

IN THE MATTER OF

The Securities Act, 1988, S.S. 1988, C.S-42.2

AND

IN THE MATTER OF

Adele Kaminsky, carrying on business as
AK Financial Planning Services

(collectively referred to as the Respondents)

Hearing held: April 6, 2015

Before: Derrek Fahl, (Chairperson), Peter Carton, Honourable Eugene Scheibel
(Panel Members)

Appearances: Dallas Smith, Legal counsel FCAA
Nicholas J. Stooshinoff, Solicitor for Adele Kaminsky/AK Financial Planning

Date of decision: June 20, 2017

Introduction

1. The hearing being held was for the purposes of sanctions based on an agreed statement of facts dated the 31st day of March, 2015 (Agreed Statement of Facts).
2. Ms. Kaminsky (Kaminsky) was a resident of North Battleford, Saskatchewan who operated as financial planner under the business name of AK Financial Planning Services.
3. In a statement of allegations (Statement of Allegations) dated March 26, 2014 staff of the Financial and Consumers Affairs Authority of Saskatchewan (FCAA staff) alleged that Kaminsky contravened sections 27, 55.1, 55.11 and 58 of *The Securities Act, 1988 S.S., 1988-89 c.S-42.2* (the Act).
4. In the Statement of Allegations, FCAA Staff alleged that Kaminsky: (a) acted as a dealer, an investment fund manager and an adviser in Saskatchewan while not registered to do so, and while no exemption from such registration requirement was available; (b) made distributions of securities without having filed a prospectus or a preliminary prospectus or obtaining receipts for said documents from the Director; (c) made statements that she knew, or reasonably ought to have known, were misleading or untrue, while such statements could reasonably be expected to have a significant effect on the market price or value of securities; and

(d) engaged in a course of action relating to securities that she knew, or reasonably ought to have known, perpetrated a fraud on a number of persons.

5. The time frames of the alleged acts are from 2007 to 2013.
6. In the Agreed Statement of Facts, Kaminsky admitted to each of the facts laid out therein and admitted to having breached each of the sections 27, 58, 55.1 and 55.11.

Issues

7. The issue at hand is to determine the appropriate orders and sanctions based upon the Agreed upon Statement of Facts.

Facts

8. From in or around 2007 to in or around 2013, Kaminsky acted as a dealer and an investment manager, she received approximately \$87,000 from Saskatchewan investors which she deposited into one or more investment funds over which she had the power to, and in fact did direct the affairs of such fund or funds.
9. Kaminsky has never been registered as an “investment fund manager” pursuant to the Act and as such contravened subsection 27(2)(c) when she engaged in the activities described in paragraph 8 hereof.
10. From in or about 2008 to in or about 2009, Kaminsky sold investment contracts (the Investments), and as such, during such time she engaged in the business of trading securities in Saskatchewan, and did in fact trade in securities in Saskatchewan.
11. Although Kaminsky was registered as a dealing representative of a Registered Dealer while engaging in these trades, the securities traded by Kaminsky were not securities that the Registered Dealer was permitted to trade or underwrite. Therefore, Kaminsky contravened clause 27(2) (a) of the Act, and section 2.1 of National Instrument 31-103 Registration Requirements and Exemptions (NI 31-103), as well as clause 27(1) (a) of the Act (as was applicable at the relevant times).
12. The trades by Kaminsky related to securities that had not previously been issued, and as such, constituted distributions under the Act.
13. No preliminary prospectus relating to the distribution of the Investments was filed, and no receipts were issued for the same. No prospectus relating to the distribution of the Investments was filed and no receipts were issued for the same. Therefore, Kaminsky contravened subsection 58(1) of the Act.
14. Kaminsky did not file any reports of trade pursuant to section 6.1 of National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106) claiming that such trades were made in reliance on any of the exemptions contained in NI 45-106.

“Enviro-can Placement”

15. In addition to the amounts received by Kaminsky referenced above, from in or around 2009 to in or around 2013 (the Relevant Time), Kaminsky raised approximately \$500,000 more from approximately seven residents of Saskatchewan through sales of securities (Investment Agreements).
16. These investors were clients of the Registered Dealer whom Kaminsky had met through her work as a salesperson or dealing representative with the Registered Dealer.
17. The Investment Agreements provided four options for investors: (1) “1 year guaranteed investment at 4.5%” (2) “2 year guaranteed investment at 5.5%” (3) “3 year guaranteed investment at 7.0%” or (4) “5 year guaranteed investment at 8% plus equity option”.
18. Kaminsky did not advise the Registered Dealer that she had sold the Investment Agreements to investors – these transactions were off-book.
19. Kaminsky also did not advise investors that the Investment Agreements were not securities that the Registered Dealer was permitted to trade or underwrite.
20. Kaminsky advised investors to make payments pursuant the Investment Agreements directly to her in her personal name.
21. Throughout the Relevant Time, Kaminsky took each payment made by investors pursuant to the Investment Agreements, and deposited the same into a personal bank account, in her name.
22. Kaminsky knowingly misappropriated investors’ funds, converting the same to her own sole use and benefit.
23. From time to time throughout the Relevant Time, Kaminsky provided investors with statements indicating purported growth on the funds invested pursuant to the Investment Agreements.
24. In reality, the funds that Kaminsky received pursuant to the Investment Agreements were never invested and never saw any growth, but rather, were arrogated by Kaminsky for her personal use.
25. Kaminsky never set up, managed, or had any role with an actual private placement called Enviro-Can Private Placement.
26. Based on the facts set out above, Kaminsky knowingly and willfully committed dishonest and deceitful acts which directly deprived investors of the value of their investments. As such, she engaged in acts or a course of action relating to securities that she knew or reasonably ought to have known perpetrated a fraud on a number of persons, contrary to clause 55.1(b) of the Act.

Prohibited Statements

27. Throughout the Relevant Time, Kaminsky made numerous statements to investors, including statements that the Enviro-Can Private Placement was guaranteed, that it paid an annual return of 4.5%, and that capital invested in it could not be lost.
28. In making these statements, Kaminsky was making statements that she knew, or reasonably ought to have known, were either misleading or untrue in material respects, at the time and in light of the circumstances in which they were made. These statements would reasonably be expected to have a significant effect on the market price or value of the Investment Agreements, and as such, Kaminsky has contravened subsection 55.11(1) of the Act.

Further Contraventions

29. With regard to her activities in relation to the Investment Agreements, Kaminsky also contravened section 2.1 of NI 31-103, clauses 27(2)(a) and 27(2)(b) of the Act and subsection 58(1) of the Act.

Criminal Proceedings

30. On or about January 9, 2015, Kaminsky entered a guilty plea to one count of fraud over \$5,000 in Provincial Court in North Battleford, Saskatchewan. The transactions and activities that form the substance of this criminal offence are the same transactions and activities outlined above.
31. On or about March 11, 2015, Kaminsky was sentenced for the criminal offence by a Provincial Court Judge to four years in jail and also ordered to make restitution to each of the investors in amounts owed to them. The full sum of the restitution order is \$639,700.

Arguments of the parties

32. FCAA staff argued that the conduct engaged in by Kaminsky was extremely serious; she committed fraud which included elements of theft and dishonesty.
33. FCAA staff reiterated that the respondent has admitted to all the allegations and breaches of the Act. Moreover, she was a registrant during the time she committed fraud. She was advising clients to invest with her and she used those monies for her own personal gain.
34. FCAA staff also alleges that the Saskatchewan capital markets have been damaged by the conduct of Kaminsky. As a registrant she was entrusted with clients' money and she committed fraud while working for a registered Mutual Fund Dealer. In such a position, she gained investors' trust, and then abused such trust.
35. FCAA staff also argued that as a registrant Kaminsky should have known that she needed to adhere to Saskatchewan securities laws. She did not - she committed fraud instead.
36. FCAA staff contended that the panel should not consider her guilty plea or resulting criminal sanction, but rather consider the highest range of sanctions and administrative penalties in this

case, as the main purpose of the Act is the protection of the public interest and the promotion of confidence in the capital markets.

37. Counsel for Kaminsky, Mr. Stooshinoff, did not dispute any of the facts and pointed out that the identical facts and breaches of the Securities Act make up the factual underpinning to the single fraud charge against Kaminsky.
38. Mr. Stooshinoff noted that Kaminsky cooperated fully with the RCMP and entered a guilty plea to the single count of fraud.
39. He also noted that Kaminsky fully cooperated with the investigators of the FCAA and admitted to the breaches of the Act, giving rise to the Agreed Statement of Facts.
40. Mr. Stooshinoff asked the panel to note that Kaminsky has already received a harsh sentence of four years in a federal penitentiary and was ordered to pay restitution of \$639,700 to her former clients.
41. Mr. Stooshinoff pointed out that Kaminsky had no prior incidents of breaches of the Act, and no prior criminal record.
42. Mr. Stooshinoff argued that Kaminsky's cooperation in both the criminal proceedings and with the FCAA, her guilty plea, her agreement to the herein-noted Agreed Statement of facts, and the harshness of her criminal sentence ought to be considered by the Panel, and given such facts, consider sanctions at something less than the maximum range allowed by the Act.
43. Stooshinoff pointed out that in criminal courts, cooperation by the accused, is a well-recognized mitigating factor for a judge to consider when contemplating sentencing.

Analysis

44. In light of the Agreed Statement of facts dated March 31, 2015 the panel can come to no other conclusion than that the Respondent has indeed breached sections 27, 58, 55.1 and 55.11 of the Act.
45. When imposing sanctions under the Act, the (then) Saskatchewan Financial Services Commission, in Bergen¹, adopted the following non-exhaustive list of factors to consider:
 - (a) the seriousness of the respondents' conduct;
 - (b) the harm suffered by investors as a result of the respondent's conduct;
 - (c) the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct;
 - (d) the extent to which the respondent was enriched;
 - (e) factors that mitigate the respondent's conduct;
 - (f) the respondent's past conduct;
 - (g) the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets;
 - (h) the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or advisor to issuers;

¹ In the Matter of The Securities Act, 1988, S.S. 1988, c.S-42.2 and In the Matter of Darcy Lee Bergen (October 31, 2000), at 3, Decision of the Saskatchewan Financial Services Commission [Bergen]

- (i) the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to capital markets;
 - (j) the need to deter those who participate in the capital markets from engaging in inappropriate conduct; and
 - (k) orders made by the Commission in similar circumstances in the past.
46. In this case, the panel considered the seriousness of the respondent's conduct, the harm suffered by investors and the need for deterrence of such behavior as the major factors when considering sanctions.
47. During arguments the panel received examples of past decisions from both FCAA Staff and Respondents counsel.
48. FCAA staff presented two past cases in which the panels had imposed maximum penalties being "Tri-Link"² and "Owens"³. In neither of these cases was there any finding of fraud, however in both, the amounts raised were considerably larger than in the case before the panel.
49. Mr. Stooshinoff argued that his client's case was more similar to a recent decision issued by the FCAA, "West African Industries Inc. et al"⁴.
50. The facts in this case bear some similarity to West African, in that funds were raised for investment promising guaranteed returns, and funds were used to enrich the respondent.
51. The sanctions in the West African case were permanent bans from participating in Saskatchewan capital markets, an administrative penalty of \$25,000 and costs of the hearing.
52. The panel believes that Kaminsky's behavior is of a serious nature. As a registrant, she held herself out to investors as a person of trust, and in such a position of trust, accepted their money, and through her intentional and knowingly fraudulent actions, converted that money to her own use, thereby causing those investors to lose considerable sums of money. She has admitted to committing fraud. The securities laws of Saskatchewan need to be respected and upheld, and when breaches occur, appropriate sanctions need to be levied.
53. Having said that, the panel must also take into account the amount of money involved, which, while not inconsequential, is also not within the highest reaches of investor frauds. Similarly, the panel has determined it appropriate to conclude that a mitigating effect be afforded Kaminsky as a result of her admitting to the allegations against her, thus avoiding a costly and time-consuming hearing, and her general cooperation with the FCAA Staff and investigators throughout the matter.
54. The Panel does not find the sentence imposed in criminal proceedings against Kaminsky to be in any way a mitigating factor in this matter. It is not appropriate to say that Kaminsky has already been punished enough. The role of the panel in these proceedings is not merely to punish those who breach the Act. Rather, it is, first and foremost, to protect the public in their securities-related dealings in Saskatchewan, and to maintain the confidence of participants in the lawful conduct of the capital markets of this Province. To that end, the fact that Kaminsky has already

² In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of Tri-Link Consultants Inc. ("Tri-Link") Klaus Link (April 21, 2009) Decision of the Saskatchewan Financial Services Commission [Tri-Link]

³ In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of Platinum Equities Corporation et. al. (February 2000) Order of the Saskatchewan Securities Commission [Owens]

been sentenced in Provincial Court in accordance with its sentencing principles is independent of and unrelated to these proceedings.

55. Having considered the actions of the Respondent, the amounts involved in this case, Ms. Kaminsky's cooperation and the decisions of other panels in relevant prior cases, this panel is of the view that a substantial penalty is in order. The panel believes that as a result of the breaches that occurred Ms. Kaminsky should never again be allowed to work in the securities industry in Saskatchewan. Given her wilful fraud, which took place over a considerable period of time, and the amount of the investors' loss, no amount of cooperation after the fact can persuade this panel that anything less than a permanent ban is appropriate. However, the panel does not believe the maximum amount of administrative penalty is appropriate.

Decision of the panel

56. Accordingly, based on all of the above, the Panel has concluded that the following sanctions are appropriate, and consistent with the public interest:

- (a) pursuant to clause 134(1)(a) of the Act, the exemptions in Saskatchewan securities laws do not apply to Kaminsky, permanently;
- (b) pursuant to clause 134(1)(d) of the Act, Kaminsky shall cease trading in any securities or exchange contracts in Saskatchewan, permanently;
- (c) pursuant to clause 134(1)(d.1) of the Act, Kaminsky shall cease acquiring securities for and on behalf of residents of Saskatchewan, permanently;
- (d) pursuant to clause 134(1)(e) of the Act, Kaminsky shall cease giving advice respecting securities, trades or exchange contracts in Saskatchewan, permanently;
- (e) pursuant to clause 134(1)(h)(i) of the Act, Kaminsky shall resign any position that she holds as a director or officer of any issuer, registrant or investment fund manager;
- (f) pursuant to clause 134(1)(h)(ii) of the Act, Kaminsky is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, permanently;
- (g) pursuant to clause 134(1)(h)(iii) of the Act, Kaminsky shall not be employed by any issuer, registrant or investment fund manager in any capacity that would entitle her to trade in or advise on securities;
- (h) pursuant to clause 134(1)(h.1) of the Act, Kaminsky is prohibited from becoming or acting as a registrant, an investment fund manager or a promoter, permanently; and
- (i) pursuant to section 135.1 of the Act, Kaminsky shall pay an administrative penalty of \$40,000.

57. The panel will issue its consequential Order in due course that reflects the above sanctions.

This is the unanimous decision of the panel.

Dated: July 20, 2017.

A handwritten signature in black ink, appearing to be 'Derrek Fahl', written in a cursive style.

Derrek Fahl (Chairperson)

A handwritten signature in black ink, appearing to be 'Peter Carton', written in a cursive style with a long horizontal stroke at the end.

Peter Carton (Panel Member)

A handwritten signature in black ink, appearing to be 'Honourable Eugene Scheibel', written in a cursive style.

Honourable Eugene Scheibel (Panel Member)