

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

AND

IN THE MATTER OF
DONALD GLENN HARMON

DECISION AND ORDER

Hearing conducted on: **September 28 and 29, October 10 and 24, 1989**

Hearing panel: Marcel de la Gorgendiere, Q.C., Chairman
Herbert Dow, Commission member
Morley Meiklejohn, Commission member

Appearances: J. M. Hall for the Commission staff
C. H. Toews for Donald Glenn Harmon

Decision dated: **November 3, 1989**

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Donald Glenn Harmon is a salesman and this matter involves a hearing held by the Commission to determine whether it is in the public interest to suspend, cancel, restrict, or impose terms and conditions on the registration of Donald Glenn Harmon pursuant to Section 29 of The Securities Act, 1988, S.S. 1988, c.S-42.2 (the "Act"). The result of the hearing is that the Commission finds, and Mr. Harmon through his counsel agrees, that it is in the public interest that his registration be cancelled and that he may not apply for registration again for ten years. The details of this are set out in the order at the end of the reasons for the decision.

A number of allegations of fact were set out in the Amended

Notice of Hearing. At the commencement of the hearings Mr. Harmon admitted paragraph number six which stated his indebtedness to a bank for \$300,000 secured by approximately 57,700 Vista shares which he purchased, a personal guarantee of \$150,000 by James Corr and other securities. From the above loan proceeds Harmon instructed Lloyds Bank to pay Corr the sum of \$150,000. The loan has been called and Corr has failed to make good on his guarantee. The admitted paragraph continues with the listing of other debts ending with statement 6E "by virtue of Harmon being unable to pay all or any of his indebtedness as outlined above Harmon is insolvent." Other admissions, which were made by his counsel at the time his counsel requested to withdraw from the hearing, are detailed hereafter.

The total effect of the admissions as Mr. Toews stated was that his client accepted that his conduct was "unbecoming of a registered representative and in breach of the bylaws and regulations of the Investment Dealers Association of Canada" and "in breach of the Securities Act and the Securities Act Regulations". Mr. Toews referring to the above loan as being Mr. Harmon's "own facility, giving a client access to borrow funds in the amount of \$150,000. The security pledged at the time was owned by the client and but it, indeed, was in breach of the regulations. Mr. Toews added the following admissions, that Mr. Harmon:

- was elected to the board of Vista Mines, Inc. and was subsequently elected secretary-treasurer;
- arranged a share purchase for one person through another and conveyed the funds to do it;
- covered a clients margin call;
- erred "in not correcting the previous error in the account of Harry Evans and that's in breach of the regulations";

- had "accounts outside the jurisdiction of Saskatchewan". Those were the admissions that Mr. Harmon "is prepared to make at this time". While he therefore did not admit to the other allegations, he certainly did not unequivocally deny them.

A discussion took place as to the efficacy of calling further evidence in support of the additional allegations and his counsel stated that the purpose of the hearing was to determine "whether Mr. Harmon has committed acts unbecoming a registered representative, then why after admission that he has in fact committed some acts and maybe more - it is really up to the Commission to conclude from the evidence that is before it whether those acts have taken place. The fact that he admitted it to this point is so that we can, in a sense, capitulate that he has committed acts which are unbecoming a registered representative. Beyond that - it becomes an inquisition -- why is there anything further to determine?"

The Commission basically accepted this contention but not on the grounds that once there is an admission there need be no further inquiry. Rather, because the Commission in this case had heard considerable evidence capable of substantiating the substance of the allegations and as Mr. Harmon's counsel stated on that evidence we could draw conclusions. We are also entitled to draw conclusions from the failure to present rebuttal evidence. In addition, the Commission did not want to hear evidence after counsel's withdrawal that could reflect on others without them having counsel present or a clear indication of any possible offence that would come with a Notice of Hearing. It would be preferable for the hearing to have counsel on both sides.

From the evidence heard, the Commission concludes the cancellation of registration with no application for registration

to be made for ten years, a severe penalty, is completely justified. The evidence is that as a registered representative Mr. Harmon had approximately 60 percent of his clients investing in shares of Vista Mines, Inc., a small mining company, while he was indebted substantially in order to purchase the same shares and that he became personally involved with the group that attained control of the company and subsequently became a director. This is not the degree of detachment from the affairs of the company required to avoid real or perceived conflicts of interest between a representative and a client on whose behalf the registrant must act. Mr. Harmon was a substantial trader in the shares probably controlling the book on the shares and so arranged accounts so as not to disclose the real identity of some purchasers. It is a course of conduct ideally suited to manipulating the market. In order to maintain the market, he guaranteed loans of margin purchasers. While well aware that Saskatchewan legislation entitled him to trade only in Saskatchewan, he repeatedly dealt with accounts outside the province. In none of these matters did he produce any redeeming reason for knowingly acting in such a manner. One is forced to conclude that the personal financial stake he maintained in the company overcame his professional judgement.

Having determined that there are reasonable grounds for so doing and with Mr. Harmon's counsel's submission, the Commission orders as follows:

Firstly, that pursuant to Section 29 of the Act, the registration of Donald Glenn Harmon as a registered representative is hereby cancelled, secondly, that no application to the Director shall be made on behalf of Mr. Harmon for registration under the Act for a period of ten years, and thirdly, that an application for

registration after ten years must be reviewed by the Commission before being approved by the Director.

DATED at the City of Regina, in the Province of Saskatchewan this 3rd day of November, 1989.



MARCEL de la GORGENDIERE, Q.C.
CHAIRMAN,
SASKATCHEWAN SECURITIES COMMISSION