

April 29, 2008

IN THE MATTER OF: THE SECURITIES ACT

-and-

**IN THE MATTER OF: SHELDON TERRY HEIDEBRECHT
AND MARGARET KONIUCK-PETZOLD**

**REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION**

Panel:

Chair	Mr. D.G. Murray
Commission Members	Ms. K.E. Hughes
	Mr. G.J. Lillies

Appearances:

Mr. S. Gingera)	Counsel for the Commission
Mr. S. Heidebrecht)	On his own behalf
Mr. J. Prober)	On behalf of Margaret Koniuck-Petzold

This matter was scheduled to be heard over two weeks commencing Monday, March 3, 2008. On the morning of March 3rd, the panel was advised that the parties and their counsel had resumed discussions that were aimed at resolving all matters at issue or at least significantly reducing the time required to hear them. The hearing for both respondents, Heidebrecht and Koniuck-Petzold ("Koniuck") was adjourned to the next day, Tuesday, March 4, 2008.

The discussions proved largely successful. On Tuesday, March 4, 2008 the panel was advised that Heidebrecht, who was unrepresented, had resolved the allegations against him and that a Settlement Agreement would be presented at a subsequent time. Concerning Ms. Koniuck, her counsel, Mr. Prober, and Mr. Gingera for Commission staff, advised that evidence would not be called and an Agreed Statement of Facts would be provided to the panel and arguments would be based on that, as well as other documents to be filed as Exhibits. The Koniuck matter was adjourned to Friday, March 7, 2008.

On Friday, March 7, 2008 the hearing reconvened. Counsel provided an Agreed Statement of Facts, filed as Exhibit 3, together with a number of other Exhibits being Exhibits 4 through 10. The panel was also advised that it would receive certain other documents, including letters of reference for Ms. Koniuck prior to or at the time of argument which was scheduled for Thursday, March 13, 2008 commencing at 10:00 a.m. The hearing then adjourned.

On Wednesday, March 12, 2008, the panel received a package of reference letters from people who had known and had dealings with Ms. Koniuck, both in her capacity as a registrant and otherwise. These were eventually filed as Exhibit 11. Almost without exception these letters referred to her good character and good works performed by her. At the hearing on March 13th the panel also received a letter from the MFDA, filed as Exhibit 12, which apparently was a follow-up to Exhibit 11-G. Neither of these letters was particularly informative and neither was considered in arriving at these Reasons for Decision. Counsel provided arguments and the matter was adjourned for written Reasons.

Evidence

As no oral testimony was provided, the Agreed Statement of Facts, together with information on the face of the documents filed makes up the evidence available to the panel. The Agreed Statement of Facts is relatively succinct and as such, rather than referring to or paraphrasing parts of it, the panel feels it is appropriate to reproduce Exhibit 3 in its entirety in the body of these Reasons. The 25 paragraphs are set out below:

AGREED STATEMENT OF FACTS

1. Margaret Koniuck, formerly Koniuck-Petzold (“Koniuck”) at all material times was a resident of Winnipeg, Manitoba.
2. At all material times, Koniuck was registered under *The Securities Act* (the “Act”) as a branch manager with Portfolio Strategies Corporation (“Portfolio Strategies”). Koniuck is currently registered as a salesperson with Portfolio Strategies.
3. At all material times, Koniuck operated a company Third Millennium Group Benefits Inc. (“Third Millennium”) which provides private health care services and administration for small businesses.
4. Sheldon Heidebrecht (“Heidebrecht”) at all material times was a resident of Winnipeg, Manitoba.
5. At all material times Heidebrecht was not registered to trade in securities under *The Securities Act* of Manitoba (the “Act”). Heidebrecht was previously registered under the Act as a salesperson with Portfolio Strategies and was dismissed on May 18, 2005. Heidebrecht’s registration under the Act was suspended on May 18, 2005.
6. At all material times:

a) Koniuck was aware that Heidebrecht was dismissed by Portfolio Strategies on or about May 18, 2005 and the reason for the dismissal;

b) Koniuck was aware that Heidebrecht was suspended under the Act as of August, 2005;

c) Koniuck was aware that Heidebrecht had filed or was going to file an Assignment into Bankruptcy.

7. In or about the fall of 2005, Koniuck bought Heidebrecht's book of mutual fund and insurance business for \$76,000.00 as he needed money to pay debts. At about the same time, Heidebrecht was hired by Koniuck to work for Third Millennium.

8. In November, 2005, Heidebrecht met with Michael Wurz of the Butte Hutterian Brethren Inc. ("the Colony") at Sandy Lake, Saskatchewan along with representatives of other colonies in relation to Third Millennium business. The Colony was a client of Third Millennium. At this meeting conversations about investments occurred. Koniuck was not present at this meeting.

9. Subsequent to the November 2005 meeting Wurz told Heidebrecht that the Colony had a \$1,000,000.00 GIC which was maturing, which they wanted to invest to get a better return than what their bank offered.

10. Wurz agreed to meet with Heidebrecht on December 15, 2005 in Regina to invest the Colony's million dollars.

11. After the November 2005 meeting, but prior to December 15, 2005, Heidebrecht informed Koniuck that Wurz and the Colony were interested in getting a better rate on their GIC investment. Koniuck told Heidebrecht she could be interested in investing this money.

12. Heidebrecht discussed with Koniuck an arrangement whereby the Colony's money would be deposited into an account of Tri-Vista Financial, a company which was to be owned by Heidebrecht, and that the money would then be invested to earn the Colony a rate of return.

13. Pursuant to arrangements made by Heidebrecht, on December 15, 2005, Heidebrecht and Koniuck met with Wurz and Ben Kleinasser ("Kleinasser") of the Colony in Regina, Saskatchewan. Wurz and Kleinasser indicated they were prepared to invest \$1,000,000.00 of the Colony's money for a better return than what they were receiving from the bank. At this meeting they indicated it was important that the Colony's investment be secure. Koniuck understood that the Colony was looking for better GIC rates and that some colonies invest in bonds but nothing high risk. Koniuck also understood the Colony was not interested in investing in mutual funds, just guaranteed investment certificates.

14. At the December 15, 2005 meeting, Wurz and Kleinasser were presented a document by Heidebrecht and Koniuck entitled "*Tri-Vista Financial Inc., - Guaranteed Investment Contract – Application*". Koniuck produced the Tri-Vista Financial Inc. Guaranteed Investment Contract

from a precedent GIC application on her computer in the presence of Heidebrecht. At the December 15, 2005 meeting Koniuck filled out this document, in duplicate, for the Colony.

15. The Guaranteed Investment Contract with Tri-Vista Financial Inc. referred to an investment in the amount of \$1,000,000.00 for a five year term with an interest rate of 4.85% compounded annually. The Guaranteed Investment Contract – Application was non-redeemable and referred to a total of \$1,267,191.00. The document was signed by Wurz and Kleinasser on behalf of the Colony.

16. No documentation, other than the Tri-Vista Financial Inc. – Guaranteed Investment Contract Application was provided to Wurz and Kleinasser at the December 15, 2005 meeting.

17. Wurz and Kleinasser on December 15, 2005 provided a cheque from the Colony to Tri-Vista Financial Inc. in the amount of \$1,000,000.00. Koniuck filled out the cheque for the Colony at their request. This cheque was given to Heidebrecht.

18. 5206767 Manitoba Ltd. was incorporated pursuant to *The Corporations Act* of Manitoba on November 21, 2005. On December 19, 2005 an amendment to the Articles of Incorporation of 5206767 Manitoba Ltd. was filed with the Manitoba Companies Office to change the name of the Corporation to Tri-Vista Financial Inc. and to change the name of the sole director and officer of the corporation to Danny Heidebrecht.

19. Danny Heidebrecht is Heidebrecht's father. Danny Heidebrecht was asked to be a director and officer of Tri-Vista Financial Inc. by Heidebrecht.

20. Subsequent to receiving the cheque from the Colony payable to Tri-Vista Financial Inc., Heidebrecht and Danny Heidebrecht went to a branch of the Assiniboine Credit Union to open an account for the purpose of depositing the Colony's \$1,000,000.00 cheque. Heidebrecht asked Danny Heidebrecht to assist him in opening this account.

21. Other than indicated above, Danny Heidebrecht had no further involvement with Tri-Vista Financial Inc. whatsoever.

22. The \$1,000,000.00 cheque payable to Tri-Vista Financial Inc. was deposited by Heidebrecht into the account of Tri-Vista Financial Inc. The Colony's funds that were deposited into the Tri-Vista Financial Inc. bank account were subsequently frozen by the Credit Union and were returned to the Colony at the Colony's request.

23. With the exception of advising Portfolio Strategies of her operating the company Third Millennium, Koniuck did not advise her sponsoring firm, Portfolio Strategies of the matters set out in these Agreed Statement of Facts.

24. Koniuck was not a director or officer of Tri-Vista Financial Inc. nor held any other position with the company and did not incorporate the company.

25. Koniuck acknowledges she traded in a security other than those specifically authorized by her registration contrary to the provisions of the Act.

Argument of Commission Staff

Mr. Gingera, staff counsel, argued that Ms. Koniuck was not a novice registrant during the time in question. She had been registered with the MSC since 1997 and was otherwise well educated and had attained the position of Branch Manager with her employer. He argued that she not only allowed, but cooperated in, the placing of her client's money with Mr. Heidebrecht and subject to his control. All the while she was well aware of Heidebrecht's financial problems, the fact that he was a non-registrant and that his employment with Portfolio Strategies Corporation had been terminated for improper sales/advising activities.

He noted that Koniuck knew that her client was seeking relatively safe and secure investments in GICs. Koniuck's actions made it appear that this was the type of investment they were being offered, when in fact their funds were being put in jeopardy. There was, he argued, a serious breach of duty on Koniuck's part and he requested a suspension of her registration for a period of three months.

Argument of the Respondent Koniuck

Mr. Prober commenced his argument by stating that he had faith the panel would "do the right thing". He argued that a suspension of registration was unduly harsh in the circumstances. He suggested that the panel first consider the circumstances of the transaction and then the personal circumstances of Ms. Koniuck in coming to a decision.

Concerning the trade, Mr. Prober stressed that Ms. Koniuck was involved in a single trade and that she played only a secondary role as Heidebrecht was the main architect of the transaction. He argued that the investment scheme was Heidebrecht's plan and that he set up the meetings with the Colony. Tri-Vista was his company and Koniuck had no interest in it. He added that Koniuck's role was intended to help Heidebrecht get back on his feet and was a case of bad judgment or inadvertence as opposed to intentional misconduct on her part.

Mr. Prober also argued that once the problem with the proposed investment became apparent his client took mitigating action in paying the Colony lost interest on the funds. He added that there was no complaint received by the MSC from the Colony and that it continues to deal with Ms. Koniuck.

As an aside, it should be noted that Mr. Prober also argued that Koniuck was not acting as a registrant throughout as she felt the transaction was a private placement and as such he believes she did not breach her obligations as a registrant. Without going any further into this line of reasoning the panel notes that the Agreed Statement of Facts acknowledges that Ms. Koniuck throughout was registered under The Securities Act and she further acknowledged trading in a security outside of those authorized by her registration in contravention of The Securities Act.

Mr. Prober also provided a comprehensive summary of Ms. Koniuck's personal circumstances. He pointed out that at 49 she is a single mother of two who has achieved much professionally and in business, while contributing significantly to the social fabric of our society. In brief, she

has achieved the Certified General Accountant designation and has attained success in the investment industry, including as a Branch Manager. Ms. Koniuck has developed a separate insurance related service business and has worked at the board level for industry associations as well as teaching at the University of Manitoba.

The letters of reference in Exhibit 11 speak of Ms. Koniuck's integrity, honesty and contributions to society through her work in numerous organizations including UNICEF. Mr. Prober points out that she has no prior disciplinary record with the Commission and that at the end of the day the client did not lose any money, partly due to her voluntary contribution of lost interest.

Mr. Prober argued that the actions of Ms. Koniuck represented an aberration in an otherwise blameless career. He added the MSC need not be concerned that this type of conduct would be repeated. Ms. Koniuck has already suffered in reputation and lost much of her insurance related business as fallout from these events. He argued that further punishment, through a suspension of any length, would be unnecessary and even unreasonable.

Decision

There is no doubt that Ms. Koniuck acted in breach of her obligations and the terms of her registration. This is admitted. The only issue for the panel is to determine what sanction is appropriate in the circumstances.

The system of registration for financial intermediaries in Canada, pursuant to the securities legislation and rules is one of the cornerstones of investor protection. Those who are entrusted to deal with the public's money and the financial well-being and future of their clients must do so at the highest standards. This is a fiduciary relationship and the public interest requires that it must be respected.

In this case, \$1,000,000.00 of the hard earned money of Ms. Koniuck's client was put in the hands and control of an unregistered individual under false pretenses. This scenario was ripe for disaster. The fact that the vigilance of the Credit Union involved prevented the worst case scenario does not change the circumstances. The panel has seen similar circumstances where the outcome was not so fortuitous.

Ms. Koniuck was a Branch Manager at the time. As such, her responsibility is to review the operations of those she supervises and to put a stop to any improper activity. In this case she did not put a stop to the improper activity, in fact she facilitated it.

The client was hers and the relationship of trust was placed in her, not Heidebrecht. The client trusted her to provide advice that was in the Colony's best interest. It was clear to the panel that without Koniuck's involvement no investment would have been made. Ms. Koniuck allowed her client's funds to be put under the control of an unregistered individual who to her knowledge had been terminated for cause and who was under significant personal financial pressure.

Ms. Koniuck's involvement was not, as suggested by her counsel, secondary in nature. She used her position of trust to have her client put its funds in jeopardy. She was aware that the Colony

wanted to invest in Guaranteed Investment Certificates, one of the more secure investments available. With this knowledge she produced a document titled “Tri-Vista Financial Inc. – Guaranteed Investment Contract - Application”. She knew that Tri-Vista was Heidebrecht’s company, a shell company and not in a position to issue GICs. In short, Ms. Koniuck misled her client. She breached her duty to her client.

The panel members were perplexed by Ms. Koniuck’s actions. As pointed out by Mr. Prober this is totally out of character with her past conduct. She put her professional status and very livelihood at risk for what appeared to be no real likelihood of personal gain. We received no evidence as to why, in this case, she would seemingly act in a manner contrary to that which she knew to be right, other than her counsel’s submission in argument that she wanted to help Heidebrecht “get back on his feet”. That is not a mitigating factor.

Commission staff counsel asked for a suspension of registration for a period of three months. He pointed out that precedents, such as Cartaway Resources Corp. (SCC) state that an administrative sanction by a securities tribunal is not intended to be remedial or punitive but preventative in nature and prospective in application. This includes the notion of deterrence. An administrative sanction is not intended so much as a punishment to the wrongdoer but to send a signal to the marketplace that improper conduct will carry negative consequences.

As indicated, staff counsel seeks a suspension for a period of three months, and while Mr. Prober argues that that would be unreasonable, the panel would not have been surprised had the period of suspension requested been more significant. In relation to a career, three months is not a long time. As a message to be sent to the marketplace concerning investor protection and public interest, the panel cannot see a lesser suspension as being sufficient or reasonable. In light of Ms. Koniuck’s actions and their very possible and foreseeable consequences, the panel suspects that staff counsel has already taken into account her past conduct and contributions in determining the length of the suspension sought and in not addressing the issue of an administrative penalty.

Ms. Koniuck’s registration will be suspended for a period of three months, with the start date to be set by the Director. In addition, the reinstatement of her registration will be conditional upon her not acting in the capacity of Branch Manager for a period of three years and, upon the expiration of that term, upon retaking the Branch Manager course and successfully challenging the examination.

The efforts of counsel to shorten proceedings by agreeing to the facts to be relied upon must be recognized. No request for costs was made by staff counsel at the hearing and no order for costs is made.

“D.G. Murray”

D.G. Murray
Chair

“K.E. Hughes”

K.E. Hughes
Member

"G.J. Lillies"
G.J. Lillies
Member