

Carolann Steinhoff
Investment Industry Regulatory Organization of Canada

Section 28 of the *Securities Act*, RSBC 1996, c. 418

Hearing and Review

Panel	Brent W. Aitken Audrey T. Ho Don Rowlatt	Vice Chair Commissioner Commissioner
Date of Hearing	December 16, 2013	
Date of Decision	January 15, 2014	
Appearing		
Ronald N. Pelletier	For Carolann Steinhoff	
D. Geoffrey Cowper, QC	For the Investment Industry Regulatory Organization of Canada	

Decision

I Introduction

- ¶ 1 In April 2010 the Investment Industry Regulatory Organization of Canada issued a Notice of Hearing containing seven counts of contraventions of IIROC rules by Carolann Steinhoff. The allegations are in connection with funds given to Steinhoff by a couple, the Ks, for short-term investment. At the time, Steinhoff was employed at the Victoria branch of Wellington West Capital Inc.
- ¶ 2 The IIROC panel issued a liability decision in October 2011 and a penalty decision in July 2012.
- ¶ 3 The panel dismissed Counts 1 and 2 in the notice of hearing, but found that Steinhoff:
- contravened IIROC rules when she engaged in unauthorized discretionary trading, (Count 3)
 - contravened IIROC rules when she made and implemented investment recommendations that were not suitable for the clients' investment objectives at the

time of their investment (Counts 4 and 5) and later, when market conditions changed (Count 6), and

- knowingly made false statements to Wellington West (Count 7).

¶ 4 In its penalty decision, the panel ordered that Steinhoff:

- be suspended for one year;
- be subject to strict supervision for another year, and to close supervision for a further year;
- be prohibited from acting as a director or senior officer of an IIROC member for five years;
- be ineligible for reinstatement until she re-writes and passes the Partners, Directors and Officers examination and the Branch Manager examination; and
- pay a fine of \$100,000, costs of \$20,000, and disgorgement of commissions of \$6,813.

¶ 5 Steinhoff applied under section 28(1) of the *Securities Act*, RSBC 1996, c. 418 for a hearing and review of the IIROC panel decisions. The Commission, with consent, stayed the penalty decision until the disposition of this review.

¶ 6 On August 7, 2013 we issued a decision (2013 BCSECCOM 308) in which we:

- confirmed the IIROC panel's findings on Counts 4 and 5,
- set aside the IIROC panel's finding on Count 7,
- made no decision regarding the IIROC panel's findings in relation to Counts 3 and 6 because, in our opinion, the heart of the case is the findings on Counts 4 and 5 and, accordingly, the findings on Counts 3 and 6 were not relevant to the determination of penalty, and
- set aside the IIROC panel's penalty decision, other than its orders relating to disgorgement and costs, and invited the parties to make submissions on penalty.

¶ 7 The parties filed written submissions relating to penalty and we heard oral submissions on December 16, 2013.

II Analysis

¶ 8 Under section 165(4) of the Act, the Commission may, as part of a section 28(1) review, confirm or vary the decision or make another decision it considers proper.

A The Parties' submissions

¶ 9 IIROC says the appropriate penalty in light of our August 2013 decision is:

- a suspension of six months,
- a fine of \$25,000,
- disgorgement of commissions of \$6,813 (as ordered by the IIROC panel),
- IIROC hearing costs of \$20,000 (as ordered by the IIROC panel), and

- a requirement that Steinhoff take the Conduct and Practices Handbook Course.
- ¶ 10 Steinhoff says that we ought to set aside the IIROC panel’s orders relating to costs and disgorgement, and impose no other penalties.

B Discussion

1 Orders in Issue

- ¶ 11 In our August 2013 decision we set aside the penalties imposed by the IIROC panel, other than its orders for costs and disgorgement. Those orders are therefore not before us, although we did consider the submissions Steinhoff made about them. We were not persuaded by those submissions, so the orders stand.
- ¶ 12 IIROC does not seek to preserve the IIROC panel’s order imposing supervision, nor its order prohibiting Steinhoff from acting as a director or senior officer of an IIROC member.
- ¶ 13 IIROC also no longer seeks to preserve the IIROC panel’s order requiring Steinhoff to take the Partners, Directors and Officers examination and the Branch Manager examination, although it is seeking an order requiring her to take the Conduct and Practices Handbook Course. In our opinion, little would be served by this. The Conduct and Practices Handbook Course is an entry-level, self-study course that devotes only a small portion of its content to the issue of suitability. It is unlikely that Steinhoff would learn anything useful from this source. The issue here is not so much whether she understands the suitability requirement but that she failed to apply it appropriately when advising the Ks.
- ¶ 14 That leaves two orders to consider – suspension and fine.

2 Suspension and Fine

- ¶ 15 In our August 2013 decision we identified the factors we consider appropriate to penalty in this case. Steinhoff suggested other factors that would be relevant to sanction, but they are embodied in the ones we identified, which are:
- Steinhoff’s failure to meet suitability requirements as described in Counts 4 and 5;
 - The impact of Steinhoff’s misconduct on the Ks;
 - The impact of Steinhoff’s misconduct on confidence in market integrity;
 - No previous findings of regulatory misconduct by Steinhoff;
 - No evidence that Steinhoff is dishonest, or acted with improper motives; and
 - The degree to which Steinhoff’s ability to carry on business ought to be affected in the circumstances.
- ¶ 16 Regulatory orders are protective and preventative in nature, intended to be exercised to prevent future harm. This principle, established in *Committee for Equal Treatment of*

Asbestos Minority Shareholders v Ontario (Securities Commission) 2001 SCC 37, applies to orders made by this Commission and by self regulatory bodies like IIROC. IIROC's Dealer Member Disciplinary Sanction Guidelines are consistent with *Asbestos*. They state that an IIROC hearing panel's main concern in determining an appropriate penalty is to protect the public, the membership, and the integrity of the markets, and to prevent repetition of the impugned conduct.

¶ 17 As we stated above, the IIROC panel's findings under Counts 4 and 5 are the heart of the case. The panel found that Steinhoff "totally lost sight" of the Ks' investment objective and that they did not have the resources to wait out a market downturn. Accordingly, the panel found Steinhoff's recommendation to the Ks, although made in good faith, to be "entirely unsuitable and inappropriate".

¶ 18 In our August 2013 decision, we characterized Steinhoff's recommendations to the Ks as "a serious mistake" and provided this description of the context of her misconduct:

"91 Steinhoff . . . has been in the business now for 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 Ks, 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."

¶ 19 We also noted that this was an isolated event:

"78 We disagree with the panel's finding that Steinhoff's behaviour was not an isolated event, but rather a pattern of misconduct. There is no evidence of a pattern of misconduct here. Only one set of clients was involved, and only one set of recommendations was alleged and found to be unsuitable."

¶ 20 We also quoted paragraph 18 from the IIROC panel's liability decision, in which the panel summarized Steinhoff's career. The career summarized in that paragraph can be described only as distinguished.

¶ 21 We questioned whether the public interest demands that Steinhoff lose her career as a result of her albeit serious mistake, making these observations about the possible impact of a suspension on a registrant's career:

"90 Suspension of any length beyond the range of a normal vacation is, for a registered representative, an extremely serious matter. A suspension of one year, what the IIROC panel ordered here, is tantamount to the termination of the registrant's career."

¶ 22 IIROC says a period of suspension is necessary “to demonstrate that there are consequences to the misconduct” found in this case. IIROC also says it is unaware of any case “involving this degree of misconduct that has not been met with a suspension of some duration”, although it acknowledges that longer suspensions are usually reserved for cases involving multiple clients or a pattern of misconduct.

¶ 23 This is paragraph 4.2.1 of IIROC’s Disciplinary Sanction Guidelines:

“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 an 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.”

¶ 24 IIROC cited several cases involving the failure to meet suitability requirements, but all of them had distinguishing features, for example: multiple clients, multiple contraventions of the rule, previous disciplinary proceedings, or a pattern of misconduct.

¶ 25 IIROC also cited *Pugliese v Clark* 2008 BCCA 130 for the proposition that, as a general principle, while it is important that the regulated individual be able to pursue a living, that consideration “cannot prevail over the overriding duty of the [regulator] to protect the public interest and the integrity of industry.”

¶ 26 This sound principle must, of course, be considered alongside the preventative and protective purpose of regulatory orders. In that context, it is appropriate to be mindful of the impact of a suspension on the registrant’s career in considering whether a suspension is necessary to achieve the objectives of protection and deterrence against future misconduct.

¶ 27 As for the fine, this is what we said in our August 2013 decision:

“95 We agree that a fine is appropriate in the circumstances: Steinhoff’s misconduct may be an isolated event, but the Ks suffered severe consequences as a result, and certainly, a representative with Steinhoff’s skill and experience ought to have known better.”

¶ 28 This brings us to what orders are necessary in this case to achieve the objectives of protection and prevention.

- ¶ 29 In our view, a suspension is not warranted in the circumstances. In our August 2013 decision we expressed scepticism about the need for a suspension and we remain so. A long suspension would risk the end, in practical terms, of Steinhoff's career, which in our opinion would be an outcome grossly disproportionate to the seriousness of her misconduct. At the other end of the range, a token suspension would do little to achieve regulatory objectives and have the additional disadvantage of imposing considerable inconvenience on Steinhoff's clients.
- ¶ 30 As noted earlier, none of the cases cited by IIROC support a suspension on these facts, and neither does paragraph 4.2.1 of the Disciplinary Sanction Guidelines, quoted above. IIROC says it is relying only on the last of the list of factors, but did not explain how Steinhoff's single mistake could have caused, never mind actually caused, any "measure of harm to the integrity of the securities industry as a whole."
- ¶ 31 In our opinion, we can appropriately address Steinhoff's misconduct through a fine alone. Having considered the objectives of regulatory orders, the factors relevant to sanction, and the parties' submissions, we find the IIROC panel's original order of a fine of \$100,000 to be appropriate and conveys our view, and IIROC's that a failure to meet suitability requirements carries serious consequences.
- ¶ 32 In taking this approach, we are mindful of IIROC's view that it is not appropriate to "trade" suspension time for a fine. That is a valid concern, and it is not what we have done. This is a case where a suspension would achieve nothing that could not be achieved by a fine, and in any event would, if short, be more of a nuisance than a sanction, and if long, be disproportionate to the misconduct. Having ruled out a suspension as an appropriate element of the sanction, we then considered the level of the fine as a separate issue.
- ¶ 33 In our opinion, the penalty we are imposing is appropriate in the circumstances and will adequately deter Steinhoff and other registrants from failing to meet suitability requirements.
- ¶ 34 It is worth noting that the proceedings in this matter covered nearly four years and cost Steinhoff thousands of dollars in legal fees. For a year and a half she has lived with the anxiety associated with a possible career-ending suspension. This is an experience Steinhoff will surely strive not to repeat.

III Decision

- ¶ 35 Under sections 28(1) and 165(4) of the Act, we vary the IIROC penalty decision by deleting paragraph 59 and substituting the following:

"59 It is ordered that Carolann Steinhoff:

(a) pay disgorgement of commissions of \$6,813;

(b) pay costs of \$20,000; and

(c) pay a fine of \$100,000.”

¶ 36 January 15, 2014

¶ 37 **For the Commission**

Brent W. Aitken
Vice Chair

Audrey T. Ho
Commissioner

Don Rowlatt
Commissioner