

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

AND

IN THE MATTER OF
ALLEN WALTER CULCHESKY
ALSO KNOWN AS ALLAN W. CULCHESKI

AND

SCHOLARSHIP CONSULTANTS OF NORTH AMERICA

Hearing Held December 8, 1988

Before: Barbara L. Shourounis, Director
Allan Walter Culchesky represented himself
James Hall represented Commission staff
Merv Negrey accompanied Allan Culchesky

DECISION

This hearing was held pursuant to Section 28 of The Securities Act, 1988 S.S. 1988, c. S-42.2 (the Act) to determine whether Allan Walter Culchesky is suitable for registration as a salesperson in the employ of Scholarship Consultants of North America Ltd. (Scholarship) and whether his registration is objectionable.

On December 9, 1986, Mr. Culchesky was charged, along with Dacam Home Comfort Ltd. (Dacam) and Michael Stephen Rawluk, with three counts of fraud pursuant to Section 338(1)(a) of The Criminal Code. The indictment alleged that the accused submitted false claims to the Canadian Home Insulation Program (CHIP) and thereby defrauded the Government of Canada.

The charges were heard before Mr. Justice Maurice of the Court of Queen's Bench for Saskatchewan in Saskatoon in February, 1987. Mr. Culchesky was represented by counsel.

In an oral judgment dated February 23, 1987, Maurice, J. found all three accused, including Mr. Culchesky, guilty of fraud on all three counts. Mr. Culchesky was sentenced to one day in jail and a fine of \$22,500.

Generally, each of the counts related to the submitting of applications and invoices under CHIP for materials and labour that were not provided by Dacam.

Mr. Culchesky's defence to count one was that he knew that the invoices were false, but that he honestly believed he had to add a labour cost to the invoices because of standards related to the CHIP program. With respect to the second count, Mr. Culchesky's defence was that he had no knowledge that work had not been done and material had not been installed until after the claims had been paid. On the third count, he admitted that he was aware that insulation had not been installed, but that he honestly believed that payment could be claimed because the work was warranted by Dacam.

Maurice, J. rejected his evidence on all three counts. He found that Mr. Culchesky knew in each case that the claims were false, at the time they were submitted, and that he didn't have an honest belief that he was entitled to make the claims. He therefore found Mr. Culchesky guilty of fraud. In his judgment, Maurice, J. defined fraud as:

"Some dishonest practice, whether resulting from falsehood, deceit or other fraudulent means, resorted to with intent to deprive another of his right, or in some way to do him harm. It connotes conduct which is dishonest and morally wrong. To defraud is to dishonestly deprive someone of property."

Mr. Culchesky's submission before me was that he shouldn't have been convicted of fraud, and that he wasn't satisfied that the trial judge considered all of the evidence he had submitted in his defence. He said that he didn't appeal the decision because of a lack of financial resources. He made a number of representations to the effect that he didn't know that the claims were false.

He stated that he had served the jail term, had paid \$7,500. of the fine, and was negotiating payment of the balance of \$15,000. of the fine .

He reviewed his business record, including substantial managerial experience in the food services industry. He felt that he had conducted himself responsibly in the past, and that the fraud conviction should not be held against him.

Section 28 of the Act gives the Director wide discretion in registering individuals to sell securities. The only statutory criteria is that the applicant be suitable and that registration not be objectionable. The criteria is very general and not particularly helpful.

The case law on the issue begins with Lymburn v. Mayland, (1932) 2 D.L.R. 6 (P.C.), which continues to be the leading case in the area. Lord Atkin in considering the constitutionality of the Alberta Security Frauds Prevention Act held:

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

Honesty is a basic prerequisite for registration as a salesperson under securities legislation. Persons licensed to sell securities are in a sensitive position. Because of the nebulous nature of securities, and the large sums of money that are often involved, opportunities for misrepresentation and fraud are significant. It is essential that salespersons be honest.

In convicting Mr. Culchesky of fraud, Maurice, J. found him not to be an honest person. I have to accept that judgement at face value. The judge heard all of the evidence, saw the demeanor of the witnesses and received the arguments. I cannot make a determination that he was wrong, based only on Mr. Culchesky's submissions to me. In any event, Mr. Culchesky's submissions as to why he was wrongfully convicted seemed to be largely the same arguments that he made at the trial.

This is not a situation where a person has accepted responsibility for his wrongful actions, has put them behind him and has gone on to establish himself as a credible person. In fact, Mr. Culchesky feels that he did nothing wrong and that he was wrongfully convicted. This attitude concerns me as much as the conviction itself.

Based on the conviction for fraud and his present attitude, I conclude that Mr. Culchesky is not suitable for registration under the Act.

DATED at Regina, Saskatchewan, this 3rd day of January, 1989.


Barbara L. Shourounis
Director