor without the supervision and control of the member: although the advisor "may believe transactions are a private arrangement, the clients may view him as acting as a representative of the firm facilitating the investment."

¶ 89 Ms. Lukic may have honestly believed that she was not obligated to disclose her recommendations to yourCFO or to seek its approval. But as a registrant, she had an obligation to know and understand the policies and procedures of yourCFO and the obligations and duties imposed on registered representatives by the by-laws and rules of applicable regulatory organizations. Her ignorance or misunderstanding of the rules in this matter was no excuse.

¶ 90 The failures to notify yourCFO and to make reasonable inquiries occurred with respect to each client of Ms. Lukic who invested in Lakepoint, each time they invested. The failures occurred over the period from 2006

to 2008.

¶ 91 We heard argument as to the meaning of the term ‘conduct unbecoming’ and the degree of negligence in the registered representative’s conduct that would result in a finding that the requirement of by-law 29.1 had been breached. The cases referred to by counsel appear to be divergent in their views, however, only if considered narrowly. For example, in *Re Octagon*, it was suggested that mere negligence is not sufficient to constitute conduct unbecoming. Similarly, in *Re Trenholm*, the panel observed that “for negligence to be considered gross, the conduct of the registrant must diverge widely from that of a reasonable person”.

¶ 92 We are not persuaded that a strict application of this language merely to the specific events under discussion is to be applied, as there are other factors that must be taken into account. The following guidance from the case of *Re Little* describes those additional factors, which are an equally relevant consideration in these determinations:

It is our view that transgressions must be looked at in the light of the reputation which the investment industry must maintain in the eyes of the public and the effect upon which the transgression could have upon that reputation. The public interest demands that Members of the industry, and their employees, be held to a very high standard of financial probity. They must be trusted because they handle other people’s money. They must be seen to be trustworthy. If conduct could even appear to cast doubt upon that probity, then it could be detrimental to the public interest and constitute conduct unbecoming.

¶ 93 We are satisfied that the conduct of Ms. Lukic as described failed to meet the standards cited in these cases. The failure to appreciate the significance of her actions in introducing her clients to the Lakepoint investment and the failure to reasonably ensure that all legal requirements were met constitute conduct unbecoming and detrimental to the public interest.

PART VII – INCIDENTAL MATTERS

Procedural Matters

¶ 94 At the commencement of the hearing, on motion by staff, supported by the respondent, we struck from the original allegation the statement that Ms. Lukic recommended and/or facilitated off-book investments for clients "without fully disclosing a conflict of interest to her clients". Accordingly, we did not consider any issue about undisclosed conflicts of interest. Also, we amended, on consent, the end period of the conduct in the allegation to 2008.

¶ 95 While examining staff’s investigator witness, staff proposed introducing a transcript of an examination of Ms. Lukic by staff. The respondent objected because Ms. Lukic was to be called subsequently as a witness. The respondent argued that it would be more appropriate for her to testify at the hearing first, and to let staff introduce the transcript during her cross-examination. We determined, after hearing argument, that by not allowing staff to introduce the transcript at the time, we would, in effect, be forcing staff to divide its case and present a part of it during or after the respondent was in the process of presenting her case. We determined that no prejudice would occur to the respondent if we allowed staff to introduce the transcript through staff’s investigator witness.

Cases considered by the panel

¶ 96 In coming to our decision, we considered the following cases:

1. As to the meaning of "recommending" and "adviser" and the "business of advising"
 - i. *Costello (Re)* (2003), 26 OSCB 1617; and *Costello v. Ontario (Securities Commission)* [2004] O.S. No. 2972
 - ii. *Donas (Re)*, 1995 LNBSC18 at p. 6
 - iii. *Kustom Design Financial Services Inc. (Re)* 2010 LNABASC 113 at para 216, and para 219.
 - iv. *Wealthstreet Inc. (Re)*, 2011 NABASC 290 at para 103

- v. *Re Brodie*, 2013 IIROC 12, para 43
- 2. As to the duty of the respondent to inquire as to the legality of the distribution of securities of Lakepoint
 - i. *Thomson (Re)* [2004] I.D.A.C.D. No. 49 at para 47
 - ii. *Bartel (Re)*, 2008 LNABASC 116 at para 114
- 3. As to the prospectus exemptions and the meaning of "member of the public"
 - i. *Re Lydia Diamond Exploration of Canada Ltd.* (2003), 26 O.S.C.B.2511
 - ii. *601949 B.C. Ltd. (re)*, 2004 LNBCSC 413 at paras 17, 18, 25
 - iii. *R v Kiefer*, [1976] 6 W.W.R. 541, paras 16 and 20
 - iv. *Thomson (Re)*, supra at para 54
 - v. *R v Pieprgrass* (1959) 29 W.W.R. 128 paras 33, 34
- 4. As to the meaning of "unbecoming":
 - i. *Little (R)*, [2007] I.D.A.C.O. No. 24 at para 24
 - ii. *Octagon, Re*, [2007] IDAC No. 16 pp 22-23
 - iii. *Scheisser (Re)*, 2011 IIROC 78 at paras 2-3
 - iv. *Laroche (Re)*, 2011 IIROC 78 at 3-4
 - v. *Thomson (Re)*, supra at paras 54 and 60
 - vi. *Blackmont Capital Inc., Re*, 2011 BCSECCOM 490
 - vii. *Collias, Re* 2000 IIROC 27
 - viii. *NG (Re)*, [2007] I.D.A.C.D. No. 47 at para 39
- 5. As to the burden of proof:
 - i. *F.H. v McDougall*, 2008 SCC 53, at paras 40, and 45-46
 - ii. *Schoer (Re)*, 2011 IIROC 33 at para 34
 - iii. *Bartel (Re)* supra at para 114
- 6. As to the scope of the allegation:
 - i. *Stevens and Law Society of Upper Canada* 55 O.R. (2d) 405 at pp 5-6
 - ii. *Deep, Re* 2013 Carswell Nat 762, 2013 IIROC 8 at paras 104-106
 - iii. *Castonguay, Re* 2013 Carswell Nat 2725, 2012 IIROC 73 at para 36
 - iv. *Myatovick, Re* 2012 Carswell Nat 5918, 2012 IIROC 47 at paras 129-132
 - v. *Scalpen v. New Brunswick Real Estate ASSN.* [2007] N.B.S. No. 117 at paras 31-32

Shortened references uses in these reasons

¶ 97 The following shortened references were used in these reasons:

- i. Respondent, Ms. Lukic: Lucy Marie Pariak-Lukic
- ii. Lakepoint: Lakepoint Mortgage Investment Fund I Inc.
- iii. Trinity: Trinity Diversified North America Limited
- iv. facilitations: the provision of information, the making of suggestions, and other

communications by Ms. Lukic to the clients, the introductions and meetings arranged by her, and the completion and transmission of documents by her relating to Lakepoint.

- v. yourCFO: your CFO Advisory Group Inc.
- vi. IDA: The Independent Dealers Association of Canada
- vii. IIROC: The Investment Industry Regulatory Organization of Canada
- viii. *Securities Act: Securities Act*, R.S.O., 1990, c.S.5, as amended
- ix. by-law 29.1: By-law 29.1 of the IDA and/or Rule 29.1 of IIROC
- x. CPH: The Conduct and Procedures Handbook of the IDA and/or IIROC

Dated at Toronto, Ontario January 2, 2014.

Paul M. Moore, Q.C., Chair

Brigitte J. Geisler

Colleen Wright

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