



Ontario
Securities
Commission
3S8

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
MARILYN DIANNE STUART**

STATEMENT OF ALLEGATIONS

(Subsections 127(1) and 127(10) of the *Securities Act*,
RSO 1990, c S.5)

A. OVERVIEW

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

B. FACTS

2. Staff make the following allegations of fact:

(i) Overview

3. On December 2, 2019, Marilyn Dianne Stuart (**Stuart**) pled guilty before the Honourable Justice D.S. Rose of the Ontario Court of Justice (the **OCJ**) to fraud over \$5000 contrary to section 380(1)(a) of the Criminal Code of Canada (**CCC**).
4. A sentencing hearing was subsequently held before Justice Rose who issued Reasons for Sentence on December 19, 2019 (the **Reasons for Sentence**), sentencing Stuart to a conditional sentence of two years less a day, to be served in the community, followed by probation for two years. Stuart was also ordered to make restitution to the MFDA Investor Protection Corporation in the amount of \$1.1 million.
5. The offences for which Stuart was charged arose from transactions, business or a course of

conduct related to securities.

6. Staff is seeking an inter-jurisdictional enforcement order reciprocating Stuart's conviction, pursuant to paragraph 1 of subsection 127(10) of the Act.
7. The offences for which Stuart was charged took place between January 2004 to May 31, 2013 (the **Material Time**).

(ii) The Respondent

8. Stuart is a resident of Keswick, Ontario.

Facts

9. Stuart has pled guilty to the facts as set out below.
10. During the Material Time, Stuart and her husband were the principals and representatives of W.H. Stuart Mutuals Ltd. (**WH Stuart**). Stuart was the co-owner and director of WH Stuart and related entities. Under the category of Mutual Fund Dealer with WH Stuart, Stuart was registered as a Trading Officer (until September 28, 2009), Dealing Representative (September 28, 2009 to May 9, 2013), Director and Officer (until May 9, 2013) and Ultimate Designated person (from November 20, 2009 to May 9, 2013).
11. During the Material Time, several individuals, consisting primarily of retired teachers and police officers, invested their commuted valued pensions with WH Stuart. They invested in the instruments marketed by WH Stuart as guaranteed investments with an annual interest rate of five percent to ten percent or as cash accounts. The investors had varying understandings of the specific investment product that they were purchasing but they all expected that their funds would be held in cash or cash equivalents or used for purchases of investment products that would return five to ten percent annually.
12. Ultimately, the funds were not used as promised. The monies invested were used to pay interest and return principal to other investors, essentially devolving in a Ponzi scheme. The monies were also transferred and deposited into the accounts of other entities and persons related to WH Stuart without the authorization of clients.

13. In September 2013, after an investigation by the Mutual Fund Dealers Association (MFDA), a bankruptcy order was made against WH Stuart. Through its Investor Protection Corporation, the MFDA compensated most of the investors, but only to the original amount of their principal investment. The total loss paid out by the MFDA following the bankruptcy of WH Stuart was approximately \$7.2 million.
14. All of the employee witnesses stated that Stuart had complete control over the finances of WH Stuart. Stuart had signing authority on all the WH Stuart accounts, and she had functional control of the bank accounts in which investor monies were deposited. Stuart directed operations including its financial affairs and also performed important regulatory functions such as client complaint handling and financial reporting to the MFDA.
15. Stuart was also part owner in a company called S21C Technologies Limited (**S21C**). The S21C software was the in-house computer database record system that was designed by Stuart and utilized by WH Stuart employees to manage their client's accounts. One of the main purposes of the S21C system was to give investors an ability to independently monitor their own accounts. In reality, S21C was part of the Ponzi Scheme. Stuart had full administrative rights to the data system and manipulated it to give investors the false impression that their funds were growing and could be redeemed, when in fact this was not true.
16. The accounting firm Deloitte conducted a tracing review of WH Stuart for the period of September 30, 2008 to May 31, 2013 (the **Tracing Period**). Deloitte focused its review on the investments of 10 clients in the investment program and concluded that these invested amounts were not used to purchase an actual investment product nor did the funds remain in a trust account in the clients' names.
17. Deloitte did not identify any repayment of investor funds from WH Stuart to the 10 clients during the Tracing Period for each deposit being traced. Deloitte found that \$1.1 million invested by the 10 clients was deposited into bank accounts held by WH Stuart and used as follows:
 - a. To fund operating expenses at each entity;

- b. To fund payments to related parties including Stuart and her immediate family or corporations under their control and WH Stuart employees and their spouses;
- c. To fund payments to other known clients; and
- d. To purchase investment products for other clients.

Stuart's Sentence

- 18. A sentencing hearing was held before Justice Rose on December 19, 2019. Stuart was sentenced to a conditional sentence of two years less a day, to be served in the community, followed by probation for two years for one count of fraud listed as count one on the Information.
- 19. In addition, pursuant to s. 380.2 of the CCC Stuart is prohibited for twenty years from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person.
- 20. Stuart was also ordered to pay restitution in the amount of \$1.1 million to the MFDA Investor Protection Corporation.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

- 21. Pursuant to paragraph 1 of subsection 127(10) of the Act, Stuart's conviction for offences arising from transactions, business or a course of conduct related to securities or derivatives may form the basis for an order in the public interest made under subsection 127(1) of the Act.
- 22. Staff allege that it is in the public interest to make an order against Stuart.
- 23. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

D. ORDER SOUGHT

- 24. Staff request that the Commission make the following inter-jurisdictional enforcement

order, pursuant to paragraph 1 of subsection 127(10) of the Ontario Securities Act, RSO 1990 c S.5 (the Act):

- (a) against Stuart that:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Stuart cease permanently;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Stuart be prohibited permanently;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Stuart permanently;
 - iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Stuart resign any positions that she holds as a director or officer of any issuer or registrant;
 - v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Stuart be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Stuart be prohibited permanently from becoming or acting as a registrant or promoter; and
- (b) such other order or orders as the Commission considers appropriate.

DATED this 12th day of January, 2021.

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