



Ontario
Securities
Commission

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de l'Ontario

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Citation: Lynne Rae Nickford (Re), 2018 ONSEC 24

Date: 2018-05-07

File No.: 2018-13

**IN THE MATTER OF
LYNNE RAE NICKFORD
(aka LYNNE RAE ZLOTNIK dba LYNNE ZLOTNIK WEALTH MANAGEMENT)**

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

Hearing: In Writing

Decision: May 7, 2018

Panel: D. Grant Vingoe Vice-Chair

Appearances: Christina Galbraith For Staff of the Commission

Lynne Rae Nickford For herself

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REASONS AND DECISION

I. INTRODUCTION AND BACKGROUND

- [1] The British Columbia Securities Commission (the **BCSC**) found that Lynne Rae Nickford, also known as Lynne Rae Zlotnik, doing business as Lynne Zlotnik Wealth Management (**Nickford** or the **Respondent**), perpetrated a fraud on 13 investors in the aggregate amount of at least \$318,141, contrary to section 57(b) of the British Columbia *Securities Act*, RSBC 1996, c 418 (the **BC Act**).
- [2] The BCSC issued its Findings of Liability on August 18, 2017 (*Re Nickford*, 2017 BCSECCOM 272 (the **Findings**)) and issued its Decision with respect to its order on February 2, 2018 (*Re Nickford*, 2018 BCSECCOM 57 (the **BCSC Order**)).
- [3] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) rely on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Ontario *Securities Act*, RSO 1990, s S.5 (the **Act**) to request that a protective order be issued in the public interest under subsection 127(1) of the Act.
- [4] The issues for me to consider are:
1. whether one of the circumstances under subsection 127(10) of the Act applies to the Respondent (namely whether the Respondent is subject to an order made by a securities regulatory authority imposing sanctions, conditions, restrictions or requirements (s. 127(10)4)); and if so,
 2. whether this Commission should exercise its jurisdiction to make a protective order in the public interest in respect of the Respondent pursuant to subsection 127(1) of the Act.

II. THE RESPONDENT'S PARTICIPATION

- [5] Staff elected to use the expedited procedure for a written hearing set out in Rule 11(3) of the Commission's *Rules of Procedure and Forms* (2017), 40 OSCB 8988 (the **Rules of Procedure**).
- [6] The Respondent was served with a Notice of Hearing issued on March 26, 2018, a Statement of Allegations dated March 23, 2018 and Staff's factum, hearing brief and book of authorities.
- [7] On April 3, 2018, the Respondent provided the Commission with two documents. The first document contained two letters: a letter dated April 3, 2018 to Commission Staff and a letter dated February 27, 2018 to Staff of the BCSC (**BCSC Staff**). These letters set out mitigating factors that the Respondent would like to bring the Commission's attention relating to her health and financial situation. The second document was a copy of the Respondent's written submissions provided to the BCSC sanctions panel, which also referenced her health condition and personal family circumstances. As these documents contain intimate financial and personal information, I am ordering that these documents be kept confidential pursuant to subsection 9(1)(b) of the *Statutory Powers Procedure Act*, RSO 1990 c S.22 (**SPPA**).
- [8] Correspondence was sent to the Respondent confirming that these documents would be considered as Nickford's written submissions in this proceeding and that pursuant to Rule 11(3)(g) of the Rules of Procedure, any additional

materials from Nickford, or any counsel she may retain, must be filed by April 23, 2018. The Respondent did not file any further materials.

III. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

- [9] The Act provides for inter-jurisdictional enforcement where a person or company is subject to an order made by a securities regulatory authority in any jurisdiction that imposes sanctions, conditions or requirements on the person or company (s. 127(10)4 of the Act). Subsection 127(10) of the Act does not itself empower the Commission to make an order; rather, it provides a basis for an order under subsection 127(1). On receiving evidence that a respondent is subject to such an order, the Commission must determine whether an order under subsection 127(1) of the Act should be made.
- [10] Subsection 127(1) empowers the Commission to make orders where, in its opinion, it is in the public interest to do so. The Commission has regard to the purposes of the Act under section 1.1, which are to provide protection to investors from unfair, improper and fraudulent practices, to foster fair and efficient capital markets and confidence in capital markets, and to contribute to the stability of the financial system and the reduction of systemic risk.
- [11] Orders made under subsection 127(1) of the Act are protective, preventive and prospective and are made to restrain potential conduct which could be detrimental to the public interest in fair and efficient capital markets (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 SCR 132 at paras 42-45).
- [12] While the Commission must make its own determination of what is in the public interest, it is also important that the Commission be aware of and responsive to an interconnected, inter-provincial securities industry. Subsection 127(10) of the Act facilitates cross-jurisdictional enforcement of findings for breaches of securities law by providing the Commission with the ability to issue protective, preventive and prospective orders to ensure that misconduct which has taken place in other jurisdictions will not be repeated in Ontario's capital markets.
- [13] In exercising its jurisdiction under subsection 127(10), the Commission does not require a pre-existing connection to Ontario (*Re Biller (2005)*, 28 OSCB 10131, 2005 ONSEC 15 at paras 32-35).

IV. THE BRITISH COLUMBIA PROCEEDING AND FINDINGS

A. The Findings – Breach of Section 57(b) of the BC Act

- [14] Nickford's misconduct took place between January 1, 2009 and March 31, 2010 (the **Material Time**). She was previously a registrant, but during the Material Time she was not registered under the BC Act but was licensed as a life and accident and sickness insurance agent.
- [15] During the Material Time, Nickford was the sole proprietor of Lynne Zlotnik Wealth Management (**LZWM**). Through LZWM, Nickford offered a variety of investment and insurance services, which she promoted using seminars, YouTube videos and promotional materials.
- [16] The BCSC found that 13 investors loaned money to, or invested a total of \$1,818,750 in, LZWM during the Material Time. Nickford told investors that LZWM was expanding and solicited investments to be used for LZWM's business

operations and for growing the business. She offered investors varying rates of return, ranging from 12% to 16%.

- [17] LZWM issued either promissory notes or "private investment" documents to investors, which set out the particulars relating to the investment. The promissory notes included the amount, interest rate and term of the loan, and specified that the funds were to be used for Nickford's business operations. The "private investment" documents did not specify what the funds were to be used for. However, some investors holding such documents stated that their investments were for the expansion of LZWM's business.
- [18] The BCSC found that the investors' funds were not used for the purposes of the Respondent's business, LZWM. The BCSC found that the Respondent transferred investor funds from LZWM's business account to her personal account, and spent at least \$318,141 on personal expenditures unrelated to the business.
- [19] The BCSC found that the investors' funds were put at risk as the funds were not used as intended. Further, as a result of the bankruptcy of the Respondent subsequent to the Material Time, investors have lost all their investments.
- [20] The BCSC concluded that the Respondent contravened section 57(b) of the BC Act.

B. The BCSC Order

- [21] The BCSC imposed the following sanctions, conditions, restrictions and requirements on the Respondent:
 - 1. under section 161(1)(b)(i) of the BC Act, all persons cease trading in, and are permanently prohibited from purchasing, any securities or exchange contracts of LZWM;
 - 2. under section 161(1)(d)(i) of the BC Act, Nickford resign any position she holds as a director or officer of an issuer or registrant;
 - 3. Nickford is permanently prohibited:
 - i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;
 - ii. under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;
 - iii. under section 161(1)(d)(ii) of the BC Act, from becoming or acting as a director or officer of any issuer or registrant;
 - iv. under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;
 - v. under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and
 - vi. under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities;
 - 4. that Nickford pay to the BCSC \$318,141 pursuant to section 161(1)(g) of the BC Act; and

5. that Nickford pay to the BCSC an administrative penalty of \$300,000 under section 162 of the BC Act.

[22] Staff seek an order imposing trading and market conduct bans similar to those imposed by the BCSC to the extent possible under the Act, in order to protect the capital markets in Ontario. Staff request an additional sanction prohibiting the Respondent from becoming or acting as an investment fund manager. This sanction is not available under the BC Act.

V. THE RESPONDENT'S POSITION

[23] In her written submissions, Nickford requested that her current health and financial situation be taken into account as mitigating factors. Nickford submitted that she "...would never go back into the capital or financial markets. Nor would I attempt to work".

VI. ANALYSIS AND DECISION

[24] The threshold has been met under paragraph 4 of subsection 127(10) of the Act as Nickford is subject to the BCSC Order, which imposes sanctions, conditions, restrictions or requirements upon her. I must now determine what sanctions, if any, should be ordered against her.

[25] The Commission may consider a number of factors in determining the nature and scope of sanctions, including:

- the seriousness of the allegations proved;
- the respondent's experience in the marketplace;
- the level of a respondent's activity in the marketplace;
- whether or not there has been a recognition of the seriousness of the improprieties;
- the need to deter a respondent, and other like-minded individuals, from engaging in similar abuses of the capital markets in the future;
- whether the violations are isolated or recurrent;
- any size of the profit gained or loss avoided from the illegal conduct;
- any mitigating factors, including the remorse of the respondent;
- the effect any sanction might have on the livelihood of the respondent;
- the effect any sanction might have on the ability of the respondent to participate without check in the capital markets;
- in light of the reputation and prestige of the respondent, whether a particular sanction will have an impact on the respondent and be effective; and
- the size of any financial sanctions or voluntary payment when considering other factors.

(Belteco Holdings Inc (Re) (1998), 21 OSCB 7743 at paras 7746-7747; MCJC Holdings (2002), 25 OSCB 1133 at 1134)

- [26] In this case, the seriousness of the misconduct and quantum of investor losses are important factors to consider. The BCSC found the misconduct to be egregious. The BCSC noted that fraud is “the most serious misconduct prohibited by the [BC] Act” (BCSC Order at para 9). Specifically, the BCSC found that:

Nickford's misconduct was particularly egregious. In the guise of supporting investors and providing investor education and empowerment, she preyed on clients of her financial services firm, her friends and members of her religious community, many of them in or nearing retirement, to raise \$1,818,750 [...] for her financial services business. She then diverted at least \$318,141 of the investors' funds for personal uses, including gambling.

(BCSC Order at para 10)

- [27] In addition, the BCSC found that Nickford co-mingled investor funds and failed to maintain or produce credible records with respect to the use of those funds (Findings, at paras 26 to 28).
- [28] The Respondent's experience is also a relevant factor. Nickford is a former registrant and long-time industry professional. The BCSC found that she is not fit to participate in the capital markets as she perpetrated a fraud.
- [29] In her written submissions, Nickford expressed sorrow, regret and grief over the financial losses of her investors. She also requested that her mental health, personal circumstances and financial situation be taken into account as mitigating factors. These are only submissions and there is insufficient evidence to support these assertions made in her written submissions. Furthermore, these same mitigating factors were argued before the BCSC. The BCSC found that there was insufficient evidence to demonstrate that these were mitigating factors during the Material Time when the misconduct was taking place (BCSC Order, at paras 16 -24). Based on the information before me and the Findings of the BCSC, I find that there are no applicable mitigating factors in the circumstances.
- [30] Nickford has also submitted that she has no intention to work in the capital markets in the future. In my view, an order against Nickford in Ontario is still necessary to protect the public. Nickford's submission falls short of an actual undertaking and considering that she engaged in fraud and that if that same conduct had occurred in Ontario it would have been considered a breach of our Act, there is a need to ensure that such misconduct be prevented in Ontario. This is achieved through imposing trading and market participation bans in Ontario similar to those imposed by the BCSC.
- [31] As a result, I find it appropriate to grant an order as requested by Staff. In this way, the Ontario markets will be protected from this Respondent. It is a reasonable regulatory response to make orders that aim to prevent similar conduct from taking place in this province. Given the nature of the misconduct,

an additional term prohibiting the Respondent from becoming or acting as an investment fund manager will be added.

VII. CONCLUSION

[32] For the reasons provided above, the following Order will be made:

1. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities or derivatives of LZWM shall cease permanently;
2. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Nickford shall cease permanently;
3. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Nickford shall cease permanently;
4. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Nickford permanently;
5. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Nickford shall resign any positions that she holds as a director or officer of any issuer or registrant;
6. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Nickford is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;
7. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Nickford is prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter; and
8. pursuant to subsection 9(1)(b) of the SPPA, all of Nickford's written submissions shall be kept confidential.

Dated at Toronto this 7th day of May, 2018.

"D. Grant Vingoe"

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