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Securities
Commission

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

- AND -

**IN THE MATTER OF AN APPLICATION FOR A HEARING AND REVIEW
OF THE DECISION OF DIRECTOR
EREZ BLUMBERGER DATED FEBRUARY 28, 2012**

- AND -

**IN THE MATTER OF THE APPLICATION FOR REGISTRATION BY
ANNA PYASETSKY**

**REASONS AND DECISION
(Section 8 of the Act)**

Hearing: September 17, 18, 19 and 26, 2012
October 15, 2012

Decision: March 28, 2013

Panel: Edward P. Kerwin - Commissioner and Chair of the Panel

Appearances: Swapna Chandra - For Staff of the Commission
Mark Skuce

Julia Lipovetsky - For Anna Pyasetsky
Rodney Brown

TABLE OF CONTENTS

I. OVERVIEW	1
A. Introduction	1
B. The Applicant	1
C. Background Facts	1
D. Reasons for the Director’s Decision to Refuse Registration	3
E. Application for Hearing and Review pursuant to Subsection 8(2) of the Act	4
II. HEARING AND REVIEW PURSUANT TO SECTION 8 OF THE ACT	4
III. PRELIMINARY ISSUES	5
A. Representation	5
1. Request for Lipovetsky to act as Representative.....	5
2. Change in Representation.....	6
3. Staff’s Motion to Remove Lipovetsky as the Applicant’s Representative	7
B. Request for an Interpreter	7
IV. ISSUES	7
V. THE POSITIONS OF THE PARTIES	7
A. The Applicant	7
B. Staff	8
VI. OVERVIEW OF EVIDENCE	9
A. Overview	9
B. Witnesses	13
1. Staff Witnesses	13
2. Witnesses for the Applicant.....	15
VII. ANALYSIS	16
A. Legal Framework for Registration	16
1. Registration under the Act.....	16
2. Public Interest Jurisdiction.....	17
3. Burden of Proof	18
B. Suitability	19
1. Integrity	19
(a) The Law	19
(b) Analysis	21
(c) Findings.....	25
VIII. CONCLUSION	26

REASONS AND DECISION

I. OVERVIEW

A. Introduction

[1] This is an application (the “**Application**”) by Anna Pyasetsky (the “**Applicant**”), pursuant to subsection 8(2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”), for a hearing and review (the “**Hearing and Review**”) by the Ontario Securities Commission (the “**Commission**”) of a decision of a Director of the Commission (the “**Director**”) dated February 28, 2012 (*Re Pyasetsky* (2012), 35 O.S.C.B. 2092) (the “**Director’s Decision**”).

[2] The Director refused the application of the Applicant to be registered as a dealing representative of a mutual fund dealer. The Director found that the Applicant lacks the requisite integrity to be registered as a securities professional to deal with the investing public because she knowingly failed to disclose her prior employment with a “boiler room” in her registration application, misled Staff of the Commission (“**Staff**”) in a voluntary interview (the “**Voluntary Interview**”) and further impugned her integrity by claims she made at the Opportunity to be Heard under section 31 of the Act (the “**OTBH**”) held by the Director.

[3] The Hearing and Review commenced on September 17, 2012 and continued on September 18, 19 and 26, 2012. On September 26, 2012, the Applicant participated by teleconference in accordance with Rule 10.2 of the Commission’s *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the “**Rules of Procedure**”) and requested an adjournment on the basis that she was ill. I granted the adjournment request and adjourned the Hearing and Review to October 15, 2012. The Hearing and Review resumed on October 15, 2012. Following the completion of the evidence, Staff and the Applicant made closing submissions and the Applicant filed written submissions at the close of her oral submissions.

B. The Applicant

[4] The Applicant is seeking registration as a dealing representative of a mutual fund dealer. According to the Applicant’s Memorandum of Fact and Law, the Applicant’s application for registration is sponsored by TD Investment Services Inc.

[5] The Applicant has not been previously registered under the Act.

C. Background Facts

[6] From May to June 2008, the Applicant was employed in connection with what Staff later alleged, and what the Commission subsequently found, to be a “boiler room” operation involving a fraudulent distribution of securities of New Gold Limited Partnership (“**New Gold**”) by, among others, an entity called Global Energy Group, Ltd. (“**Global Energy**”) (the investment scheme is defined in these reasons as the “**Global Energy Investment Scheme**”). The Applicant was employed as a “qualifier” to telephone prospective clients to solicit their interest in purchasing limited partnership units of New Gold. Her employment ended following the execution of search warrants at a number of premises of companies related to the Global Energy Investment Scheme by Staff on June 25, 2008.

[7] The Applicant is *not* named as a respondent in any enforcement proceeding before the Commission. However, Staff did commence enforcement proceedings by filing a Statement of Allegations, dated June 8, 2010, and an Amended Statement of Allegations, dated January 23, 2012, against a number of individuals and companies, including Global Energy, New Gold and Vadim Tsatskin (“**Tsatskin**”). Tsatskin, who was one of the directing minds of Global Energy, pled guilty before the Ontario Court of Justice to one count of fraud in connection with the sale of the securities of New Gold to members of the public by Global Energy, its salespersons or agents, contrary to subsections 122(1)(c) and 126.1(b) of the Act. Further, in its reasons and decision dated December 21, 2012 (*Re Global Energy Group, Ltd.* (2013), 36 O.S.C.B. 202), the Commission found that the respondents in the enforcement proceeding engaged in the sale and distribution of securities of New Gold without complying with the registration and prospectus requirements, contrary to subsections 25(1)(a) and 53(1) of the Act. The Commission further found that certain of the respondents, including Tsatskin and Global Energy, acted fraudulently, contrary to subsection 126.1(b) of the Act.

[8] The Applicant disputes that she was an employee of Global Energy and takes the position that she was employed by an entity called GVC Marketing Ltd. (“**GVC Marketing**”). GVC Marketing was not a respondent in the enforcement proceeding before the Commission. It is not disputed, however, that GVC Marketing is related to Global Energy in connection with the Global Energy Investment Scheme and that the Applicant acted as a qualifier to solicit interest in securities of New Gold.

[9] In the Memorandum of Fact and Law filed by the Applicant, the Applicant recounted that, on October 21, 2011, she submitted an application (the “**Registration Application**”) to the Commission, sponsored by TD Investment Services Inc., seeking to be registered as a dealing representative of a mutual fund dealer.

[10] The Registration Application was submitted electronically in Form 33-109F4 – *Registration of Individuals and Review of Permitted Individuals* (“**Form 33-109F4**”). In the Registration Application, the Applicant did not disclose that she had worked for Global Energy or GVC Marketing.

[11] On November 16, 2011, Staff conducted a voluntary interview with the Applicant to discuss the Registration Application (the “**Voluntary Interview**”). During the Voluntary Interview, the Applicant was asked questions and provided answers regarding her employment history, including her previous employment with Global Energy.

[12] By two letters dated December 19, 2011 and January 30, 2012 to the Applicant, Staff informed the Applicant that it recommended to the Director that the Applicant’s application for registration be denied. The letter dated December 19, 2011 sets out the following two grounds for denying the Applicant’s application for registration:

1. You knowingly failed to disclose in the [Registration] Application that you were previously employed by Global Energy Group, Ltd.; and
2. On November 16, 2011 you were informed by Staff that the employment section of your [Registration] Application (“Item 11 – Previous Employment and Other Activities”) was incomplete and

needed to be updated, however as of the date of this letter the Application has not been updated in this regard.

[13] The letter dated January 30, 2012 sets out three additional grounds for denying the Applicant's application for registration:

3. Staff alleges that by trading in securities of New Gold Limited Partnership, you conducted registerable activity without registration, contrary to s. 25(1) of the *Securities Act* (Ontario) (the Act);
4. Staff alleges that on November 16, 2011, during an examination under affirmation, you falsely represented to Staff that you had never heard the terms Global Energy Group Limited or New Gold Limited Partnership, and falsely denied knowing that you had worked for a company bearing the name Global Energy Group Limited, contrary to s. 122(1) of the Act;
5. Staff alleges that your registration would be objectionable in light of your employment with Global Energy Group Limited, your failure to disclose that employment in the [Registration] Application, and your misrepresentation to Staff regarding that employment.

[14] The Applicant exercised her right for an OTBH pursuant to section 31 of the Act and an OTBH was held before the Director on February 10, 2012. At the OTBH, the Applicant submitted an amended registration application (the "**Amended Registration Application**"). As a result, Staff withdrew the second ground for denying the Applicant's registration, which relates to the Applicant's failure to update the Registration Application.

[15] The Director's Decision was issued on February 28, 2012.

D. Reasons for the Director's Decision to Refuse Registration

[16] The Director found that the Applicant knowingly omitted her employment with Global Energy in the Registration Application and that she misled Staff during the Voluntary Interview:

After considering the submissions of Staff and the Applicant and after closely considering the Applicant's testimony, including her candour and demeanour in answering questions posed by Staff and myself at the OTBH proceeding, I have concluded that the registration of the Applicant should be refused. I find that the Applicant knowingly omitted her employment history with Global [Energy] and that in the course of the registration application process she made numerous misrepresentations to OSC Staff. Accordingly, I find that the Applicant lacks the requisite integrity to be a securities professional.

(Director's Decision, *supra*, at para. 10)

[17] The Director further found that the Applicant impugned her credibility during the OTBH:

Moreover, at the OTBH proceeding, the Applicant further impugned her integrity by claiming she technically never worked at Global [Energy], but instead for GVC Marketing, which was the firm that was paying her telemarketing salary. However, even her amended registration application – which she acknowledged filling out herself after the [Voluntary] Interview with Staff – stated under ‘previous employment’ that she worked for “GVC Marketing Inc./Global Energy Group”.

Another particularly troubling aspect of the Applicant’s testimony, which in my view also impugned her integrity, was her claim – made for the first time at the OTBH proceeding – that she intentionally left off her initial registration application jobs with less than four months in duration, pursuant to her interpretation of an instruction in the application form. When asked why she did not explain this reason at the [Voluntary] Interview, she claimed that at the [Voluntary] Interview she forgot that she relied on this section of the application form as the basis for not disclosing her employment with Global [Energy].

(Director’s Decision, *supra*, at paras. 14 and 15)

[18] The Director concluded that “the Applicant has not demonstrated the requisite integrity to be licensed to deal with the investing public”, because not only did she “fail the first test contemplated by the Commission in *Re Thomas*, she failed a second test by virtue of the responses she provided to Staff at the [Voluntary] Interview. And she failed a third test by not being forthcoming at the OTBH proceeding” (Director’s Decision, *supra*, at paras. 17 and 18).

[19] The Director noted that “[a]lthough Staff also alleged as an independent ground for refusal of registration the fact that the Applicant engaged in registerable activity in breach of subsection 25 of the Act..., I do not find it necessary to make a finding regarding whether her telemarketing activities constituted registrable activity” (Director’s Decision, *supra*, at para. 19).

E. Application for Hearing and Review pursuant to Subsection 8(2) of the Act

[20] By e-mail dated March 22, 2012, the Applicant requested a hearing and review of the Director’s Decision pursuant to subsection 8(2) of the Act. The Application was filed in accordance with Rule 14 of the Rules of Procedure.

[21] The Applicant takes the position that she did not knowingly fail to disclose her employment with Global Energy or GVC Marketing in the Registration Application, nor did she make misrepresentations to Staff during the Voluntary Interview.

II. HEARING AND REVIEW PURSUANT TO SECTION 8 OF THE ACT

[22] Section 8 of the Act governs a hearing and review of a decision of the Director. It provides that:

8. (1) Review of decision – Within 30 days after a decision of the Director, the Commission may notify the Director and any person or company directly affected of its intention to convene a hearing to review the decision.

(2) Review of Director’s decisions – Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.

(3) Power on review – Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

(4) Stay – Despite the fact that a person or company requests a hearing and review under subsection (2), the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review.

[23] Pursuant to subsection 8(3) of the Act, the Commission in a hearing and review has the power to confirm the decision under review or make such other decision as the Commission considers proper. The case law interpreting this subsection has established that, in a hearing and review of a Director’s decision, a panel of the Commission may substitute its own decision for that of the Director (*Re Istanbul* (2008), 31 O.S.C.B. 3799 (“*Istanbul*”) at para. 14). As the Commission stated in *Re Triax Growth Fund Inc.* (2005), 28 O.S.C.B. 10139 at para. 25, “when conducting a review of the Director’s decision pursuant to section 8 of the Act, [the Commission is] not bound in any way by the Director’s determination”.

[24] It is also well established in the Commission’s jurisprudence that a review of a Director’s decision pursuant to section 8 of the Act is a hearing *de novo*. As such, this is a fresh consideration of the matter, as if it had not been heard before and no decision had been previously rendered. An applicant does not have the onus of demonstrating that the Director was in error in making the decision (*Istanbul, supra*, at para. 15; and *Re Biocapital Biotechnology* (2001), 24 O.S.C.B. 2843 (“*Biocapital*”) at p. 2846).

[25] During the Hearing and Review, the Applicant made a number of submissions regarding the OTBH and the Director’s Decision, including that the Director was partial, that the Applicant’s evidence and arguments were disregarded and that the Director’s Decision was not substantiated by evidence. These submissions are not supported by the evidence before me. In any event, the hearing and review of a decision of a Director is a hearing *de novo* and the Commission may substitute its own decision for that of the Director.

III. PRELIMINARY ISSUES

A. Representation

1. Request for Lipovetsky to act as Representative

[26] On September 18, 2012, the Applicant, who was not represented by legal counsel at the Hearing and Review, requested that Julia Lipovetsky (“**Lipovetsky**”), a friend of the Applicant, be permitted to act as her representative at the Hearing and Review. Staff did not object to this request in the interest of allowing the Applicant to have assistance in presenting her evidence.

[27] Rule 1.7.1 of the Rules of Procedure provides that “a party may be self-represented or may be represented by a representative”. A “representative” is defined in Subrule 1(1) of the Rules of Procedure to mean, “in respect of a proceeding to which the Rules [of Procedure] apply, a person authorized under the *Law Society Act*, R.S.O. 1990, c. L.8, as amended, to represent a person in a proceeding”.

[28] Subsection 26.1(2) of the *Law Society Act*, R.S.O. 1990, c. L.8, as amended (the “**LSA**”) establishes that “no person, other than a licensee whose licence is not suspended, shall hold themselves out as, or represent themselves to be, a person who may practise law in Ontario or a person who may provide legal services in Ontario”. A “licensee” is defined in subsection 1(1) of the LSA to mean: (a) a person licensed to practise law in Ontario as a barrister and solicitor, or (b) a person licensed to provide legal services in Ontario.

[29] Lipovetsky is not a licensee as defined in subsection 1(1) of the LSA. However, subsection 26.1(5) of the LSA states that “[a] person who is not a licensee may practise law or provide legal services in Ontario if and to the extent permitted by the by-laws”.

[30] Paragraph 5 of subsection 30(1) of By-Law 4 made pursuant to subsections 62(0.1) and (1) of the LSA permits a “friend” with the following characteristics to provide legal services without a license:

Acting for friend or neighbour

5. An individual,

- i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
- ii. who provides the legal services only for and on behalf of a friend or a neighbour,
- iii. who provides the legal services in respect of not more than three matters per year, and
- iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

[31] After hearing and considering the submissions by the Applicant and Staff, I permitted Lipovetsky to act as a representative for the Applicant pursuant to this exemption.

2. Change in Representation

[32] By e-mail dated September 22, 2012 and at the Hearing and Review on September 26, 2012, the Applicant advised the Panel that Lipovetsky would no longer represent her, and that she planned to request that another individual be permitted to act as her representative. I requested that the Applicant provide the Office of the Secretary and Staff with the name and contact information of her proposed representative and, if the proposed representative is not a licensee under the LSA, submissions in support of her request for changing representation by the close of business on September 28, 2012. By e-mail dated September 27, 2012, the Applicant requested that Rodney Brown

(“**Brown**”), a friend of the Applicant, be permitted to act as her representative and provided his contact information in accordance with Rule 1.7.3 of the Rules of Procedure.

[33] When the hearing reconvened on October 15, 2012, I permitted Brown to act as a representative for the Applicant for the same reasons set out in paragraphs [27] to [31] above with respect to Lipovetsky.

3. Staff’s Motion to Remove Lipovetsky as the Applicant’s Representative

[34] On October 15, 2012, I heard a motion by Staff to remove Lipovetsky as the representative for the Applicant. The Applicant indicated that she did not oppose Staff’s motion. Having considered the submissions from Staff and the Applicant, and in particular, the Applicant’s submission that she did not oppose the motion, as well as taking into account the Applicant’s request for change in representation, I ordered that Lipovetsky be removed as the representative for the Applicant.

B. Request for an Interpreter

[35] Prior to the Hearing and Review, the Applicant requested that an interpreter in the Russian language be provided at the Commission’s expense. The Commission refused that request in accordance with Rule 10.5 of the Rules of Procedure, which provides that:

If a party requires an interpreter for a language other than English or French, the party shall notify the Secretary as soon as possible, and in any event, at least 30 days before the hearing, and the Secretary will arrange for an interpreter at the requesting party’s expense.

[emphasis added]

[36] On September 19, 2012, the third day of the Hearing and Review, the Applicant requested that Lipovetsky be permitted to act as an interpreter in the Russian language to assist the Applicant’s father with his testimony. Staff submitted that it is not desirable to have Lipovetsky act as an interpreter because she was a witness in the Hearing and Review and would not be an impartial interpreter.

[37] Lipovetsky is a friend of the Applicant, testified on behalf of the Applicant at the Hearing and Review and, at the time of this request, was acting as the representative for the Applicant at the Hearing and Review. Based on her lack of impartiality, I refused the Applicant’s request for Lipovetsky to act as an interpreter.

IV. ISSUES

[38] The issue before me is whether the Applicant has the requisite integrity to be registered as a dealing representative of a mutual fund dealer, or whether her registration is otherwise objectionable, in light of her disclosure to the Commission regarding her prior employment with Global Energy or GVC Marketing.

V. THE POSITIONS OF THE PARTIES

A. The Applicant

[39] The Applicant submits that she does not lack the integrity to be registered as a dealing representative of a mutual fund dealer. According to the Applicant, she considers herself a person of integrity who has always “earned an honest living and did not bend

any rules” (Hearing Transcript dated September 17, 2012 at pp. 39 and 40). She submits that, as an immigrant, she studied and worked diligently to overcome language barriers and to complete her education. She submits that she was a good and dedicated employee of TD Canada Trust as a customer service representative and a financial services representative before her registration was denied by the Commission.

[40] The Applicant acknowledges that her disclosure in the Registration Application was incomplete. She admits that she should have taken due care in completing the Registration Application. She submits that she has now learned the importance of attention to detail, particularly in her chosen profession. It is the Applicant’s position, however, that she did not wilfully fail to disclose her previous employment with Global Energy or GVC Marketing in the Registration Application, nor did she mislead Staff during the Voluntary Interview. She submits that she has been “sincere, forthcoming, open, and cooperative with the Commission from day 1” (Hearing Transcript dated September 17, 2012 at p. 42). She further submits that she was not aware of the nature of the business of Global Energy or GVC Marketing until the Voluntary Interview and there was no motive for her to mislead the Commission. She takes the position that she will not admit to something that she has not done to save her career.

[41] The Applicant submits that the denial of her registration is effectively a life time ban from her chosen profession and has placed her entire future into jeopardy. She submits that her mental health and her parents’ health were also adversely affected by the denial of her registration.

[42] The Applicant submits that she is not a risk to the investing public. She submits that she is “professional” and has “years of proven experience building relationship with clients by always striving to act in their best interest and conducting myself with integrity”(Hearing Transcript dated September 17, 2012 at p. 41).

[43] Although the Applicant made extensive submissions alleging misconduct on the part of Staff in the process of reviewing her application to be registered, including that Staff acted in bad faith, abused its power, attempted to extort a false confession from the Applicant and slandered the Applicant’s reputation, I am not persuaded that there is a basis to support those submissions of the Applicant.

B. Staff

[44] Staff withdrew the second ground for refusing the Applicant’s registration, that is, her failure to update the Registration Application as requested by Staff during the Voluntary Interview. Staff further advised the Panel that no evidence would be led with respect to the third ground, that is, that the Applicant engaged in trading New Gold securities without registration contrary to subsection 25(1) of the Act.

[45] Staff recognizes that the Applicant is young, is at the beginning of her career and has made some notable efforts in her education and in her career choices to build and advance a career in the securities industry. Staff says that, accordingly, it has not at any stage treated the Application lightly. Staff takes the position, however, that it has not been able to obtain a sense of comfort or to achieve a level of confidence in the Applicant’s integrity to register the Applicant throughout their interaction. It is Staff’s

position that the Applicant does not have the integrity required for registration and that her registration is otherwise objectionable for the reasons that follow.

[46] First, Staff submits that an assessment of the integrity of the Applicant begins with the Registration Application. Staff submits that the Panel has heard evidence that the Registration Application did not contain full, true and plain disclosure. Staff further submits that the disclosure in the Amended Registration Application, which was filed at the OTBH and at the Hearing and Review, remains incomplete.

[47] In Staff's submission, however, Staff's recommendation to refuse the registration of the Applicant has never been based alone on the type of information or due diligence that should be exercised in completing the application. Staff submits that, throughout the application process, including the Voluntary Interview, the OTBH and the Hearing and Review, the Applicant offered numerous contradictory explanations regarding the incomplete disclosure in the Registration Application. These explanations, according to Staff, ranged from "I don't remember" to "I will never forget" to "not in my active memory" to "I chose carefully what companies I wanted to be associated with" to "I had nothing to do with the fraud" (Hearing Transcript dated October 15, 2012 at pp. 144 and 145). Staff submits that there was no consistent or credible explanation at any stage, nor did the Applicant make any meaningful acknowledgement of her shortcomings.

[48] It is also Staff's submission that the Applicant has demonstrated a complete lack of accountability during the application process. Staff submits that the Applicant is defensive during the proceedings, and to the Applicant, every instance where the Applicant is not happy with the way things have proceeded is somebody else's fault. Staff submits that, for example, the Applicant blamed Staff for her failure to attend the Voluntary Interview with a lawyer although she was invited by Staff to bring one. Staff submits that the Applicant also maintained that Staff provided her with misleading instructions to update the Registration Application although she did not seek further instructions from Staff and failed to follow the instructions provided by her employer. In Staff's view, there is no comfort that the Applicant would be accountable to her clients if she is registered, especially in the event that the portfolio on which she advises her client is unsuccessful.

[49] Staff submits that the Applicant does not yet understand what it means to be a registrant. In particular, it is Staff's submission that she failed in her duties as a potential registrant at every step of these proceedings, whether it was in the disclosure she made in writing, the disclosure she made in person, her interaction with Staff or her ability to understand the obligations of a registrant in interacting with the regulator or the investing public. While there may come a time when the Applicant would be suitable for registration, Staff submits that the Applicant had some significant work to do before she would be able to reach the level of responsible business judgment that is expected of a registrant.

VI. OVERVIEW OF EVIDENCE

A. Overview

[50] At the outset of the Hearing and Review, I was advised that Staff and the Applicant reached an agreement that Staff would proceed with its case first, followed by

the Applicant. The Hearing and Review proceeded on this basis and I heard from two Staff witnesses, Tom Anderson (“**Anderson**”) and Toni Sargent (“**Sargent**”), and four witnesses for the Applicant, a friend of the Applicant who will be referred to as “**N.S.**” in these reasons, Lipovetsky, the Applicant’s father and the Applicant on her own behalf.

[51] During the Hearing and Review, a number of issues arose with respect to the calling of witnesses and admissibility of evidence. First, at the commencement of the Hearing and Review, the Applicant indicated that she wished to call Mark Skuce (“**Skuce**”) and George Gunn (“**Gunn**”) as her witnesses, a request opposed by Staff. Skuce is a Legal Counsel with the Compliance and Registration (the “**CRR**”) Branch of the Commission. George Gunn is a manager of the CRR Branch.

[52] The Applicant explained that she wished to question Skuce regarding the manner in which the Voluntary Interview was conducted, the recommendations that were made by Staff to the Director to refuse the application of the Applicant to be registered and his submissions at the OTBH. She further explained that she wished to question Gunn because he approved Staff’s recommendation to the Director that the Applicant’s registration be refused.

[53] I refused the Applicant’s request to call Skuce and Gunn as her witnesses. The testimony that the Applicant sought to elicit from Skuce and Gunn, described in paragraph [52] above, is not probative of the issue before me which is her suitability to be registered.

[54] During Staff’s case, Staff sought to introduce, through Anderson, a Staff investigator described in further detail in paragraph [70] below, a photograph showing lists titled “the little boys” and “the big boys” and found during the execution of search warrants, which purport to show the real names of staff working in the “boiler room” and their aliases. This photograph is new evidence not relied on at the OTBH and was only presented to the Applicant for the first time at the Hearing and Review. Staff submitted that the photograph was discovered following the deadline for new evidence, however, the evidence could only have reasonably been found after the Applicant’s witness list was submitted.

[55] While the new evidence was not filed in accordance with the time requirement set out in Rule 14.5 of the Rules of Procedure, the Applicant indicated that she did not object to its admission as evidence. I admitted this evidence, although I do not find it necessary to rely on it in rendering my decision.

[56] The Applicant sought to admit the written statements of two of her friends who could not attend the Hearing and Review because they do not reside in Toronto. While Staff objected to these written statements being introduced into evidence, I admitted both statements pursuant to subsection 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the “**SPPA**”), which permits a tribunal to admit evidence that may not be otherwise admissible in a court, including hearsay evidence. I note that one of the statements, which was made by a friend of the Applicant, presents evidence that is repetitive of the evidence heard from Lipovetsky regarding a telephone conversation. I accept this evidence to the extent that it is corroborative of Lipovetsky’s evidence that the telephone conversation took place. I place no weight on the other statement, which was made by another friend of the Applicant, because the statement relates to substantive

issues of the Applicant's employment in the "boiler room" and could not be tested by cross-examination.

[57] The Applicant's father testified on September 19, 2012 and gave evidence, among other things, about the Applicant's representation to him regarding how she recalled the term "GVC Marketing" following the Voluntary Interview. By e-mail dated September 24, 2012, the Applicant's father indicated that he recalled the entire context relating to that evidence and requested that he be permitted to give further testimony on this point.

[58] I refused the request to recall the Applicant's father as a witness. The Applicant's father had an opportunity to provide his evidence in-chief, was cross-examined and was given an opportunity to be re-examined. While the Applicant's father had some difficulty with the English language, the Panel allowed him to testify with the assistance of notes, and he appeared to have given evidence to the best of his ability at the time of his testimony. I was also concerned that there appeared to have been a discussion between the Applicant and her father about his evidence following his testimony in which he was "reminded of what he forgot" (Hearing Transcript dated October 15, 2012 at p. 53). In these circumstances, I concluded that it would not be appropriate to recall the Applicant's father as a witness.

[59] Finally, Staff sought to admit the transcript of the Voluntary Interview as evidence that the Applicant did not disclose her previous employment with Global Energy or GVC Marketing in the Registration Application and as evidence that the Applicant misled Staff during the Voluntary Interview. The Applicant made extensive submissions challenging the admissibility of the transcript of the Voluntary Interview which I attempt to summarize below.

[60] The Applicant submitted that Staff counsel conducted the Voluntary Interview with a bias arising from the fact that the Applicant's name had been entered into an enforcement database following the execution of the search warrants at premises of companies related to the Global Energy Investment Scheme. She further submitted that Staff is biased because the Applicant's ethnic background is the same as the directing minds of the "boiler room" operation.

[61] The Applicant submitted that her right to counsel was violated. She submitted that she was not advised of the purpose of the Voluntary Interview, namely, that there appeared to be a problem with the Registration Application. The Applicant also submitted that it was only "hinted" to her that she may attend with counsel and she interpreted Staff's invitation to attend with a lawyer as a mere formality. The Applicant further submitted that Staff also mischaracterized the Voluntary Interview as an "interview" rather than "an examination under affirmation" and the Applicant attended the Voluntary Interview thinking it was something similar to a job interview and in anticipation of receiving her registration. She submitted that, as a result, she thought that there was no reason for her to bring a lawyer to the interview.

[62] The Applicant submitted that her right to counsel was also violated because her request for a lawyer was denied. During the Voluntary Interview, she indicated to Staff that "I really needed a lawyer with that" (Transcript of the Voluntary Interview dated November 16, 2011 at p. 29). In her submission at the Hearing and Review, when the Applicant uttered the word "lawyer", it was Staff counsel's responsibility to stop the

interview, ask the Applicant why she felt that she needed a lawyer and ask her whether she would like to proceed with the interview or retain a lawyer. According to the Applicant, however, Staff counsel “very much changed his tone of voice and changed his tactic and tried to sort of play the good cop in order to get me not to exit the room and to stay for the interview” (Hearing Transcript dated September 17, 2012 at p. 172). She submitted that she cooperated with Staff and stayed for the duration of the entire interview because she was “just nice enough to stay” (Hearing Transcript dated September 17, 2012 at p. 170).

[63] The Applicant submitted that the Voluntary Interview was conducted in bad faith for the following reasons.

- (a) The Applicant submitted that Staff counsel set the Applicant up for failure by providing misleading instructions to update the Registration Application because, according to the Applicant, the electronic system did not allow her to update or amend the Registration Application.
- (b) The Applicant submitted that Staff asked misleading questions that were intended to extort false admissions. For example, questions were asked using the name “Global Energy” rather than “GVC Marketing”, the latter of which the Applicant claims to be the name of the company for which she worked.
- (c) The Applicant submitted that Staff did not ask her to bring or review any documents prior to the Voluntary Interview. Staff did not show her a copy of the Registration Application during the Voluntary Interview and only showed her a summary of her prior employment history. The Applicant submitted that, as a result, she was not prepared to answer questions that required reference to documents.
- (d) The Applicant submitted that she felt that she was being intimidated and interrogated by Staff. She indicated to Staff that she was feeling nervous and uncomfortable but, in her submission, her comments were ignored.
- (e) The Applicant submitted that Staff did not provide her with an interpreter and spoke quickly during the Voluntary Interview.
- (f) The Applicant submitted that Staff “refuse[d] to reply to my questions, interrupt[ed] and cut[] me off, so not allowing me to fully express my points” (Hearing Transcript dated September 17, 2012 at p. 35).

[64] Staff submitted that the Applicant was advised of the purpose of the Voluntary Interview, which was to discuss the Registration Application. By e-mail dated November 4, 2011, the subject line of which stated “Application for registration”, Skuce indicated to the Applicant that he wished to interview the Applicant “about [her] application”. The e-mail also informed the Applicant that:

...[the interview] would proceed on an entirely voluntary basis (that is, you are under no obligation to accept my request for an interview). If you feel more comfortable bringing a lawyer with you, you may do so if you like, but you are under no obligation to do so if you don’t want to.

[65] It was Staff's submission that, at the outset of the Voluntary Interview, the Applicant was once again advised that the interview was voluntary, that she was not interviewed "under compulsion of law", that she could leave any time she wished and that she did not "have to answer any of [Staff's] questions" (Transcript of the Voluntary Interview dated November 16, 2011 at p. 5).

[66] Staff submitted that, while the Applicant made a statement of "I really needed a lawyer with that", it was in the context of discussing her employment with TD. The Applicant made no other requests for a lawyer, nor did she express that she did not wish to answer questions or that she wished to leave the Voluntary Interview. It was Staff's submission that it would not be appropriate for Staff to advise the Applicant at any time whether she should have a lawyer or not.

[67] While Staff acknowledged that the Registration Application was not presented to the Applicant during the Voluntary Interview, Staff submitted that the Applicant was provided with a print-out of the National Registration Database showing the Applicant's employment history as she had disclosed in the Registration Application.

[68] Staff also pointed to the fact that the Applicant did not request an interpreter prior to or during the Voluntary Interview. To summarize, it was Staff's submission that the Voluntary Interview was conducted in the normal course in which all cautions were provided on the record.

[69] I admitted the transcript of the Voluntary Interview. Having considered the submissions by Staff and the Applicant, I was not persuaded that there was a basis to exclude the Voluntary Interview, which is relevant evidence to determine the suitability of the Applicant to be registered.

B. Witnesses

1. Staff Witnesses

[70] Anderson is an investigator with the Enforcement Branch of the Commission assigned to a team specializing in "boiler room" style fraud investigations. Anderson gave testimony about his investigation of the Global Energy Investment Scheme which involved the sale of limited partnership units of New Gold by Global Energy and others. His evidence is that the Global Energy Investment Scheme involved a number of corporate entities, including Global Energy, which is named as a respondent in an enforcement proceeding before the Commission, and GVC Marketing, which is not subject to any Commission proceedings.

[71] Anderson testified about the execution of search warrants on June 25, 2008 at premises of companies related to the Global Energy Investment Scheme. According to Anderson, when the search warrants were executed, Staff loudly announced its presence and the fact that Staff was executing a search warrant. He also testified that it was clearly communicated to the occupants at each of the premises that the search warrant was executed on behalf of Staff and that a copy of the search warrant was provided to the senior employee at the premises.

[72] Search warrants were executed at four premises, which were Suites 103, 200 and 400 in a location on Steeles Avenue West in North York (referred to in these reasons as "**Suite 103**", "**Suite 200**" and "**Suite 400**", respectively, and the "**Steeles Avenue West**

Premises”, collectively) and another premises located on Tandem Road in Concord (the “**Tandem Road Premises**”). At the time of the execution of the search warrants, the Applicant was present in Suite 103, which Anderson described in evidence as the suite occupied by the qualifiers, and her name was recorded by Staff. Anderson further testified that Staff located a number of employee records in Suite 400.

[73] During the Hearing and Review, Anderson identified documents seized and photographs taken during the course of the execution of the search warrants. They include:

- (a) An “employee information form” with the heading “Global Energy Group” was found in Suite 400. This document contains handwritten information of the Applicant, including her name, social insurance number and contact information. The form appears to be signed and dated by the Applicant on May 21, 2008.
- (b) “Time sheets” with the heading “GVC Marketing Inc.” were found in Suite 400. These documents have the name “Anat Pyasetsky” handwritten on them and appear to be setting out the dates and the amount of time the Applicant worked.
- (c) The copy portion of cheques issued by GVC Marketing and payable to “Anat Pyasetsky” were found in Suite 400.
- (d) Scripts that appear to have been used by qualifiers to generate interest in the limited partnership units of New Gold were found in Suite 103. They include a script with the following information handwritten on the document (the “**Script**”):
 - username: Anat
 - password: newgeggold
- (e) Documents entitled “Hot Leads” that appear to set out names of prospective investors and the qualifiers who had contacted them were found at the Steeles Avenue West Premises. They appear to suggest that “Anat” contacted an investor on June 2, 2008.
- (f) Numerous photographs were taken during the course of the execution of the search warrants. They include photographs of the Applicant taken in Suite 103; a photograph of a clock in Suite 103 that appears to indicate the time in Kentucky; a photograph showing a white board in Suite 103 which Anderson described in his evidence as showing the number of investors who were contacted by each qualifier and who indicated that they were willing to receive promotional materials; and a photograph taken in Suite 103 of two handwritten lists titled “the little boys” and “the big boys” which, according to Anderson, show the real names and the aliases of the qualifying and sales staff.

[74] Anderson explained that as an investigation procedure, the names of the people who were employed in a “boiler room” environment are indexed in an enforcement database for future reference.

[75] Sargent is a registration officer with the CRR Branch and was responsible for the initial review of the Registration Application. She provided evidence about the steps she took in reviewing the Registration Application, including conducting a number of background checks using various databases. In particular, she testified that one of the background checks, the intelligence check, the results of which came from a database maintained by the Enforcement Branch of the Commission, gave rise to some concerns because the intelligence check shows that the Applicant was an employee of “Global Energy Group, Ltd. GVC Marketing Group Inc.” and search warrants had been executed with respect to these companies by Staff in its investigation of a “boiler room” operation.

[76] Sargent also participated in the Voluntary Interview. During the Hearing and Review, she provided testimony with respect to the Voluntary Interview. For example, Sargent testified that at no time during the 90-minute Voluntary Interview did the Applicant mention that the reason that she did not disclose her employment with Global Energy or GVC Marketing was because she relied on clause 11 of Form 33-109F4, which stated that “Do not include short-term employment of four months or less while a student, unless it was in the securities, derivatives or financial industry” (the “**Clause**”).

2. Witnesses for the Applicant

[77] N.S. has been a friend of the Applicant since 2007 and gave evidence regarding the Applicant’s good character. She testified that, at the time the Applicant was employed by Global Energy or GVC Marketing, the Applicant had spoken to her about her employment with GVC Marketing and described it as a typical summer telemarketing job. N.S. further testified that, shortly after the execution of the search warrants, the Applicant told her about a search conducted by what the Applicant thought was the Canada Revenue Agency (the “**CRA**”). On this point, N.S. testified that the execution of the search warrants appeared to be a “thrilling” or “adventurous” story for the Applicant to tell her family and friends and that the Applicant did not seem to have any concerns about the execution of the search warrants beyond having to look for another summer job (Hearing Transcript dated September 18, 2012 at p. 148). Finally, N.S. testified that, following the Voluntary Interview, the Applicant appeared to be very upset and was crying.

[78] Lipovetsky had been a friend of the Applicant for approximately six years at the time of the Hearing and Review and testified to the Applicant’s good character. She testified that, as a career counselor, she had provided advice to the Applicant regarding her resume, including the advice to not include small, short-term telemarketing jobs in her resume.

[79] Lipovetsky testified that at the time when the Applicant was employed by GVC Marketing, the Applicant spoke to her about the employment and described it as a telemarketing job with “a party atmosphere” in which the employees “were all friends, including [the] supervisor” (Hearing Transcript dated September 18, 2012 at p. 165). According to the witness, following the execution of the search warrants, the Applicant appeared “excited” and “animated” and repeated the story to her family and friends because it was a “cool story to tell” (Hearing Transcript dated September 18, 2012 at p. 169). However, the Applicant stopped discussing the event shortly afterwards, when it was no longer “on [her] radar” (Hearing Transcript dated September 18, 2012 at p. 170).

It is her evidence that the Applicant did not express any concerns following the search other than having to find another summer job. Finally, the witness testified that, following the Voluntary Interview, the Applicant called Lipovetsky who was driving at the time. Lipovetsky testified that, during that conversation, the Applicant told Lipovetsky and another friend in the car about the Voluntary Interview and the Applicant sounded “scared”, as if she was “in shock” (Hearing Transcript dated September 18, 2012 at pp. 176 and 177). She further testified that the Applicant said that she was angry because Staff member accused her of lying.

[80] The Applicant then called her father as a witness. With respect to the execution of the search warrants, he testified that the Applicant said that she was surprised by what happened and expressed concerns that she would need to find another summer job as a result of the search by who she thought was the CRA. With respect to the Voluntary Interview, he testified that the Applicant returned home soon after the Voluntary Interview and described the interview to be a “very rude interrogation” (Hearing Transcript dated September 19, 2012 at p. 25). The Applicant also told him that she only recalled the name of her employer being GVC Marketing following the Voluntary Interview. Finally, he testified that the Applicant was an individual of integrity and that the denial of her registration had negatively affected the health of his family.

[81] Following the testimony of the Applicant’s father, the Applicant was given the opportunity to consider whether she wished to testify on her own behalf, and elected to do so. In her testimony, she provided evidence about her employment with GVC Marketing and gave explanations regarding the responses that she provided in the Registration Application, the Voluntary Interview and the Amended Registration Application. Her evidence will be discussed in further detail below.

VII. ANALYSIS

A. Legal Framework for Registration

1. Registration under the Act

[82] The registration requirement for an individual dealing representative is found in section 25 of the Act:

25. Registration – (1) Dealers – Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities unless the person or company,

...

(b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

[83] Registration is a privilege, not a right, that is granted to individuals and entities that have demonstrated their suitability for registration (see *Re Trend Capital Services Inc.* (1992), 15 O.S.C.B. 1711 at pp. 1764 and 1765; and *Istanbul, supra*, at para. 60).

[84] Section 27 of the Act sets out, in subsection (1), the test to be applied when determining whether a proposed registration should be granted, namely, that registration will be granted unless it appears to the Director that the applicant is not suitable for registration or the proposed registration is otherwise objectionable and, in subsection (2), matters to be considered by the Director in considering whether a person is not suitable for registration:

27. (1) Registration, etc. – On receipt of an application by a person or company and all information, material and fees required by the Director and the regulations, the Director shall register the person or company, reinstate the registration of the person or company or amend the registration of the person or company, unless it appears to the Director,

- (a) that, in the case of a person or company applying for registration, reinstatement of registration or an amendment to a registration, the person or company is not suitable for registration under this Act; or
- (b) that the proposed registration, reinstatement of registration or amendment to registration is otherwise objectionable.

(2) Matters to be considered – In considering for the purposes of subsection (1) whether a person or company is not suitable for registration, the Director shall consider,

- (a) whether the person or company has satisfied,
 - (i) the requirements prescribed in the regulations relating to proficiency, solvency and integrity, and
 - (ii) such other requirements for registration, reinstatement of registration or an amendment to a registration, as the case may be, as may be prescribed by the regulations; and
- (b) such other factors as the Director considers relevant.

...

2. Public Interest Jurisdiction

[85] When exercising its discretion to review the decision of a Director, the Commission is required to act in the public interest with due regard to its purpose under the Act, set out in section 1.1 of the Act (See *Re Michalik* (2007), 30 O.S.C.B. 6717 (“*Michalik*”) at para. 44; and *Biocapital, supra*, at p. 2846).

[86] Section 1.1 of the Act provides that:

1.1 Purposes – The purposes of this Act are,

- (a) to provide protection to investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in capital markets.

[87] In pursuing the purposes of the Act, the Commission is required to have regard to certain fundamental principles, such as the “requirements for the maintenance of high

standards of fitness and business conduct to ensure honest and responsible conduct by market participants” (subparagraph 2(iii) of section 2.1 of the Act). Registrants have a very important function in the capital markets and they are also in a position where they may potentially harm the public. Regulating the conduct of registrants is therefore a matter of public interest (*Michalik, supra*, at para. 48).

[88] In *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 (“*Mithras*”), the Commission noted that its discretion in the public interest is to be exercised prospectively to protect the public and the integrity of the capital markets. The Commission stated that:

...the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts... We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person’s future conduct might reasonably be expected to be; we are not prescient, after all.

(*Mithras, supra*, at pp. 1610 and 1611)

3. Burden of Proof

[89] In *Re Sawh* (2012), 35 O.S.C.B. 7431 (“*Sawh*”), the Commission held that, in a Hearing and Review of a Director’s decision denying an applicant’s registration, Staff bears the onus of demonstrating that an applicant is not suitable for registration or that the proposed reinstatement is otherwise objectionable, keeping in mind that:

...section 27 gives the Director broad discretion in considering whether the person or company is not suitable for registration or whether the proposed registration is otherwise objectionable. Further...one of the primary means for achieving the purposes of the Act is the “requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants”.

(*Sawh, supra*, at para. 148).

[90] At the Hearing and Review, the Applicant raised the issue of the standard of proof that must be met by Staff in demonstrating that the Applicant is not suitable for registration. The Applicant argued that this matter is “quasi-criminal” in nature because her “dignity is in jeopardy, and [the] applicant was humiliated by exposing her as a liar and accused of being a liar”. She further submitted that “[s]he has lost her position at work. She was miscalled as being untruthful, non-forthcoming, non-forthright” (Motion Transcript dated October 15, 2012 at p. 14). She argued that cases related to integrity are quasi-criminal matters that go beyond administrative matters and the standard of proof to be applied should be that of “beyond a reasonable doubt”.

[91] The Applicant has fundamentally misconstrued the nature of the Hearing and Review. The Hearing and Review is an administrative proceeding to consider whether the

Applicant should be granted registration as a dealing representative of a mutual fund dealer. The Commission's power to grant or deny registrations involves the exercise of its public interest jurisdiction and is regulatory in nature, prospective in operation and preventative in effect (*Mithras, supra*, at pp. 1610 and 1611).

[92] It is also well established in case law that the standard of proof in an administrative proceeding before the Commission is the civil standard of the balance of probabilities. In *F.H. v. McDougall*, [2008] 3 S.C.R. 41 ("*McDougall*"), the Supreme Court of Canada reaffirmed that "there is only one civil standard of proof at common law and that is proof on a balance of probabilities" (*McDougall, supra*, at para. 40). This requires the trier of fact to decide "whether it is more likely than not that the event occurred" (*McDougall, supra*, at para. 44). The Court noted that "the evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*McDougall, supra*, at para. 46).

[93] Staff must show that, on balance, the Applicant does not have the requisite integrity, and therefore the suitability, to be registered, or that the registration of the Applicant is otherwise objectionable.

B. Suitability

[94] The three criteria for determining suitability for registration are codified in subsection 27(2) of the Act, following its amendment on September 28, 2009. In considering whether a person or company is suitable for registration, the Director shall consider whether the person or company has satisfied the requirements prescribed in the regulations relating to proficiency, solvency and integrity as well as such other factors as the Director considers relevant.

[95] The suitability criterion that is at issue in this case is the Applicant's integrity.

1. Integrity

(a) The Law

[96] Integrity is not defined under the Act. However, in considering the integrity of an individual to be registered, the Commission has held in prior cases that an assessment of integrity should be guided by the criteria set out in paragraph 2.1(2)(iii) of the Act: "This provision states that an important principle that the Commission shall consider in pursuing the purposes of the Act is 'the maintenance of *high standards of fitness and business conduct* to ensure *honest and responsible conduct* by market participants'" [emphasis in original] (*Istanbul, supra*, at para. 68).

[97] In *Istanbul, supra*, at para. 66, the Commission referred to an earlier decision by the Director in *Re Wall* (2007), 30 O.S.C.B. 7521 which addresses the issue of integrity. The latter decision explains that:

OSC staff look at the honesty and the character of the applicant when analyzing integrity. In particular, staff examines the applicant's dealings with clients, compliance with Ontario securities law and other applicable laws, and the use of prudent business practices.

(*Re Wall, supra*, at para. 23)

[98] In *Istanbul*, the Commission found that the applicant lacked the trustworthiness and integrity required of a registrant because he misappropriated his clients' loyalty points (*Istanbul, supra*, at para. 80).

[99] Part 1 of Companion Policy 31-103CP – Registration Requirements, Exemptions and Ongoing Registrant Obligations also provides guidance on the meaning of “integrity” as follows:

Registered individuals must conduct themselves with integrity and have an honest character. The regulator will assess the integrity of individuals through the information they are required to provide on registration application forms and as registrants, and through compliance reviews...

[emphasis added]

[100] Staff referred me to a number of cases before the Director or the Commission regarding the disclosure on registration application forms as an indication of an applicant's integrity. The Commission, in *Re Thomas* (1972), O.S.C.B. 118, stated:

The keystone to the registration system is the application form. A desire and an ability to answer the questions in it with candour in many respects can be said to be the first test to which the applicant is put.

(*Re Thomas, supra*, at p. 120)

[101] A recent decision of the Director in *Re Couto* (2012), 35 O.S.C.B. 4105, cited by Staff, stated that:

First, the application form is designed to provide the OSC with the information it needs to assess the applicant's suitability for registration. Sometimes the information sought by the application form may reflect negatively on an applicant's suitability. The effectiveness of the application process would be significantly diminished if applicants could avoid disclosing detrimental information on the basis of unreasonable assumptions, forgetfulness, or misunderstandings. Second, the OSC must be reasonably confident that the individuals to whom it grants the privilege of registration will discharge their professional obligations to their clients honestly and diligently. The application process is the seminal event in an applicant's career as a capital markets professional, and a lack of care and diligence in this process may be a worrisome signal about how they will approach the interests of their clients.

(*Re Couto, supra*, at para. 15)

[102] Staff also relies on the Director's decision in *Re Doe* (2010), 33 O.S.C.B. 1371 (“*Doe*”) for the proposition that “one false statement is enough to discredit the Applicant's credibility and raise an issue as to his integrity. In other words, one false statement is sufficient to result in the Applicant's application for registration being denied on the basis that the Applicant lacks the requisite integrity required of a securities industry professional and is, therefore, not suitable for registration” (*Doe, supra*, at para. 41).

[103] Staff further submits that the Director's decision in *Doe* also stands for the proposition that integrity "is broader than dishonesty and encompasses a certain duty of care in one's work product. The Applicant had a duty to carefully complete documents relating to his registration, including his initial application for registration" (*Doe, supra*, at para. 47).

(b) Analysis

[104] It is not in dispute that the Applicant was employed to telephone prospective clients to solicit their interest in purchasing limited partnership units of New Gold. Nor is it contested that the Applicant was not named as a respondent in the enforcement proceeding before the Commission relating to the Global Energy Investment Scheme. The parties, however, disagree as to whether certain information regarding the Applicant's employment with Global Energy or GVC Marketing should have been disclosed in the Registration Application and the Amended Registration Application. They further disagree as to whether the Applicant's failure to disclose such information was intentional or was an inadvertent mistake. The parties are also in dispute as to whether the Applicant intentionally misled Staff during the Voluntary Interview.

[105] The salient facts of this case are as follows. As described in paragraph [9] above, the Applicant submitted the Registration Application seeking to be registered as a dealing representative of a mutual fund dealer. In the Registration Application, she certified that "all of the information provided on this form is true". Her employment with Global Energy or GVC Marketing was not disclosed in the Registration Application.

[106] The Applicant was then invited to the Voluntary Interview in which she was asked about her summer job with "Global Energy". She initially denied that she worked for such a company. After Staff counsel provided further description about Global Energy, including that search warrants were executed at Global Energy's premises, she said that she recalled working for a telemarketing company that was subject to the execution of a search warrant. During the Voluntary Interview, she provided a number of explanations regarding her failure to disclose this employment in the Registration Application, including that she forgot about the employment because it was a short-term, inconsequential summer job and that she completed the Registration Application in haste.

[107] Some of the statements made by the Applicant during the Voluntary Interview appear to have caused Staff concerns that the Applicant intentionally failed to disclose this employment in the Registration Application. For example, the Applicant said during the Voluntary Interview that the execution of the search warrants was a "traumatic" experience "that was definitely something that [she could] not forget" (Transcript of the Voluntary Interview dated November 16, 2011 at pp. 34 and 37). According to Staff, it follows that the Applicant was unlikely to have forgotten about her summer job with Global Energy. Further, the Applicant also stated during the Voluntary Interview that she had "carefully selected very carefully the companies I would like to be associated with" (Transcript of the Voluntary Interview dated November 16, 2011 at p. 69).

[108] The Voluntary Interview appears to have led to Staff's recommendation to the Director that the Applicant's application for registration be refused on the basis that she lacks the requisite integrity to be registered.

[109] The Applicant then exercised her right to an OTBH. At the OTBH, she submitted the Amended Registration Application in which she disclosed that she worked for “GVC Marketing Inc./Global Energy Group” from May to June 2008. In the Amended Registration Application, she described “the firm’s business, [the Applicant’s] position, duties and [the Applicant’s] relationship to the firm” as follows:

Unable to confirm details of the firm’s business. I was hired as a telemarketer conducting outbound calls.

[110] During the OTBH, the Applicant took the position that the failure to disclose her employment with Global Energy or GVC Marketing in the Registration Application was an honest mistake but provided for the first time the explanation that she relied on the Clause which, as set out in paragraph [76], stated “Do not include short-term employment of four months or less while a student, unless it was in the securities, derivatives or financial industry”. According to the Applicant at the OTBH, as her employment with Global Energy or GVC Marketing was a short-term telemarketing job and she was not involved in selling securities, she did not disclose this employment. She also gave evidence at the OTBH regarding the responses that she provided at the Voluntary Interview.

[111] The Director denied her registration on the basis that she lacks the requisite integrity to be registered. The Applicant then applied for a Hearing and Review of the Director’s Decision.

[112] At the Hearing and Review before me, the Applicant acknowledged that her employment with Global Energy or GVC Marketing was not disclosed in the Registration Application and that there are a number of inaccuracies in the Registration Application. In her testimony at the Hearing and Review, the Applicant offered a number of explanations regarding her failure to disclose her employment with Global Energy or GVC Marketing in the Registration Application. She also provided testimony at the Hearing and Review to explain why she initially denied during the Voluntary Interview that she worked for Global Energy or GVC Marketing. The Amended Registration Application was submitted to me as the most recent version of the Applicant’s application for registration.

[113] In essence, the Applicant’s evidence at the Hearing and Review was that it was an honest mistake that she did not disclose in the Registration Application her employment with GVC Marketing or Global Energy and she continued to assert her reliance on the Clause. She said that she now recognizes that she should have taken better care of her application for registration.

[114] With respect to the Voluntary Interview, she also claimed at the Hearing and Review that she initially denied that she worked for GVC Marketing or Global Energy during the Voluntary Interview because she did not remember the employment. She took the position at the Hearing and Review that she was sincere and cooperative with Staff during the Voluntary Interview and, with respect to the statements that she made in the Voluntary Interview that appear to have caused Staff concerns, she explained that English is not her first language and she had difficulty expressing herself in a stressful situation.

[115] For example, she claimed at the Hearing and Review that it was an exaggeration to use the word “traumatic” during the Voluntary Interview when describing the execution of the search warrants. She also asserted at the Hearing and Review that, when she said in the Voluntary Interview that she carefully selected the companies that she would like to be associated with, she was not referring to the disclosure in the Registration Application, but she meant that “I want to naturally be associated – associate myself with good companies, to be a part of those companies. Like with everything else in my life, good friends, good neighbour, good people, good lifestyle.” (Hearing Transcript dated September 19, 2012 at p. 77).

[116] She also took the position at the Hearing and Review that the manner in which Staff conducted the Voluntary Interview did not assist her with recalling this employment at that time.

[117] However, the Applicant’s position at the Hearing and Review, summarized in paragraphs [112] to [116] above, clearly does not apply to the disclosure in the Amended Registration Application. The Applicant was asked by Staff during the Voluntary Interview to “go back and update this thing with all the small jobs, okay, everything” (Transcript of the Voluntary Interview dated November 16, 2011 at p. 39). As such, she was required to provide complete disclosure of all of her prior employment in the Amended Registration Application, regardless of the Clause.

[118] The Applicant provided disclosure in the Amended Registration Application, which was filed with the Director prior to the commencement of the OTBH and submitted to me and admitted as evidence of the most recent version of her registration application. In the Amended Registration Application, she disclosed that she was employed by “GVC Marketing Inc./Global Energy Group” and that she could not confirm the nature of the company’s business in the following terms, which I once again set out:

Unable to confirm details of the firm’s business. I was hired as a telemarketer conducting outbound calls.

[119] During cross-examination in the Hearing and Review, the Applicant explained that she provided this response because:

Because at this point, I didn’t know if it had anything to do – because my job was telemarketing for the purpose of general, like, interest solicitation and promotion. It wasn’t really – like, it wasn’t direct selling. So I wasn’t sure what to put in there. And so I have asked my counsel at that time what should I be – is this okay to put that? And she had advised me on that.

...

I have counselled my lawyer on that at that time of what to – if it’s okay to put that because she wasn’t even sure of what my job entailed. I was trying – we went over the scripts Mr. Skuce had provided, and I was trying to figure out what should I be – what is the correct thing to be...

(Hearing Transcript dated September 19, 2012 at pp. 187 and 188)

[120] The evidence that emerged during the Hearing and Review is that Staff informed the Applicant about the nature of Global Energy and GVC Marketing during and following the Voluntary Interview. She was informed that a Statement of Allegations was issued with respect to Global Energy, a company related to GVC Marketing. The Applicant's testimony during the Hearing and Review that she first learned about the alleged fraudulent activity on the part of Global Energy and GVC Marketing at the Voluntary Interview shows that she was aware of the alleged fraudulent activity by the time of the conclusion of Voluntary Interview at the latest.

[121] In addition, during the OTBH, the Applicant was able to describe the business of both GVC Marketing and Global Energy as follows:

Q. ...So, did you, in fact, work for a company called Global Energy?

A. No. I have worked for GVC Marketing Inc., which was a – which was hired by Global Energy or as far as I was – that's what I was explained to is that we were a third party calling...

...

Q. What was your understanding – what was your understanding at the time of having the job of what Global Energy as a company did?

A. I understood that they're a venture oil company that is looking for potential investors or potential partners.

[emphasis added]

(Transcript of the OTBH dated February 10, 2012 at pp. 59 and 61)

When asked about these exchanges during the Hearing and Review, the Applicant acknowledged that she had "more information" regarding Global Energy and GVC Marketing by the time of the OTBH (Hearing Transcript dated September 19, 2012 at p. 184).

[122] It is clear that the Applicant was informed of the nature of her former employer by the time of the OTBH. She should have provided in the Amended Registration Application the responses that she gave when giving evidence during the OTBH, that is, GVC Marketing purported to be a telemarketing company acting on behalf of Global Energy, Global Energy was purportedly a venture oil company looking for potential investors or partners, and there were allegations that they were acting fraudulently. That would have been full, true and plain disclosure that reflects the Applicant's understanding of the nature of her former employer's business at the time she submitted the Amended Registration Application.

[123] Unlike the Registration Application which the Applicant claims to have completed in haste, the Applicant had ample opportunity, by the time she submitted the Amended Registration Application, to carefully reflect on the shortcomings of her responses in the Registration Application and to provide forthright and truthful disclosure regarding the nature of the business of Global Energy or GVC Marketing in the Amended Registration Application. Having been questioned about the responses in the Registration Application in both the Voluntary Interview and the OTBH, the Applicant should have, at the time of submitting the Amended Registration Application, understood the importance

of providing full, true and plain disclosure in an application for registration. The Applicant nonetheless still failed to make such disclosure in the Amended Registration Application and contended that she could not confirm the nature of the business of Global Energy and GVC Marketing. Her statement in cross-examination during the Hearing and Review set out below only further demonstrates that the disclosure in the Amended Registration Application arose out of her unwillingness to acknowledge her association with activity engaged in by Global Energy or GVC Marketing which she knew was alleged by Staff to be fraudulent:

So what was I supposed to put under the job description? I wasn't the one
– I am not held responsible for Global –

...

...I do not know the details of the...It's Mr. Anderson's job to have the details of the investigation.

(Hearing Transcript dated October 15, 2012 at pp. 35 and 36)

[124] At the Hearing and Review, the Applicant maintained a distinction between Global Energy and GVC Marketing. She insisted that she was employed by GVC Marketing and not Global Energy. However, this does not change my analysis as (i) the Applicant had provided her personal information in an “employee information form” with the heading “Global Energy Group”, which she had signed and dated; (ii) the Applicant listed Global Energy in the Amended Registration Application as her former employer alongside GVC Marketing, and (iii) in any event, the Applicant was aware of the connection between Global Energy and GVC Marketing when completing the Amended Registration Application, if not from the employee information form and the pay cheques and time sheets which formed part of the record of the OTBH.

[125] The Applicant in her evidence asserted that she relied on her counsel's advice when completing the Amended Registration Application. Despite this assertion, I received no documentary or other evidence regarding the nature of such advice. In these circumstances, I am unable to conclude that the Applicant can rely on this as a defence.

(c) Findings

[126] I find that, regardless of whether the Applicant knowingly failed to disclose her employment with Global Energy or GVC Marketing in the Registration Application and whether she misled Staff during the Voluntary Interview, when given an opportunity to provide complete disclosure, she failed to do so in the Amended Registration Application. Her evidence at the Hearing and Review shows that she did not provide this disclosure because she did not want to acknowledge her association with activity engaged in by Global Energy or GVC Marketing which she knew was alleged by Staff to be fraudulent. I find that the Applicant's failure to make complete disclosure when given an opportunity to correct her registration application, as in the case of *Re McCartney* (1965), O.S.C.B. 1 at pp. 1 and 2, “indicates that at this time the applicant is not willing to exercise a proper judgment and is likely to take a course which [she] feels would be to [her] advantage, disregarding the truth. This is not the type of character which is desirable in a registrant under The Securities Act” [emphasis added]. Accordingly, I find that the evidence demonstrates a lack of integrity requisite for the Applicant to be registered.

VIII. CONCLUSION

[127] For the reasons above, I find that the evidence demonstrates a lack of integrity requisite for the Applicant to be registered. It is not in dispute that the Applicant is not named as a respondent in the enforcement proceeding before the Commission. However, the integrity of an applicant can be evaluated by the truthfulness and the forthrightness of his or her disclosure to the Commission, particularly in an application for registration which is a cornerstone of the registration regime.

[128] I find that, in the Amended Registration Application, which was submitted as evidence at the Hearing and Review, the Applicant failed to provide complete disclosure of her employment with Global Energy or GVC Marketing because of her desire to distance herself from potential fraudulent activity and unwillingness to acknowledge her association with them through employment.

[129] For the reasons above, the Application is dismissed and the application for registration of the Applicant as a dealing representative of a mutual fund dealer is denied.

DATED at Toronto on this 28th day of March, 2013.

“Edward P. Kerwin”

Edward P. Kerwin