

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF THE INVESTMENT DEALERS ASSOCIATION OF
CANADA BY-LAW NO. 33**

AND

**IN THE MATTER OF AN APPLICATION BY CAROLANN STEINHOFF
FOR A HEARING AND REVIEW**

Hearing: October 29, 2002

**Panel: H. Lorne Morphy, Q.C. - Chair of the Panel
 Robert L. Shirriff, Q.C. - Commissioner**

**Counsel: Kate Wootton - For the Staff of the
 Ontario Securities Commission**

**Patricia A. Taylor - For the Staff of the British
 (via audio conference) Columbia Securities Commission**

**B. G. Lohmann - For the Investment Dealers
 Association of Canada**

**B. Bellmore - For Carolann Steinhoff
 K. Mitchell**

REASONS FOR DECISION

1. This is a motion brought by Staff of the Ontario Securities Commission to consider:
 - (a) whether the Ontario Securities Commission (the “OSC”) has jurisdiction under s. 21.1(4) or s. 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the “Act”) or the Investment Dealers Association of Canada’s By-Law No. 33 to hear the application of Carolann Steinhoff (“Steinhoff”); and
 - (b) if the OSC does have jurisdiction to hear the application by Steinhoff, should the OSC decline to exercise that jurisdiction in favour of the jurisdiction of the British Columbia Securities Commission (“BCSC”) as the more appropriate forum to resolve the matters in issue?
2. The motion by Staff is supported by the Investment Dealers Association of Canada (the “IDA”) and by Staff of the BCSC.
3. Carolann Steinhoff (“Steinhoff”) is a member of the IDA who lives and works in British Columbia. For some time her licence as an Investment Advisor has been subject to a strict supervision requirement while the Pacific District of the IDA investigates a number of complaints made against Steinhoff by clients.
4. The application by Steinhoff to the OSC is dated July 8, 2002. In that application she requests the following orders:
 - (a) a hearing and review of the decision, direction or requirement of the IDA that the Applicant’s licence be subject to the condition of strict supervision and of its administration of that decision, direction or requirement;
 - (b) an order removing the supervision requirement from the Applicant’s licence as an Investment Advisor;

- (c) a hearing and review of the IDA investigation into the complaints made against the Applicant and more particularly, the investigations into the complaints by Malcolm and Jacqueline Holt commenced on September 16, 1999, the complaint by Mary Conley commenced December 22, 1999, and the complaints by Wendy Rayner, Robin Burrell on behalf of Vernon Dawson (deceased), Paul Wilson and Mr. and Mrs. John Shea commenced October 3, 2000;
- (d) a hearing and review of the IDA's failure to complete the investigations into the complaints in a timely or fair manner, and to make any decision with respect to the complaints;
- (e) an order staying the investigations of the said complaints; and
- (f) such further and other relief as counsel may advise and the Ontario Securities Commission deem just pursuant to sections 21.1(4) and 21.7 of the *Securities Act*, R.S.O., c. S.5 and Bylaw 33 of the Investment Dealers Association of Canada.

5. On the return of the Staff motion, Steinhoff filed an affidavit and also gave *viva voce* evidence. She expressed concern and frustration over the fact that she had been subject to the strict supervision requirement for a substantial period of time and that in regard to the complaints against her, they had not been investigated in a timely fashion or brought to a hearing. This led to her filing her application with the OSC.

6. In regard to the condition of strict supervision, there was evidence on the motion that subsequent to the Steinhoff application to the OSC being filed, and prior to this motion by Staff of the OSC, the IDA had advised Steinhoff on August 26, 2002 that:

“The Pacific District Council of the Investment Dealers Association (“Council”) has accepted a proposal whereby the condition of strict supervision is to be lifted within six months unless Staff makes a specific recommendation to Council to extend the condition.

Council imposed strict supervision on the registration of Carolann Steinhoff pending the outcome of the investigation. As Staff has not

made a recommendation to extend the condition in this circumstance, the condition is removed effective immediately.”

7. Warren Fund, Vice-President, Member Regulation, western Canada of the IDA also filed an affidavit and gave *viva voce* evidence on the return of the motion. In his affidavit sworn on October 21, 2002, Warren Fund deposes:

“The Association is prepared to commence disciplinary action pursuant to Association By-law 20 against Ms. Steinhoff with respect to 2 of the 6 complaints referred to in paragraph 16 of this my affidavit. The Association has not commenced such proceedings as it was awaiting the outcome of Ms. Steinhoff’s application before the OSC.”

8. Assuming the IDA proceeds expeditiously with these two complaints, as we expect it will, that, together with the removal of the strict supervision condition, should alleviate in total, if not in large measure, the situation that led to Steinhoff filing her application with the OSC.

9. Having regard to this, on the hearing of the motion counsel for Steinhoff was asked what relief was now being sought from the OSC to which counsel replied:

“I would be asking for an order of this Commission to direct the IDA to turn over their entire files to this Commission on this file -- on this matter; the Commission to look at the work they did or failed to do on this; the way in which this complaint was handled; and to make a determination whether or not this complaint ought to go forward.”

10. With respect to s. 21.7 of the *Act*, we are of the view that the OSC does not have jurisdiction under this section to hear and grant the relief that Steinhoff requests in that there is no decision as required by s. 27(1) of the *Act* to review. On the motion, it was argued on behalf of Steinhoff that she was relying on the decision by the IDA to commence the investigation against her and the decision to maintain an on-going investigation to satisfy the requirements of s. 21.7(1) of the *Act*. In response to this submission, we were referred to the decision of *Re Ironside 2002*, ABSECCOM REA-895918.7. Relying on that, it was submitted that to be a

decision, as used in s. 21.7(1) of the *Act*, requires that there be a formal decision made after a hearing and not simply an administrative decision by Staff such as whether or not to commence an investigation or to take certain actions during an investigation. With that submission we agree and we find that there has been no decision rendered in this matter that could be the subject of a hearing and review under s. 21.7(1) of the *Act*.

11. With respect to s. 21.1(4) of the *Act*, having regard to what has transpired since the filing of the Steinhoff application to the OSC, as noted in paragraphs 6 and 7 supra, we do not think it is necessary to decide at this time whether there is any basis for the OSC having jurisdiction to consider the relief requested by Steinhoff. Because of the close nexus of the matters raised in the application to British Columbia and because we expect the Pacific District of the IDA will proceed expeditiously with the two remaining complaints involving Steinhoff, if there are matters that Steinhoff desires to pursue, we believe that the BCSC is the more appropriate forum.

Dated at Toronto, this 6th day of December, 2002.

“H. Lorne Morphy”

“Robert L. Shirriff”
