

Re Pariak-Lukic

IN THE MATTER OF:

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

**The Rules of the Investment Industry Regulatory Organization
of Canada (IIROC)**

and

Lucy Marie Pariak-Lukic

2014 IIROC 11

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

Heard: February 20, 2014; in Toronto, Ontario
Decision: March 6, 2014

Hearing Panel:

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

Appearances:

Robert DelFrate, Enforcement Counsel

Sharon Lloyd-Gyurkovics, Staff Investigator

Kevin Richard, Respondent Counsel

David Sischy, Respondent Counsel

Lucy Marie Pariak-Lukic, Respondent

DECISION AS TO PENALTY

BACKGROUND

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 the distribution properly qualified for a prospectus exemption;

contrary to IDA by-law 29.1."

Hearing and decision on the merits

¶ 2 The hearing on the merits took place on October 23, 24, 25, 28, 29, 2013; and December 11, 2013.

¶ 3 On January 2, 2014 we issued our decision on the merits. In that decision we found 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.

¶ 4 Shortened references used in that decision are used with the same meanings in this decision.

DECISION AS TO PENALTY

¶ 5 We order that the following sanctions shall apply:

Fine

¶ 6 Ms Lukic shall pay a fine of \$50,000 to IIROC.

Close Supervision

¶ 7 Ms Lukic shall be under close supervision by her employer firm, Burgeonvest-Bick Securities Limited, for six months from the date of this decision. In the event, Ms Lukic recommends or intends to recommend to her clients investments in any financial product, other than listed securities or firm-approved investments, Ms. Lukic should advise her employer firm's UDP or Chief Compliance Officer of each instance of this.

Further Education

¶ 8 Ms Lukic shall, within one year from the date of this decision, rewrite and pass the Canadian Securities Course and the Conduct and Practices Handbook examinations.

Costs

¶ 9 Ms Lukic shall pay \$45,000 to IIROC for a portion of IIROC's costs of \$63,591.50.

KEY OBSERVATIONS

¶ 10 The allegation against Ms Lukic consist of one count. The count is quite narrow and does not include allegations that the investments in Lakepoint were high risk, or unsuitable for her clients, or that Ms Lukic did not undertake adequate due diligence inquiries as to the risks involved with the investments, or the second mortgages on which they were based, or Trinity, or its promoter. None of these matters were a part of the case which Ms Lukic had to meet. Accordingly, we are not prepared to make any unfavourable inferences or conclusions regarding such matters in determining appropriate sanctions.

¶ 11 Taking into account what we found in our decision on the merits, we make the following observations that are relevant to our decision as to sanctions.

¶ 12 Ms Lukic was wrong when she concluded that the investments in Lakepoint were not investments in securities. While Ms Lukic held a widely held misconception that second mortgages are not securities because they are not usually regulated as such by reason of exemptions under the Securities Act, she should have realised that the investments were securities when it became clear that they were made through the purchase of shares of a corporation (Lakepoint) which clearly are securities.

¶ 13 Ms Lukic had a due diligence obligation to reasonably conclude that the issues of the shares of Lakepoint were qualified by a prospectus or benefited from an exemption from the prospectus requirements. The reliance of her husband on the oral advice of the lawyer purporting to be a securities lawyer, with whom the husband met only twice, and who was recommended as a lawyer by the promoter of Trinity, and, in retrospect, who was likely acting for Trinity as well, was not reasonable in the circumstances. Ms Lukic's second-hand reliance on the advice of the lawyer as conveyed by her husband was not reasonable due diligence on her part for the conclusion that a prospectus exemption was available. Furthermore, neither Ms Lukic nor her husband took necessary steps to satisfy themselves that the conditions for the availability of the exemption mentioned by the lawyer were being complied with, prior to suggesting this investment to her clients.

¶ 14 The failure of Ms Lukic to notify her employer firm of the investments and to obtain its approval was contrary to the rules of her employer firm and deprived the firm of the opportunity to supervise her regarding

the investments.

¶ 15 Ms Lukic received no personal benefit from her clients' investments in Lakepoint.

¶ 16 Investors in Lakepoint (including Ms Lukic and her husband who, themselves, invested \$100,000) were almost all clients of Ms Lukic and likely will lose their original investments of \$3,000,000 because of the insolvency of Trinity.

¶ 17 Although Ms Lukic's misconduct occurred over the period from 2006 to 2008, and involved several different clients, it involved the same consistent mistake regarding the nature as securities of investments in Lakepoint.

¶ 18 Without minimizing the seriousness of the failure of Ms Lukic to notify her employer firm about the investments and to obtain its approval to proceed, or to conduct proper due diligence to ensure that there was a prospectus exemption available, we note that there was no hint of dishonesty or dishonourable conduct on the part of Ms Lukic, and no reason to conclude that Ms Lukic was not acting in good faith and in what she believed was the best interests of her clients.

¶ 19 In some respects Ms Lukic's conduct has been commendable. She kept meticulous notes of the various events in question. She was forthright in her testimony and did not attempt to portray events other than as she honestly remembered them. She did not attempt to hide or diminish her misconduct.

SUBMISSION OF STAFF

¶ 20 Staff recommended the fine, the cost order, and the further education order we have imposed, and also recommended a suspension from the industry for two years.

¶ 21 Staff stated that IIROC's sanction guidelines recommend a minimum fine of \$10,000, a suspension of 3 months to 10 years or a possible ban if the conduct is sufficiently egregious, and a re-write of the Conduct and Practices Handbook in cases involving a breach of the Securities Act. For cases involving outside business activities, the sanction guidelines recommend a minimum fine of \$10,000, a re-write of the Conduct and Practices Handbook, a period of close/strict supervision and a period of suspension in egregious cases involving large value high risk off-book distributions.

¶ 22 Staff suggested that the further education order should also reference the Canadian Securities Course (in addition to the Conduct and Practices Handbook) because the respondent's misconduct was rooted in her misunderstanding of the nature of the investments in Lakepoint, and the Canadian Securities Course covers all financial products.

¶ 23 Staff observed that there were several client complaints in the matter before us.

¶ 24 Staff referred us to several cases, including the decision of an I.D.A. hearing panel in *Thomson* which, staff argued, was an appropriate precedent for us to consider. In *Thomson*, which, staff argued, had facts similar to those in the matter before us, a suspension of 7 years was imposed on the respondent.

¶ 25 Staff argued that in view of the magnitude of the losses that will be suffered by the client investors of Lakepoint, a suspension of two years was appropriate as part of the sanctions to serve as a general deterrence to others.

¶ 26 In conclusion, staff submitted that the proposed sanctions would lessen the potential of future misconduct by the respondent, deter others from engaging in similar misconduct and foster confidence in the investment industry.

SUBMISSION OF THE RESPONDENT

¶ 27 The respondent recommended a fine of \$20,000, a period of close supervision for six months, and the requirement to rewrite the Conduct and Practices Handbook examination. The respondent agreed at the penalty hearing to the order for further education we imposed.

¶ 28 The respondent suggested that no separate costs award was appropriate. The respondent argued that

since the panel found some of staff's witnesses to be unreliable, the hearing had taken longer than necessary. Furthermore, Ms Lukic has already incurred substantial costs of her own. The respondent suggested that the panel should aggregate the amount of the fine and costs when considering the total financial penalty for Ms Lukic. In the alternative, if the panel decided that a separate costs award was warranted, the respondent suggested it should be no more than \$10,000.

¶ 29 The respondent suggested that no suspension should be imposed: a suspension would be disproportionately harsh in light of the findings made against Ms Lukic and would unnecessarily harm her and her clients who continue to rely upon her.

¶ 30 The respondent argued that as Ms Lukic's actions (or lack thereof) were not based on dishonest conduct, or in bad faith, or any degree of moral turpitude, they were at the less egregious end of the spectrum of conduct unbecoming.

¶ 31 The respondent also argued that while Ms Lukic failed to conduct proper due diligence as to the availability of a prospectus exemption, she and her husband had sought legal advice, however insufficient that was, and had advised her clients to seek independent legal advice. Furthermore, the respondent argued, Ms Lukic's involvement and that of her husband's in Lakepoint was fully disclosed to her clients.

¶ 32 The respondent submitted that in determining appropriate sanctions we should consider Ms Lukic's forthright and reliable testimony, her cooperation with IROC's investigation, the fact that she has not had any other complaints or prior regulatory issues in her 19 year career in the industry, and that she continues to serve hundreds of clients who continue to trust and rely on her for financial guidance.

¶ 33 The respondent argued that a suspension of any length for a registrant in Ms Lukic's circumstances is an extremely serious matter: staff's proposal for a two year suspension was tantamount to a proposal to terminate Ms Lukic's career in the industry. It would be draconian and was uncalled for.

¶ 34 The respondent referred to the decision of the British Columbia Securities Commission in *Steinhoff*, August 7, 2013 and *Steinhoff*, January 15, 2014, where the commission said, "Suspension of any length beyond the range of a normal vacation is, for a registered representative, an extremely serious matter.... Steinhoff made a serious mistake. Does the public interest demand that she lose her career over it?"

Mr. Mario Frankovich

¶ 35 The respondent called as a witness at the penalty hearing Mr. Mario Frankovich, the Chief Executive Officer and UDP of Burgeonvest-Bick Securities Limited. He wrote one of 5 testimonial letters of support for Ms Lukic that were filed as exhibits.

¶ 36 He testified that Ms Lukic accepted employment with his firm on June 30, 2011 and that during her entire time with his firm she has conducted herself honestly, transparently and in good faith in her dealings with their head office, including their compliance department, and in respect of her dealings with her clients.

¶ 37 He told us he would not have hired her if he had thought she would be suspended as a result of the matter before us. He stated his belief that the industry views suspension as a tool to deal with dishonesty, and fines and other sanctions to deal with honest people who make mistakes. When asked by the panel if he would still not retain a registered representative who had been suspended where the panel had not found any dishonesty or moral turpitude, he replied that it was a question of reputational risk, implying he would not be willing to risk hiring or retaining someone who had been suspended.

¶ 38 He confirmed that his firm would support any terms and conditions, such as close supervision, that we would place upon Ms Lukic.

REASONS FOR THE DECISION

Purposes and Objectives of Sanctions

¶ 39 The purposes of sanctions for securities violations are to be protective of the public and preventative of harm. Their purpose is not to punish. They are intended to be applied to prevent likely future harm to the capital

markets. Specific and general deterrence are legitimate objectives for sanctions.

¶ 40 Accordingly, in considering sanctions, these purposes and objectives should be determinative.

Fine

¶ 41 Ms Lukic has been in the industry for almost two decades. Her mistake about the nature of the investments in Lakepoint is surprising and difficult to fathom. She had a duty to understand the nature as securities of the investments she recommended to her clients and the obligation she had to advise her employer firm of the potential investments and to report any off-book investments to her employer firm for its approval .

¶ 42 We are not prepared to speculate what might have happened had Ms Lukic informed her employer firm about the investments and sought its approval, or if Lakepoint had provided to investors prospectus level disclosure about Trinity and Lakepoint and its shares. We are not prepared to speculate what might have happened had someone performed adequate due diligence inquiries about Trinity and its promoter. Nor are we prepared to attribute to specific causes the losses that flow from the insolvency of Trinity.

¶ 43 However, although we have some difficulty linking the loss suffered by Ms Lukic's clients to the specific and narrow allegation in the count, we determine that the misconduct of Ms Lukic was likely a contributing factor to the loss of the original investment in Lakepoint and that Ms Lukic's clients likely will suffer from the insolvency of Trinity. The harm has been substantial.

¶ 44 Accordingly, the panel determined that more than the minimum fine suggested by the sanctions guideline was warranted in this matter.

¶ 45 We accept that the fine recommended by staff is in the public interest as an appropriate specific deterrent to the respondent and as a general deterrent to others. It sends the message that there will be painful financial consequences to conduct unbecoming, regardless of the absence of dishonesty or bad faith, which will be in addition to the time, trouble, costs and heart-ache to a respondent entailed in an investigation and hearing with IIROC and other litigation that may flow from not following the rules.

Costs

¶ 46 We do not agree with the argument of the respondent that because we found the testimony of some of staff's witnesses to be unreliable, the hearing went on longer than necessary. Staff was fully entitled to present its case through its witnesses. In fact, the hearing panel, while agreeing that the testimony of these witnesses had large elements of unreliability, did note that on relevant matters, the evidence was consistent with that provided by the respondents' witnesses, and accordingly, was helpful. Staff does not have the ability to subpoena or otherwise compel witnesses and had to make do with what it had.

¶ 47 We found nothing in staff's presentation of its case that would cause us to reduce or eliminate the costs award for IIROC. The amount of the costs award recommended by staff is conservative and appropriate in the circumstances.

The Further Education Order

¶ 48 We agree with staff that because the misconduct of the respondent was rooted in her misunderstanding of the nature of the investments as securities, she should retake the Canadian Securities Course which deals, among other things, with the nature of various investments as securities.

Close Supervision

¶ 49 We agree that the respondent should be under close supervision for six months. Her new employer firm has confidence that she is a competent registrant and that she will not make the same mistake in the future, and is willing to place her under close supervision.

Suspension

¶ 50 As stated in *Re Mithras Management Ltd. et al*, the role of the securities regulator "is to protect the public interest by removing from the capital markets- wholly or partially, permanently or temporarily as the

circumstances may warrant- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct...”

¶ 51 In *Thomson (Re)*, an IDA hearing panel found that Mr. Thomson distributed securities to clients without a receipt for a prospectus having been issued, distributed securities off the books of his firm, and recommended the purchase of the securities without using due diligence to ensure that the securities were a legitimate investment. The allegations in that case were wider than the allegations in the matter before us. The hearing panel imposed, among other sanctions, a 7 year suspension from registration.

¶ 52 In *Schiesser (Re)*, *Laroche (RE)* and *Voyer (Re)* IIROC hearing panels accepted settlement agreements wherein the respondents admitted, among other things, to soliciting and facilitating off-book investments in various private placements without the knowledge or consent of their member firms. The agreed sanctions in those cases included suspensions of one month for Mr. Laroche and two years for Mr. Voyer.

¶ 53 In *Lee (Re)* an IIROC hearing panel accepted a settlement agreement which included a 6 month prohibition from registration on Mr. Lee for his facilitation and participation in the purchase of off-book securities by clients. At the time of the settlement agreement, Mr. Lee had been out of the industry for 16 months.

¶ 54 In *Steinhoff*, the British Columbia Securities Commission reviewed a penalty decision of an IIROC hearing panel which, among other things, imposed a one year suspension on the respondent. The commission rejected the suspension. It said,

A suspension of one year, what the IIROC panel ordered here, is tantamount to the termination of the registrant's career. At a minimum, it requires the registrant to build a book from scratch, a process that takes years and enormous effort. That assumes a clean slate.

And further on,

Steinhoff made a serious mistake. Does the public interest demand that she lose her career over it? She has been in business now for over 25 years. She has no previous regulatory sanctions. There is no basis to conclude that she acted dishonestly or for an improper motive, or has ever done so. Although her mistake unquestionably harmed the K's, there is no evidence that she represents any ongoing threat to her clients, to potential new clients, to the reputation of the securities markets or of IIROC or its members.

¶ 55 In *Hazen (Re)*, a hearing panel considered whether a suspension should be imposed on a registrant who had admitted that he acted contrary to the Securities Act when he solicited and traded in investments for a group of his clients in two off-book private placements without the knowledge or approval of his employer firm. The panel determined that a suspension was not appropriate in the circumstances and that the imposition of a suspension, which by necessity causes disruption in the ability to earn an income, is not required in a case where there has been no deliberate or reckless harmful behavior.

¶ 56 The misconduct of Ms Lukic was not as a result of her dishonesty, or acting in bad faith, or any other kind of moral turpitude. It was not without regard for, or with reckless disregard of, her understanding of the best interests of her clients.

¶ 57 It was as a result of an inexcusable, and to us, an incomprehensible, lack of understanding of the nature as securities of the investments in Lakepoint. Retaking the Canadian Securities Course and a period of close supervision for six months should be remedial in this regard.

¶ 58 In view of the trauma we believe this IIROC regulatory proceeding has had on Ms Lukic, and the sanctions we are imposing, and the fact that if she were to make the same or similar mistake again in the future the consequences next time would likely be a suspension that could effectively end her career in the industry, we believe it is unlikely that her misconduct will be repeated. We believe she will be more cautious and questioning (and consultative with her employer firm) in the future whenever any potential investment activity out of the ordinary and usual course of her business with her employer firm might arise.

¶ 59 The panel do not believe that it is necessary for the protection of the public interest that Ms Lukic be removed from the capital markets, wholly or partially, or temporarily or permanently. In all the circumstances of this matter, including the sanctions we are imposing, we are not led to conclude that Ms Lukic's conduct in the future may well be detrimental to the integrity of the capital markets.

¶ 60 The disruption of the career of Ms Lukic in the industry or of the reliance of her clients on her and of their established relationships with her that would result from a significant period of suspension is not necessary or desirable in this case. Consequently, we do not believe that any significant period of suspension is necessary in this case, taking into account the purposes and objectives of sanctions, including specific and general deterrence.

¶ 61 One of the panel members felt that a suspension for a period of two months would not be inappropriate having consideration to all of the facts, including the failure of Ms. Lukic to understand the nature and requirements of the Lakepoint investments, and the enormity of the clients' losses. The majority of the panel, however, felt that a short suspension would not really add much to the other sanctions, would be unduly disruptive to Ms Lukic's clients, and was unnecessary.

CASES CONSIDERED BY THE PANEL

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

- a) *Re Committee for the Equal Treatment of Asbestos Minority Shareholders* [2011] 2 S.C.R. 132
- b) *Re Mithras Management Ltd. et al.*, [1990] LNONOSC 119
- c) *Re Cartaway Resources Corp* [2004] 1 S.C.R. 672
- d) *Re Georgakopoulos* [2009] UROC 25
- e) *Re Thomson* [2004] LD.A.C.D. No. 49
- f) *Re Schiesser* [2011] IIROC 78
- g) *Re Laroche* [2011] IIROC 78
- h) *Re Voyer* [2011] UROC 76
- i) *Re Lee* [2013] IIROC 10
- j) *Carolann Steinhoff and Investment Industry Regulatory Organization of Canada*, 2013 BCSECCOM 308
- k) *Carolann Steinhoff and Investment Industry Regulatory Organization of Canada*, 2014 BCSECCOM 23
- l) *Re Steinhoff*, 2012 IIROC 39
- m) *Zosiak, Re*, 2012 IIROC 59
- n) *Hazen (Re)*, [2006] I.D.A.C.D. No. 20
- o) *Credifinance Securities Limited, Re*, [2006] I.D.A.C.D. No. 30
- p) *Lambert, Re*, 2013 IIROC 16
- q) *Schillaci, Re*, [2007] I.D.A.C.D. No.6
- r) *Collias, Re*, 2009 IIROC 43
- s) *Beaudoin, Re*, 2011 IIROC 66
- t) *Credifinance Securities Ltd., Re*, 2006 CarswellNat 5800
- u) *Octagon Capital Corp., Re*, 2007 CarswellNat 6935
- v) *Ng, Re* 2007 CarswellNat 6452

SHORTENED REFERENCES IN THIS DECISION

¶ 63 Shorten references in this decision are explained in our decision on the merits except for the following that are used only in this decision:

- a) UDP means the ultimate designated person responsible for compliance at a member firm of IIROC.

Dated at Toronto, Ontario, March 6, 2014.

Paul M. Moore, Q.C., Chair

Brigitte J. Geisler

Colleen Wright

Copyright © 2014 Investment Industry Regulatory Organization of Canada. All Rights Reserved.