

IN THE MATTER OF  
*THE SECURITIES ACT, 1988, S.S. 1988, c. S-42.2*

AND

IN THE MATTER OF  
GUY JOSEPH DAUPHINAIS

DECISION

Hearing Held November 23, 1994

Before: Marcel de la Gorgendiere, Q.C., Chairman

Appearances: Patti Pacholek, representing Commission staff

Guy Joseph Dauphinais, representing himself

Decision dated: December 6, 1994.

## DECISION

This decision is to determine the matter considered at a hearing held pursuant to Section 28(3) of *The Securities Act, 1988* (the "Act"). Guy Joseph Dauphinais (the "Respondent") was denied registration as a scholarship plan salesperson and pursuant to section 28(3) "the Director shall not refuse to grant, renew, reinstate or amend a registration or impose terms and conditions on a registration without giving the applicant an opportunity to be heard". Section 28(1) of the Act requires that the "Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant where, in his opinion:

- (a) the applicant is suitable for registration; and
- (b) the proposed registration or amendment to registration is not objectionable".

The Act further provides in accordance with section 29(1) "after giving a registrant an opportunity to be heard, the Commission may:

- (a) suspend, cancel, restrict or impose terms and conditions on his registration; or
- (b) reprimand the registrant;

where, in its opinion, that action is in the public interest".

Finally, section 7(1) provides, "The Chairman may exercise the powers of and shall perform the duties vested in or imposed on the Commission by this Act and the regulations."

Pursuant to these provisions, the matter was referred to the Chairman in accordance with an Amended Notice of Hearing issued November 15, 1994. The Respondent appeared in person and represented himself at the hearing.

The Commission recently reviewed the requirements for consideration in regard to suitability in the matter of Steven Peter Sombach which was decided on March 10, 1994. The authorities were reviewed in that decision and I have them in mind for the purposes of consideration of this matter. The authorities considered then led to the conclusion at page 15, "Where the finding, if adverse, would interfere with the right to earn a living for which one is qualified we must only take action on the basis of "clear and convincing proof" such proof varying with the gravity of the matter is "something more" than the preponderance of probability". What then is the clear and convincing proof that is something more

than what on the preponderance of probability would indicate that the applicant was unsuitable or that the proposed registration was objectionable? In this particular case the applicant met the qualification generally used as the indication of suitability in that he had passed the test required of scholarship salespersons.

The following matters or allegations were advanced as grounds for consideration. The Respondent:

1. Appeared before four hearings before the Discipline Committee of the Law Society of Saskatchewan and all four hearings found the Respondent guilty of conduct unbecoming a barrister and solicitor pursuant to *The Legal Profession Act*. Together, the complaints involved four counts of failing to respond to letters from the Secretary of the Law Society and two of failing to serve his client in a conscientious, diligent and efficient manner, one of breaching an order of the Law Society and one of failing to discharge with integrity duties owed to his client.
2. Was late in filing his annual practice fee on 18 occasions
3. Was subject to three claims, the result of which left him indebted to the Saskatchewan Lawyers' Insurance Association for over \$28,000. The indebtedness arose as a result of his legal practice and while the Saskatchewan Lawyers' Insurance Association denied coverage in one of those claims because of the Respondent's failure to promptly report the claim which ultimately prejudiced the insurer's position, the claim was settled by the Association and the Respondent signed promissory notes in favour of the Association on which he still owes approximately \$23,000.
4. Was charged under *The Income Tax Act (Canada)* in 1989 and 1993 and is subject to a continuing garnishment.
5. Has been the subject of judgments by Laurent Chabot and Rosemarie Geoffrion Brown as a result of proceedings taken for enforcing a collection of outstanding debts.

The Respondent did not deny the allegations of fact in the Amended Notice of Hearing. He indicated that pursuant to his agreement with the Law Society he was no longer in practice and that finding employment was difficult, but that he was doing his best to repay his liabilities. He felt that none of his offences involved "sins of commission" but, rather were "sins of omission". When asked to explain his conduct he stated that he felt that the observation made by one of the members of the Discipline Committee of the Law Society that he was "spinning his wheels" was correct and that when he would get into a difficult

situation that he found stressful he would get involved in other activity or worry about the matter, but not move ahead. He stated that he had been doing occasional work providing accounting and income tax services to individuals without complaint and that he would be able to handle the responsibilities for sales of scholarship plans because his wife was also involved in the same activity and would be of assistance, presumably by keeping watch on his work habits.

After considering this evidence I have concluded that the Respondent has not worked sufficiently on his own or for others for a sufficient time from the April 19, 1994 order of the Law Society of Saskatchewan which provided that he could not practice law or revert to active practice status without the consent of the Professional Standards Committee of the Law Society and further that he could not apply for a notary public designation. The incidents described show that however well meaning and honest the Respondent may be, he has over a lengthy period of time exhibited work habits that do not provide evidence of steady, diligent, reliable conduct that one would expect from a person who is soliciting savings of individuals as a fiduciary. One might speculate on the number of circumstances in which a customer of the Respondent, if he were licensed, might seek information or explanations and not be treated reasonably. The Commission might also have concerns that if any allegations of misconduct arose that they would not be treated any more seriously in regard to their inquiries than was the Law Society of Saskatchewan. To my mind, this makes the applicant both unsuitable to serve investors and objectionable insofar as the Commission is concerned. In addition, the disciplinary record in regard to his conduct as a lawyer and as an individual in regard to his relationship with the Income Tax Department are such that the public could well feel that it was objectionable conduct that merited the denial of a right to public license which should be given only in the situations that were outlined in the case of Lymburn v. Mayland, (1932) 2 D.L.R.6(P.C.) where referring to sections similar to section 28 in the present Securities Act the Court stated:

"There is no reason to doubt that the main object sought to be secured in this part of the Act is to secure that the persons who carry on the business of dealing in securities shall be honest and of good repute, and in this way to protect the public from being defrauded".

To my mind it appears that at this time the requisite good repute is not present.

As a result, therefore, I have no doubt that the staff of the Commission have clearly established the something more that is required in these serious matters "to provide the clear and concise proof based upon cogent evidence to justify an administrative tribunal in revoking a license....or to gain a livelihood in business". (Coates et al (1988, 63 O.R. (2d) 526 at page 536).

I therefore find that the proposed registration by the Respondent should be refused on the grounds that the Respondent is not suitable and that the registration would be objectionable.

I would however urge that the Respondent continue to work to try and establish that he can work for others in a diligent and responsible manner over a longer period of time so that one may be more reasonably assured that he has overcome his propensity to "sins of omission" and having redeemed himself in the eyes of the public, might once again be found worthy of executing a position of trust.

DATED at the City of Regina, in the Province of Saskatchewan, this 6<sup>th</sup> day of December, 1994.



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Marcel de la Gorgendière, Q.C.  
Chairman