

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

AND

IN THE MATMR OF
BARRY JOSEPH FOLK

DECISION OF THE DIRECTOR

Before: Barbara L. Shourounis, Director

Appearances: James M. Hall, Acting Deputy Director, Registration,
representing Commission staff

Barry Joseph Folk, for himself.

Heard: On December 16, 1992 at Regina, Saskatchewan

This hearing was held pursuant to section 28 of The Securities Act, 1988, (the "Act") to determine whether Barry Joseph Folk is suitable for registration as a mutual fund salesperson employed by PFSL Investments Canada Ltd.

Facts

Mr. Folk applied to the Saskatchewan Securities Commission ("the Commission") for registration as a mutual fund salesperson by application dated August 18, 1992. The following questions and answers in that application are relevant to this proceeding:

- Question 13C asked whether he had ever had a license or registration suspended or cancelled. Mr. Folk answered that his license under The Saskatchewan Insurance Act was suspended for seven days in November, 1991 because he did not disclose his prior criminal record in a licensing application.

- Question 15B asked whether he had ever been found guilty of a criminal offence. Mr. Folk disclosed four criminal convictions:
 1. On March 3, 1976 he was convicted of common assault under section 245(1) of the Criminal Code and given a three month conditional discharge.
 2. On September 23, 1976 he was convicted of theft under section 294(b) of the Criminal Code and given a conditional discharge for six months.
 3. On June 19, 1985 he was convicted of aggravated assault under section 245.2(1) of the Criminal Code, and sentenced to nine months. This sentence was increased on appeal by the Crown to 15 months.
 4. On January 24, 1986 he was convicted of impaired driving under section 234(2) of the Criminal Code and sentenced to a fine of \$400 or 15 days.

Question 15C asked whether he was currently the subject of a charge for a criminal offence. Mr. Folk answered "no".

By information sworn June 15, 1992 it was alleged that on May 30, 1992 Mr. Folk stole assorted items from Canada Safeway and committed a common assault on Melinda Daradics. On October 22, 1992 Mr. Folk pleaded guilty to both charges and was fined \$50 for each offence.

Mr. Folk's Response

Mr. Folk gave the following explanation of his criminal record:

- The 1976 assault conviction related to an altercation with a commissionaire who was writing out a parking ticket. Mr. Folk said he pushed by him to get into his car to get away. He was 16 at the time.
- The 1976 charge for theft related to what he termed a "minor incident" of taking a few items from a grocery store.
- The 1985 conviction for aggravated assault and the 1986 conviction for impaired driving relate to an incident which occurred in 1983. He and his brother were driving home after "a night on the town" when they were stopped by the police in front of his house. He and his brother did not co-operate and additional policemen were called to the scene. A major altercation ensued which resulted in the two convictions. Mr. Folk

laid a complaint against the police with the Police Commission, but his complaint was dismissed. He says he didn't expect otherwise when policemen sit in on the Police Commission.

He explained that he didn't disclose his prior criminal record in his application in June, 1990 for his insurance license because he had tried to block the 1983 incident from his mind.

He said the theft and assault charges in June 1992 related to a minor incident where he took a few items from Safeway store without paying for them. A clerk followed him out of the store, he got into a dispute with her and resisted her attempts to take him back into the store. He said he purposely didn't disclose that these charges were pending when he applied for registration under the Act in August 1992. He thought that to disclose them would slow down his application. He felt that he would be found not guilty. After initially pleading not guilty to the charges, he entered a guilty plea in October 1992.

He said he has no excuse for this most recent incident, and suggested that he could be granted a probationary license with conditions. He was unable to suggest what conditions might be suitable.

Decision

The Commission requires high standards of honesty and integrity of those who work in the securities industry. In light of the foregoing facts Barry Joseph Folk does not meet those standards and is not suitable for registration.

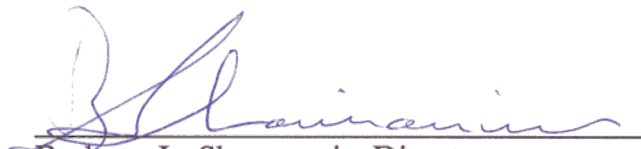
Mr. Folk showed he is not a truthful individual when he failed to disclose his prior criminal record in his application for an insurance license in 1990, and again when he did not disclose the pending criminal charges in his application to the Commission in August 1992.

His two convictions for theft, the first in 1976 and the second just two months ago, indicate that he is not an honest person. By itself, the 1976 conviction could have been overlooked because he was only 16 year old at the time. However, the recent conviction shows that he has not changed his ways.

Mr. Folk's explanation of his past shows that he doesn't accept full responsibility for and the gravity of his actions. At the hearing his attitude was that the criminal convictions were either minor or that he wasn't entirely to blame for the trouble he got into with the law.

Mr. Folk asked for some indication as to when he might reapply for registration. Section 30 of the Act states that where a registration has been refused, a further application may be made where it is clear that material circumstances have changed. Therefore, Mr. Folk cannot expect to be registered until he can produce clear evidence that he has become an honest, truthful, and law abiding individual.

Dated at Regina, Saskatchewan, this 21st day of December, 1992.



Barbara L. Shourounis, Director