May 14, 2010

IN THE MATTER OF: THE SECURITIES ACT

- and -

IN THE MATTER OF: SHELDON HEIDEBRECHT and MARGARET KONIUCK-PETZOLD

REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION

Panel:

Panel Chair:	Mr. G.S. Posner

Appearances:

Mr. S. Gingera	)	Counsel for the Commission
Mr. J. Prober Mr. H. Khan	)	Counsel for the Respondent

PRELIMINARY MATTERS:

1. This matter was heard on April 14 and 15, 2010. It had originally come for hearing before Panel Members D. Smith and G.S. Posner, but counsel for the Defendant Koniuck-Petzold objected to the hearing continuing with only two members as the panel. The panel agreed that there should be an uneven number of panelists. The case was put over for a hearing in April, 2010 and Panel Member Smith withdrew so that there was only one member sitting for this hearing.

2. There was an agreed Statement of Facts presented and thus there was no oral evidence. The defendant was present for the entire hearing. The agreed Statement of Facts is set out below.

AGREED STATEMENT OF FACTS:

3. Margaret Koniuck, formerly Koniuck-Petzold ("Koniuck") at all material times was a resident of Winnipeg, Manitoba.

4. 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.

5. 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.

6. Sheldon Heidebrecht ("Heidebrecht") at all material times was a resident of Winnipeg, Manitoba.

7. 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.

8. 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;

9. 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.

10. 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.

11. 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.

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

13. 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 in their GIC investment. Koniuck told Heidebrecht she could be interested in investing this money.

14. 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.

15. 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. .

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

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

22. 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.

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

24. 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.

25. 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 this Agreed Statement of Facts.

26. 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.

ALLEGATIONS:

27. The allegations against the Defendant were set out on Exhibit 2 in what was termed the Statement of Allegations of Staff of the Manitoba Securities Commission. The 5 principal allegations were contained in 1. b) through f).

28. The allegations were:

b) Koniuck-Petzold traded in securities other than those specifically authorized by her registration under the Act;

c) Koniuck-Petzold conducted trades in securities without the knowledge or consent of her dealer, Portfolio Strategies

d) Koniuck-Petzold assisted Heidebrecht in arranging the foregoing transaction with the Colony when she knew or ought to have known that Heidebrecht was not registered to trade in securities

e) Koniuck- Petzold traded in securities, or assisted Heidebrecht in trading in securities which were unsuitable for the Colony

f) The conduct of Koniuck-Petzold, as set above, was contrary to the public interest

If these allegations were proven, Koniuck-Petzold should not be entitled to use of any of the exemptions as set out in the Act, should not be able to participate in the exempt markets in the future and should be ordered to pay an administrative penalty pursuant to s. 148.1(1) of the Act. Further, due to the allegations, Koniuck-Petzold's registration under the act as a salesperson should be suspended or cancelled.

29. These allegations were made in detail to address the relief sought by the Commission as set out in the Notice of Hearing. Exhibit 1 was the Notice of Hearing and it sets out the crux of this case.

The first issue to address was whether or not it is in the public interest to order, pursuant to 19(5) of the Securities Act that

(a) subsection 19(1) of the Act does not, with respect to such of the trades referred to in that subsection, apply to Margaret Koniuck-Petzold

(b) subsection 19(2) of the act does not, with respect to such of the securities referred to in that subsection, apply to Koniuck-Petzold

30. The second issue was whether or not it is in the public interest to order, pursuant to subsection 8(1) of the Act, that Koniuck-Petzold's registration under the Act should be cancelled or suspended

31. The third issue was whether or not it is in the public interest to order, pursuant to s. 148.1 (1) of the Act, that Koniuck-Petzold pay an administrative penalty

32. The fourth issue was whether or not it is in the public interest to order that Koniuck- Petzold pay the costs of and incidental to the Hearing

33. Three of these four issues were the questions to be answered (the issue relating to the administrative penalty was not dealt with at this time and only was applicable if there was a finding against the Defendant) and the sections of the

Manitoba Securities Act (hereinafter called the Act) relevant to a decision were S. 19(5), 8(1) and 148.1(1)

ARGUMENTS:

34. Even before these three issues could be addressed, the question of jurisdiction was raised. It was argued by counsel for the Commission that there was jurisdiction to hear this case. Counsel for the Defendant said the panel lacked jurisdiction. The argument advanced by the Defendant was that because the transaction took place in the Province of Saskatchewan, all the discussions were there, there was no solicitation from Manitoba, no sale occurred anywhere else except Saskatchewan, no negotiations anywhere but in Saskatchewan, then a panel hearing a case under the Securities Act of Manitoba lacked proper authority to deal with charges under that Act. Counsel for the Commission argued that Manitoba has jurisdiction just by virtue of the fact that the corporation in whose name the investment was placed was a Manitoba corporation and that the Defendant was a resident of Manitoba. Counsel for the Commission also observed that if the Defendant was successful in her argument, then many people would use such a device to circumvent the Act. Counsel submitted the following cases as relevant to the question as to jurisdiction. They were Gregory & Co. v. Quebec Securities Commission [1961] S.C.R 584. (S. C. C.), R v. McKenzie Securities Ltd. in [1966]4 C. C. C.29 56 D. L. R.56 and Re Sunwide Finance at 32 O. S. C. B. 4671. Counsel tried to show that these cases were substantially different from the present case because in all of the three cases cited, there was a connection to the jurisdiction where the case began. In Gregory, material was mailed from Montreal so that gave Quebec jurisdiction, in Sunwide, the calls went through Ontario and in McKenzie, the facts were too different to be useful.

35. I, however, am of the view that in this case, where the fact that the drawing of the application for an investment took place in Regina and the signing of it also took place there, does not remove the authority of this commission to hear the case. I agree with the words of Freedman J. A in the McKenzie case. In para. 23, the learned judge goes into some detail as to the connection Manitoba had with the trade that was alleged to have occurred. Although the facts are indeed far removed from the present case, the principle that Mr. Justice Freedman articulates is relevant. Applying the principle to this case, there was a document placed in front of officers of the Colony and that document although drawn or reproduced in Saskatchewan and signed there, was nevertheless created by a resident of Manitoba, the Defendant, and the investment was to be placed either with or through a Manitoba corporation Tri Vista. To admit a lack of jurisdiction owing to the place where papers are signed, would be to make a mockery of the Act and indeed would create an untenable situation where creative con artists would try and likely succeed to avoid the Act. I do hold that there is jurisdiction to hear this case.

36. The argument placed before the panel by counsel for the Commission was that all three sections of the Securities Act as set out in the Notice of Hearing have been satisfied. Counsel specifically dealt with the Statement of Allegations and in particular Part C. Counsel addressed the question as to whether or not the instrument in question was a security as defined in the Act. In particular, the applicable subsections of the definition that were relevant were a} b} and m}. The

reason that this instrument had to be a security was because of the wording of section 19(2) of the Act.

37. The relevant parts of Section 19(2) of the Act read as follows:

> "subject to the regulations, registration is not required to trade in the following securities:
>
> a) bonds, debentures or other evidences of indebtedness."

If this instrument is not a security, then the section and even other sections are inapplicable. The question then posed to the panel "was the application for a GIC, exhibit 8, a security?" Mr. Prober argued that the definition section as in (a), (b)and (m) could not apply. With respect to a), he indicated that the wording was too general and that with respect to (b) and (m), they did not apply here. The cases that Mr. Gingera put forward were Re Gill Financial Corp.11 B. C. L. R. 102 and Pacific Coast Coin Exchange of Canada v. Ontario Securities Commission [1987]2 S. C. R. 112. Mr. Prober advanced the position that these cases were much different from the present case. In this case, no one was forced to sign papers as in Gill, there was no personal loan agreement, but instead, an application. But, the judgment of the B.C. Court of Appeal in Gill in para. 45 is instructive.

> "The appellant's submissions might be read to suggest that the form of the transaction documents, that is the "personal loan agreements" should prevail over the substance of the documents. However, in Pacific Coast Coin Exchange of Canada, ... de Grandpre J. for the majority at p127 quoted with approval a portion of Tcherepin v. Knight 389 US 332 stating that
>
> "in searching for the meaning of the word "security" in the Act, form should be disregarded for substance and the emphasis should be on economic reality""

38. Applying that principle to this case, the document was called a Guaranteed Investment Contract Application, but it was for all intents and purposes in my opinion a GIC or what was likely considered a GIC by the Colony representatives when they signed it. It appeared like a GIC and to say that this is not a security because it is not called one is, to put form over substance. Even if I am wrong on that point, it seems to me that the definition section is wide enough to capture this document as an investment contract, which are words used on the document and as included in the definition in (m).

39. Notwithstanding that result, there is a subsection in Section 19 of the Act, being S 19(5), which exempts the application of S. 19 (1) and (2) if it is in the public interest to do so. This issue of public interest arises also in reference to s. 8 (1) and s. 148.1(1). My comments relating to the public interest issue are set out later in the judgment.

40. Paragraphs b), c) and e) of the Allegations specifically use the word trade or trading and if this completion of the GIC application was not a trade or amount to trading, then, even if this document is a security, if it is not a trade, the allegations as set out in b), c) and e) are not met and the case is not proven against the Defendant.

There were many cases cited by both counsel with respect to this issue as to whether or not the GIC application was in fact a document which could fall within the definition of trade as defined in the Act. The Act defines trade with four subsections but only a) and d) apply in my view. The act says that a trade includes

> a) any sale or disposition or other dealings in or any solicitation in respect of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, or any attempt to do one of the foregoing
>
> and
>
> d) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing

41. Mr. Prober advanced the argument that since there was no sale or disposition, there could not be a trade. He also argued that there was no consideration given to anyone. It was his view that, even the other Defendant Heidebrecht, who was the chief protagonist in this situation, received no consideration here. Moreover, the Defendant Koniuck-Petzold did nothing in furtherance of a trade. All she did was print off a form and help write it out as well as a cheque. Mr. Prober analogized her role to a secretary. He referred to the case of Re Brown, a decision of the Ontario Securities Commission reported in 2004 LNONSC.499. In that case, Staff submitted that certain acts were acts that were in furtherance of trade, such as an invitation to a group to attend a presentation, the fact that the Browns were part of the organizing group and that one of the Browns, Leslie, spoke at the meeting and urged attendees to note the unique opportunities afforded by the programme. But, further in para. 28, I note the following statement.

> "In support of that position, Staff submits the words "any act in furtherance" as found in the definition of trade in the Act be given a broad interpretation. "

42. The tribunal hearing the Brown case found that the Browns were not acting on behalf of or in furtherance of Anderson's trading activities. They go on to say what it was that Leslie Brown advocated the participants to do but "there was no need for immediate action, if, in fact anyone was going to invest".

43. In para. 34, they say "for a person to act in furtherance of a sale or disposition of a security that is in fact being sold or disposed of by someone else, there must be at a minimum, something done by that person for the purpose of furthering or promoting the sale or disposition of the security by the one engaged in that activity. The receipt of consideration or some other direct or indirect benefit, although not a necessary component, could be a strong indication of such a purpose. There is no evidence to show that in arranging for their friends to attend, the Browns were doing so for such a purpose. Rather it would appear the meeting was convened by the Browns simply in order for their friends to have an opportunity to become acquainted with F. E. D. I."

44. On the other hand, counsel for the Commission points out that in the interview with the Defendant, entered as Exhibit 11, at line 1218, Margaret Koniuck-

Petzold says in answer to a question as to where the document(the GIC application} came from

> " I believe that Sheldon had done it up so there would be some official document for the transaction so that the Hutterites would have an official document of what the obligations were from Tri- Vista"

45. Later in the interview in line 1251, she says

> "Yes, I know it was done on the computer and it was I think just, copying another basic GIC application to insure that it was a legal document between two parties so."

46. At line 1324, she admits in response to the question as to what was in your mind about the purpose of the document that

> "For them to have a piece of paper in return for their $1, 000,000.00 so that they would know what the agreement was, that they were getting a 4.85% compounded annually."

47. All of these statements by the Defendant suggest to me that this document was meant to be a GIC or lead up to a GIC. Either way, the Defendant understood it to represent a trade or something leading to a trade as in furtherance of a trade and as a result, this transaction with the issuance of the GIC application form for $1,000,000.00 with Tri -Vista, was in my opinion a trade as defined in the Act.

48. Counsel for the Defendant went further however to say that even if this was a trade and the application was a security as defined in the Act, this trade was really a private placement and was thought to be a private placement by the Defendant and as a result, would qualify for the exemption provided for registration and prospectus requirements in the Act. In support of that argument, he produced a document called "Overview" published by the Manitoba Securities Commission. He referred in particular to the following paragraph

> "There is an exemption from the registration and prospectus requirements when a person buys a security with an aggregate cost of at least $97,000.00 for investment only and without the intention to resell the security."

49. This section of the Overview was taken from what was then S. 19 (3) of the Act. Mr. Prober provided examples of the intentions of the Defendant as expressed by her in the interview. The message Mr. Prober was sending was that the Defendant thought this was an exempt transaction. Mr. Gingera however pointed out that even if this was a private placement (which he did not accept), that fact was of no assistance to the Defendant. Mr. Gingera indicated that the Defendant had a restricted registration and therefore, as is set out on Tab 3 of the Case Law provided by the Commission Counsel, the Defendant cannot trade in securities, even exempt ones, without first obtaining an amendment to the registration. No one is able to trade outside of the parameter of the license and here it is clear that the Defendant was outside of her registration capacity. I concur with the position taken by Mr.

Gingera and find that the Defendant was outside of her registration limits when she assisted in this trade. Hence, the allegation in C. b) is satisfied.

50 The next allegation set out in C. c) is that the Defendant traded in securities without the knowledge of her dealer, Portfolio Strategies. That allegation is proven just by virtue of paragraph 23 of the Agreed Statement of Facts.

51 With respect to the allegation set out in C. d), that is, that Koniuck-Petzold assisted Heidebrecht in arranging the forgoing transaction with the Colony when she knew or ought to have known that Heidebrecht was not registered to trade in securities, that allegation is proven by virtue of the admission made in the agreed Statement of Facts in paragraph 6. I am convinced that the Defendant was aware of the suspension of Heidebrecht and if she was not aware, she certainly ought to have been aware that Heidebrecht, because he was suspended, was therefore not registered to trade in securities.

52. The allegation contained in C. e) is that the Defendant traded in securities or assisted Heidebrecht in trading in securities which were unsuitable for the Colony. It is a fact that the Butte Hutterite Colony wanted a GIC and that is, on the face of it, what it received. It seemed to rely on the Defendant a great deal to make sure that they received from Heidebrecht a GIC that would provide the Colony with a better rate of return than the colony was previously getting. The fact that it was with Tri-Vista did not, on the face of the material provided, seem to bother the officers of the Colony. But, I have trouble vindicating the Defendant as this particular investment was, in my view, one that was patently unsuitable for the Colony. The fact that the GIC was made out to a corporation that was the creation of the other Defendant, ought to have sounded alarm bells to Margaret Koniuck- Petzold. I think that she ought to have known better than to allow this to occur. As a result, I find the Defendant in contravention of this allegation.

53 The last allegation as set out in C. f) is that the conduct of Koniuck- Petzold was contrary to public interest. If this is so, then it follows that I must decide the questions asked in the Notice of Hearing and apply the public interest issue to S. 19.(5), S. 8.(1) and S. 148.1(1) of the Act.

54. This issue of public interest occupied the greater part of the arguments advanced by both sides and I commend counsel for the depth of the arguments made. The public interest argument is critical to this case as it affects three sections of the Act.

55. Both counsel acknowledged that public interest is not defined in the Act. Further, both counsel were quite clear in stating that there did not have to be a violation of the Act in order that there could be an action that was in contravention of public interest. There was argument as to the latitude that could be exercised in finding what was in the public interest as counsel for the Commission urged a wide latitude and counsel for the Defendant a more restrictive interpretation.

56. The case of Re Mitchell and Ontario Securities Commission, 12 D. L. R. (2d) at 221 was cited as the kind of approach I should adopt here. The line of the judgment that was asked to be applied was on p. 225 in the decision of Laidlaw J. A.

when he says " It is the function of the Commission under s. 8 of the Securities Act to form an opinion whether or not it is in the public interest to suspend or cancel the registration of any person. It is intended by the legislation that the Commission shall have extremely wide powers of discretion in forming the opinion."

56. The case of Re Cartaway Resources, a decision of the Supreme Court of Canada was also submitted as to the way to deal with this public interest issue. That case, in 2024 Carswell BC 844 is relevant to this point as set out in paragraph 58 and in the subsequent paragraphs through paragraph 63.

57. The Manitoba Securities commission case of Jack George Wladyka referred to in Tab 4 of the Case Law presented by counsel for the Commission also talks in a broad way with respect to public interest. In paragraph 52, the judgment says

> "The Alberta Securities Commission case Re Lamoureux (2002) WL33 686 (Alta Securities Com.) makes note of the " special role of a registrant". The decision quotes the Supreme Court of Canada as follows:
>
> 'The paramount object of the Securities Act is to ensure that persons who, in the Province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public in the province or elsewhere, from being defrauded as a result of certain activities'…. (para. 16)
>
> Public confidence in the integrity of the capital markets is jeopardized when a registrant fails to comply with securities regulations."

58. The fact situation in this case is far removed from Wladyka where there were allegations of fraud. No such allegation is made here. This fact was raised by Mr. Prober to distinguish it from Wladyka and the other cases put forward by Mr. Gingera. Mr. Prober argued that this case did not have the egregious conduct required to be found before there could be the application of the public interest clause. Put succinctly, it was the argument of Mr. Prober that to use the special powers in finding a breach of " public interest", there had be some abusive conduct. What, he submitted, was so serious and extreme about the conduct of the Defendant that caused alarm bells to go off or to suggest a breach of public interest? He agreed that she exercised bad judgment, but not to the extent that it would affect the capital markets thereby causing the commission to invoke its public interest jurisdiction.

59. Mr. Gingera on behalf of the Commission advanced the argument that the trading of securities outside of her conditions of registration by the defendant was by itself a violation of the public interest. Further, she failed to disclose to her employer, Portfolio Strategies any of this activity. The whole system breaks down if people do not follow the appropriate code of conduct, according to Mr. Gingera and here she failed to follow appropriate conduct. The fact that she failed to report this trade to her employer was by itself an omission against the public interest. The fact that she assisted Heidebrecht, a known non- registrant to complete this deal, was an act that alone contravened the broad public interest requirement. This was not simply a case of exercising bad judgment; the public confidence in the public markets and the protection of investors relies heavily on the integrity of people who participate in

capital markets. The argument made was that if you do not have standards of integrity, the system of regulation in Canada breaks down. There is a high onus and expectation.

DECISION:

60. That then is the crux of this case in so far as the question of the public interest is concerned. I recognize that this case is a long way from Wladyka and indeed some of the other cases cited by counsel in terms of the behaviour of the Defendant. For sure, there was not here the egregious conduct complained of in other cases. Yet, what the Defendant did was in my view indeed wrong and certainly improper. I am troubled by her participating in a transaction, which although she may have regarded as a private placement, was still a transaction (I consider it a trade as mentioned earlier) to the outside world and in particular to the Hutterite Colony which invested $1,000,000.00. She acted in a rather cavalier manner even if unintended. She gave to the Colony what I would call her moral imprimatur to this transaction by helping complete the GIC form, even writing the cheque. They trusted her and that trust had obviously had developed over a period of time as a result of her assisting the Colony in her health insurance business. I take the view that this was not the appropriate way to handle this kind of a transaction and that the Defendant ought to have been more forthright with the Colony as to whom they were placing the funds with; she ought to have disclosed more information about Heidebrecht. Koniuck-Petzold had to know that taking a cheque for $1,000,000.00 and giving it to Heidebrecht was, plain and simple, the wrong thing to do. She was, after all, the branch manager of Portfolio Strategies and this type of transaction could not have been foreign to her. Perhaps the Colony would not have cared, but the fact Heidebrecht was a bankrupt and was not registered, were not insignificant facts. Koniuck- Petzold had a duty to the Colony that required more care and attention be given to this large investment by the Colony. In her own way, although perhaps not intended, the Defendant misled her own client, the Hutterite Colony and that, in my opinion, is unforgivable. Moreover, Koniuck- Petzold ought to have disclosed the trade to her employer. All of these failures in my mind constitute a kind of conduct, although not egregious, represent non-adherence to a standard of conduct expected from a registrant. It is in the public interest that this kind of conduct be prevented from happening again in the future.

61. For these reasons I therefore find that The Defendant was in breach of the allegations made against her as set out in the Statement of Allegations set out in exhibit 2. I find that items b) through f) have been satisfied by the commission. What remains is for an adjudication as to the penalty to be made. I do find that pursuant to S. 19 (5), it is in the public interest to order that S. 19{1) of the Act does not, with respect to such of the trades referred to in that subsection, apply to Margaret Koniuck-Petzold and that subsection 19(2) does not, with respect to such of the securities referred to in that subsection, apply to Koniuck-Petzold.

62. The questions raised by the Commission as set out in the Notice of Hearing are contained in three sections of the Act, being s. 19(5) , S. 8 (1) and s.148.1(1) and as well question 4. Except for the application of s.19(5) which I have already addressed in this judgment, I will defer the answers to the other questions until counsel has had a chance to make representations.

"G.S. Posner"
G.S. Posner
Panel Chair