

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of

SOUTHERN BROKERAGE & HOLDING CO., INC. (801-1280):  
d/b/a THE CANADIAN FORECASTER :  
100 Adelaide Street, W. :  
Toronto, Ontario, Canada :

Alan McDonald Munro :  
Peter Jeffery :

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FILED

JUL 31 1967

SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

Irving Schiller  
Hearing Examiner

Washington, D. C.  
July 31, 1967

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BEFORE: Irving Schiller

APPEARANCES: Peter J. Adolph and Donald F. Burt  
for the Division of Trading and Markets  
  
Leonard R. Glass of Glass & Greenberg  
for Southern Brokerage & Holding Co., Inc.  
and Alan McDonald Munro

These are proceedings instituted pursuant to Section 203(b) of the Investment Advisers Act of 1940 (Act) to determine whether Southern Brokerage and Holding Co., Inc. doing business as THE CANADIAN FORECASTER (registrant), Alan McDonald Munro (Munro) and Peter Jeffery (Jeffery) willfully violated certain specified provisions of the Act and the rules thereunder and to determine what, if any, remedial action is appropriate in the public interest pursuant to Section 203(d) of the Act.<sup>1/</sup>

The order instituting these proceedings alleges in substance that during the period from on or about December 3, 1964 to April 26, 1966 registrant, Munro and Jeffery, singly and in concert, willfully violated and willfully aided and abetted violations of Section 206 of the Act<sup>2/</sup> in that the said persons

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1/ Section 203(d) of the Act, as pertinent here, provides that the Commission may revoke or suspend the registration of an investment adviser if it finds it is in the public interest and that such investment adviser has willfully made any false or misleading statement in its application for registration or has willfully violated or aided and abetted such violation of the Act or any rules or regulations thereunder.

2/ Section 206 forbids an investment adviser from employing any device, scheme or artifice to defraud any client or prospective client, from engaging in any transaction, practice or course of business which operates as a fraud and deceit upon any client or prospective client and from engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative.

directly and indirectly employed devices, schemes or artifices to defraud clients and prospective clients and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon clients and prospective clients. The order further alleges that in the course of such conduct and without regard to the obligations of an investment adviser to adhere to standards of care and responsibility and to render fair and impartial analysis, respondents, through the instrumentality of THE CANADIAN FORECASTER, recommended the unseasoned and speculative securities of Victoria Algoma Mineral Co., Ltd. (Victoria) by means of false, deceptive and misleading representations and omitted to state certain material facts and adverse information with respect to the aforesaid securities, which representations and omissions are specified in the order for proceedings. It is also alleged that the respondents recommended certain specified securities of speculative character and unknown investment worth, together with securities of substantial companies of known investment merit in such a way that they created a false and misleading impression that the speculative securities were also of high quality, had mining or other properties of similar quality and that the market performance of the securities of the speculative companies would equal or surpass those of known investment merit. The order further alleges that from on or about December 3, 1964 to September of 1966 respondents, singly and in concert, willfully violated and willfully aided and abetted violations of

Sections 203(c), 204 and 207 of the Act and Rules 203-1 and 204-1 thereunder in failing to include certain required information in its registration application, Forms ADV and ADV-SUP, and that registrant and Munro failed promptly to file amendments on Form ADV-SUP correcting the inaccurate statements in registrant's application for registration and failed promptly to file a similar amendment indicating that registrant maintains an office in Buffalo, New York in addition to its office in Toronto, Ontario, Canada.

After appropriate notice hearings were held before the undersigned hearing examiner. Proposed findings of fact and conclusions of law and brief in support thereof was filed only by the Division of Trading and Markets.

Respondent Jeffery was duly served with a copy of the order for proceedings but failed to file a notice of appearance or an answer as required by the said order. The record reflects that Jeffery failed to appear at the hearings and that he informed the Division that he intends to default. Pursuant to Rule 6(e) of the Commission's Rules of Practice the proceeding may be determined against Jeffery upon determination of the order for proceeding, the allegations of which may be deemed to be true. Accordingly the proceeding, with respect to Jeffery, is respectfully submitted to the Commission for the entry of an appropriate order.

The following findings and conclusions are based on the record, the documents and exhibits therein and the hearing examiner's observation of the various witnesses.

Southern Brokerage and Holding Co., Inc., a Missouri corporation, doing business as The Canadian Forecaster, is registered as an investment adviser pursuant to Section 203(c) of the Act and has been so registered since June 8, 1956. On December 3, 1964 Munro became president and a director of the registrant and sole owner of all of its stock. Registrant publishes a weekly document of four pages entitled The Canadian Forecaster (Forecaster) of the type generally referred to as a "market letter." Munro is the editor-in-chief of the Forecaster and as such is the person solely and ultimately responsible for its contents. The Forecaster was distributed through the mails to subscribers in Canada and the United States and during the period January through March 1966 it had approximately 3,000 subscribers of which approximately 65% were residents of this country.

Violations of Section 203(c), 204 and 207 of the Act

The Commission's order for proceedings alleges that registrant and Munro willfully violated the Act in representing in its registration application and amendments filed thereto (Form ADV and ADV-SUP) that no person directly or indirectly controlled by registrant, including its employees, has been found by the Commission to have violated the Act or to have aided or abetted in such violation whereas in fact Jeffery was a controlled person or employee of the registrant, participated jointly with Munro in writing the Forecaster, and was found by the Commission to have been in violation of the Act.

Jeffery was employed by registrant as a salaried employee from approximately August 1, 1965 through March 1, 1966. Prior to August 1, 1965 Jeffery was employed by Mining News and Statistics which sold certain investment advisory material to registrant. In the spring of 1965 when Mining News and Statistics ceased operations Jeffery continued to furnish material to the Forecaster on a piece-work basis under the pseudonym of "Roy Ritter." However, the record discloses that from approximately August 1, 1965 Munro paid Jeffery a weekly salary plus expenses by checks payable to Peter Jeffery and he knew that Roy Ritter's real name was Peter Jeffery. The record further discloses that prior to February 1966 Munro was aware that Jeffery had "some difficulties" with S.E.C., the exact nature of which he did not know. He admitted he never pressed Jeffery for a precise explanation of his "difficulties" with the S.E.C. and found the entire matter "a little bit embarrassing to both parties." On September 4, 1963 the Commission rendered an opinion in the Matter of The Dynamics Letter, Inc. in which, among other things, it found that respondent Jeffery willfully violated and aided and abetted willful violations of specified sections of the Act and the rules thereunder.<sup>3/</sup>

Thus, it is clear that although Jeffery's violations of

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<sup>3/</sup> The Dynamics Letter, Inc., Securities Act Release 148, September 4, 1963.

the Act were a matter of public record since 1963 and available to Munro upon inquiry no such inquiry was made notwithstanding the fact that he knew that Jeffery was in trouble with this Commission, and no explanation was offered for the failure to make any effort to obtain information concerning his employee.

During the period of Jeffery's employment registrant filed one amending Form ADV in which it stated in response to one of the items required to be answered, that no person controlled by registrant, including any employees, had been found to have violated any provision of the securities laws or aided or abetted such violation. The Commission has held that broker-dealer employers have a duty to make diligent inquiry into the background of their employees.<sup>4/</sup> Certainly, such duties and responsibilities are equally applicable to investment advisory firms in connection with their hiring of employees. Munro's conduct in failing promptly to file an amendment concerning Jeffery's violations of the Act to correct the inaccurate statement on file with the Commission constituted willful violations of the Act. In addition, the amendment to the registration application signed by Munro and filed with the Commission on February 3, 1966 at a time when the record shows Munro knew that the S.E.C. "had to close him down" constituted the willful filing of a false statement in violation of the Act.

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4/ Vickers, Christy & Co., Inc., 41 S.E.C. 182 (1962); in the Matter of Hugh N. Casper, Securities Exchange Act Release No. 7479 (1964).



The hearing examiner finds that during the period from on or about August 1, 1965 to at least March 1967 (the date the instant record was closed) registrant and Munro, singly and in concert, willfully violated and willfully aided and abetted violations of Sections 203(c), 204 and 207 of the Act and Rules 203-1 and 204-1 thereunder in filing an amendment to registrant's registration application on Form ADV on December 3, 1964 falsely stating that no controlled person of registrant or employee has been found by the Commission to have violated the Act and the Rules thereunder when in fact one of its employees, Jeffery, has been found by the Commission to have willfully violated or aided and abetted in willful violations of the Act and the Rules thereunder and in failing promptly to file an appropriate amendment to correct the inaccurate statements in registrant's application for registration and amendments filed thereto.

Registrant and Munro admit that from approximately March 1 until at least August 31, 1966 registrant maintained a business office at 284 Delaware Avenue, Buffalo, New York which office constituted the principal place of business of registrant. The Commission's files disclose that no amendment was ever filed to reflect that registrant had moved its office from Toronto, Canada to Buffalo, New York. Munro urges in his defense that in March he retained counsel in Buffalo and asked them to handle everything and the record discloses that registrant sent two letters to the Commission stating that it had established an office in

Buffalo, New York. The first of such letters dated March 4, 1966 is addressed to the Commission and the second dated March 9, 1966 is addressed to a Commission attorney in Washington, D. C. in which Munro states, among other things, that registrant had opened an office in Buffalo, New York and he was "applying for registration with the New York State Authorities." The Commission has held that the president of a registrant was under a duty to determine whether a filing had been consummated and his failure to do so constituted such negligence as to amount of willfulness<sup>5/</sup> and that willfulness is not negated by either retention or reliance on counsel.<sup>6/</sup> The Commission has also held that even if it assumed that it has somehow acquired knowledge of certain matters such fact does not relieve a registrant from compliance with statutory filing requirements.<sup>7/</sup> However, under the Commission's decisions these factors, though they are not sufficient to negate a finding of willfulness, may be considered as mitigating factors in connection with determining an appropriate sanction in the public interest and will be so considered by the hearing examiner.<sup>8/</sup> The hearing

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5/ Sterling Securities Company, 39 S.E.C. 487, 495 (1959)

6/ N. Pinsker & Co., Inc., 40 S.E.C. 285, 289 (1960)

7/ Wendell Maro Weston, et al, 30 S.E.C. 296, 311 and 312 (1949)

8/ N. Pinsker & Co., Inc., supra. Though the case cited and those in footnotes 5, 6 and 7, supra, relate to broker-dealers registered under the Securities Exchange Act of 1934 the principles stated therein are equally applicable to investment advisers since the requirements to file a correct registration statement and the necessity promptly to amend information in such statement which is or becomes inaccurate, are substantially similar for broker-dealers under the Exchange Act as they are for investment advisers under the Act. Cf. Edwiin Hawley, 32 S.E.C. 375 (1951).

examiner finds that registrant and Munro willfully violated Section 204 and 207 of the Act and Rule 204-1 thereunder in failing promptly to file an amendment to its registration application on Form ADV-SUP indicating that registrant's principal place of business is located at 284 Delaware Ave., Buffalo, New York.

Violations of Section 206 of the Act

The gravamen of the violations of Section 206 of the Act alleged in the order of proceedings is that respondents employed schemes or artifices to defraud clients and engaged in practices and a course of business which operated as a fraud and deceit upon clients and prospective clients by making false, deceptive and misleading representations and omitting to state certain material facts in recommending the unseasoned and speculative securities of Victoria. The representations appear in nine of the weekly issues of the Forecaster, commencing January 14 and continuing through March 11, 1966. The Forecaster may be described as a type of market letter which, in general, contained comments of a varying nature concerning securities listed on both United States and Canadian stock exchanges as well as over-the-counter securities in both countries. None of the market letters during the period January through March purported to contain a detailed analysis of a particular security or provide financial information or other data from which an informed judgment could be made as to the investment value of a security. Rather, these market letters contain comments about developments

affecting a particular company or industry or a group of industries or effecting the economy generally and purport to reflect views of the current stock market situation. The bulk of each issue is devoted to noting market fluctuations of a specified security and the reasons therefor, sometimes depicting such fluctuations in graph form, together with recommendations to either buy or sell or indicating a range of prices for purchases and sales.

Commencing with the issue of January 14, 1966 the Forecaster started "touting" Victoria stock. A review of the type of information published in the weekly issues will amply demonstrate not only the falsity of many of the statements made concerning Victoria but Munro's lack of knowledge of material facts at the time he either wrote or edited the material, the irresponsible and reckless manner in which information which was obtained was reflected in market letters and the omission to state material facts he knew or should have known.

Before analyzing the information published by the Forecaster concerning Victoria we note that the company was organized in 1954 and that as of August 31, 1965 it had 3,820,000 shares of common stock issued and outstanding, had current assets consisting of cash of \$60 and an operating deficit of \$11,549. As of November 23, 1965 the company had no producing mines, had never had any earnings and never paid any dividends on its common stock.

In the January 14, 1966 issue the Forecaster recommended purchasing 500 shares of Victoria stock. Under a heading "Canada; Bargains In-The-Making," the Forecaster after noting that Victoria had been formed some twelve years earlier for exploration purposes stated they were now the third largest in the Timmins camp after Texas Gulf Sulphur and Abitibi-Inco and there was a rumor that there was "starting an aggressive Timmins-area program following extensive airborne E/M and geophysical ground work." Munro testified that immediately prior to inserting the item and the sole basis for its inclusion was that he noticed that Victoria's stock had doubled in price in a week from 13 to 26 cents. There is no evidence that at the time the statements were published registrant or Munro knew Victoria's property was in fact the third largest in the Timmins camp nor does the record disclose that any facts were available to Munro from any reliable source to support the published rumor if it in fact existed. Moreover, it appears from the record that Victoria filed a prospectus in 1964 and thereafter filed various amendments with the Ontario Securities Commission in Canada and that information concerning the company was available publicly which Munro never took the trouble to look at. The hearing examiner finds that registrant had no basis for the statements in the Forecaster of January 14, 1966, concerning the extent of Victoria's holdings, that Munro failed to verify the company's holdings and omitted to disclose that the sole reason for the statements relating to the company was the market rise of its stock.

One week later on January 21 the Forecaster again recommended purchase of Victoria stock repeating that it held the third biggest claim spread in the Timminsarea after Texas Gulf and

Abitibi-Inco. The market letter also stated that in the past week the stock caught fire and that the reason for the eruption, according to the Northern Miner, a Canadian mining publication, was that Victoria 'may have had a discovery in Cape Breton.' The Forecaster then stated "we" phoned the company to verify the facts and "according to an exasperating spokesman McIntyre<sup>9/</sup> controls the destiny of Victoria in at least three areas, Pine Point camp, the Timmins-Texas Gulf camp and somewhere in Cape Breton, that McIntyre has made a major copper discovery in one of these territories but won't release full details until further territorial rights have been established." Munro testified that at the time he published the foregoing information he had one conversation with the president of Victoria who indicated he had a discovery but would not say where and he "would not give any information on it at all." Munro also testified he was aware of the fact that McIntyre had an agreement with Victoria Algoma relating to exploration but did not know the terms thereof nor what properties were involved. Munro further testified that in publishing the information he "therefore had to read between the lines."

The record discloses that in 1965 Victoria entered into an option agreement with McIntyre with respect to mining claims in the Timmins area under which McIntyre agreed to explore the optioned

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<sup>9/</sup> McIntyre Porcupine Mines, Ltd. is a mining company listed on the New York Stock Exchange. As at December 31, 1966 it had assets in excess of \$130 million, earnings of \$3.78 per share and had dividends of \$2.70 per share on its 2,389,182 shares of stock outstanding.

property with both companies sharing in the profits and had an oral agreement with McIntyre regarding possible exploration of property near the Manitoba-Ontario border. In late 1965 McIntyre, as a result of geophysical work on the property, completed drilling three holes on the only three geophysical anomalies of any interest on the property and concluded that each of the holes proved that the anomaly was caused by something other than sulphur which might contain an ore body, that the result of the drilling denied the existence of an ore body and that as of March 1966 nothing of commercial value had been found on the property. An official of McIntyre testified that as to the oral agreement relating to the Manitoba-Ontario border, McIntyre sent one of its employees to look at the property as a result of which the company concluded "we found there was absolutely nothing there." The official also testified that during January and February McIntyre made no copper discoveries and it does not consider it controls the destiny of Victoria.

Moreover, the record shows that in a prospectus dated November 23, 1965 and accepted for filing by the Ontario Securities Commission on January 20, 1966 <sup>10/</sup> Victoria included an Engineers Report dated August 15, 1965 which stated that extensive exploration had been carried out on the Victoria Timmins property, that nothing of commercial value had been found and that no further work was recommended. Munro's testimony discloses he made no effort to obtain a copy of or even look at the prospectus nor the engineers report, nor did he attempt to

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<sup>10/</sup> Under Ontario Securities laws the acceptance of a document for filing by the Ontario Securities Commission makes the material immediately available publicly.

verify the item relating to Cape Breton. The information relating to the Cape Breton properties was utterly false. Munro's explanation for the item was that it was based on information in the Northern Miner. In fact, the Northern Miner made no mention of a discovery but merely stated "The company (Victoria) is acquiring a spread of ground in Cape Breton Island..." The hearing examiner finds that the information set forth in the January 21 issue of the Forecaster concerning Victoria was false and misleading, failed to include material information which was publicly available and which Munro could have obtained and that, under the circumstances, the information in the market letter was published carelessly, recklessly and without any reasonable attempt by Munro to verify information received from Victoria's president or the information he read in the Northern Miner.

Following the January 21 publication and prior to issue of January 28 Munro met with the president of Victoria and a Dr. Barringer. The latter told Munro that he had done some airborne magnometer work for McIntyre in the Timmins area but gave no information regarding any of the results. Victoria's president told Munro that the company had made a discovery but he was unwilling to elaborate, that the company was acquiring a very exciting new property but he would not give any indication of its location or say anything further until the company completed its position and that the company and McIntyre were interested in the Falcon Lake area. Armed with the above generalities and the paucity of specific



information Munro wrote in the January 28 issue that Victoria's "rumored (but not confirmed) discovery also involves copper..." Munro testified that several days later he again met with Victoria's president and at the time was told that Victoria had completed 200 claims in an area known as Great Slave area which was 18 miles from Pine Point, that grab samples had been obtained that assayed better than three per cent copper and that the showing was in an area of about 4-1/2 miles varying in widths from 170 to 700 feet. However, when the February 4 market letter was published it stated that in the Timmins area Victoria may have one of the biggest mineral discoveries since Pine Point, Texas Gulf, Dynasty and Columbia River, that the company landed four stakers near the eastern rim of Great Slave Lake - 18 miles from Pine Point and put them to work acquiring land around "a surface copper discovery of unusual proportions." That issue also stated that "on an educated guess basis (persons who had flown parts of the Rockies and have walked the main geological breaks surrounding Great Slave Lake) Victoria has scratched the top of a discovery which could make it parallel to the Dynasty picture." Finally, the Forecaster recommended purchase of the stock stating "Victoria should be able to swing to \$2-1/2."

Assuming arguendo that Munro's testimony concerning the statements made to him by Victoria's president were to be believed they were never verified by Munro and provided no justification for the Forecaster to publish that Victoria had the biggest mineral

discovery since Texas Gulf. Moreover, absent any assay disclosing a percentage of copper it was grossly misleading for the Forecaster to publish that there was a copper discovery of unusual proportions. Munro admitted he never saw any assay reports on the grab samples and that he made no effort to verify the distance between Victoria's property and Pine Point. Pine Point is approximately 80 miles from the Victoria property in Great Slave Lake area and Munro admitted the statement in the market letter relating to the distance was erroneous. Munro further admitted that the prediction of a rise in the price of the Victoria stock was not founded upon the information he purportedly received but on a projection "based purely on technical chartings" of the stock in his office.

The February 11 market letter stated Victoria "may have made one of the biggest new copper discovery since Texas Gulf Sulphur's Timmins find," and that the company has "at least 4 miles of potent geology to cover the MacDonald fault before anybody will know if the company is sitting on the biggest copper discovery since Texas Gulf." In another part of that issue the Forecaster stated that "Victoria engineers were directing trenching and line-cutting activities upon what may be one of the most massive copper discoveries in a decade. . . . When assays are released from its Great Slave Lake find we suggest it could double again. One of our reasons for saying as much is that we employ a man who has walked many of the copper-bearing breaks in this region and has brought

back ore samples which might have come from a crown-jewel collection." Munro testified that the statements in both the February 4 and 11 market letters referring to the Great Slave area and the ore samples brought back were based on conversations he had with one of his employees who told him that in the late 50's or early 60's while on a summer job with a government geological survey crew in the general area of Great Slave Lake he picked up some grab samples which he displayed to Munro. It is clear from the record, that Munro knew that the samples were not taken from Victoria's property and he testified that in any event he was aware of the fact that absent an assay or other documentation not much significance can be attached to grab samples and the samples he saw were not indicative of the mineralization on Victoria's property. He further testified he was unable to determine exactly where such samples came from other than he thought he was between 10 and 30 miles from the company's property. The hearing examiner finds that on the basis of the information obtained by Munro, prior to the publication of the February 11 market letter, concerning Victoria's properties, the statements that Victoria may have made one of the biggest new copper discovery or that it has what may be the most massive copper discoveries in a decade were false. On the basis of the information Munro had concerning grab samples, the manner in which the statements relating to them was published was tantamount to a complete fabrication since they were designed to give the impression the grab samples evidences the existence of vast quantities of copper and that there was some relationship between the

grab samples and Victoria's property particularly since the Forecaster concluded with a prediction that the company's stock could double. Such prediction was completely without foundation.

In the issue of February 18 the Forecaster continued enthusiastic recommendation of Victoria by repeating that Victoria had made a discovery on the east shore of the Great Slave Lake area -- all in a sheer-zone formation containing bomite, calchopyrite and some native copper and that two major copper outcroppings are 4 miles apart and have been well covered by Victoria's stakers. In the February 25 issue Munro again repeated that Victoria may have a major copper discovery and urged purchasing the stock. Munro testified the basis for these statements were his "interpretations" of statements made by Victoria's president and the grab samples referred to earlier. The hearing examiner finds that Munro made no effort to verify any information he had prior to publishing the aforesaid two market letters and that the statements concerning discoveries on Victoria's property were unwarranted under the circumstances and false.

Prior to the publication of its next market letter the registration statement of the Forecaster as an investment adviser was suspended by the Ontario Securities Commission because of the nature of its constant references to Victoria's major copper discovery which in fact was nonexistent. Nevertheless, in the March 4 issue the Forecaster, after stating that the Ontario

Securities Commission had suspended its registration statement as an investment adviser "on grounds which had not been fully elucidated. . .," the Forecaster stated "we think Victoria's find may be a major discovery. Meanwhile, a securities-agency consultant in Toronto has implied that in his opinion Victoria has not made a discovery. . ." "We shall appeal of course. . ."

The Forecaster continued to recommend purchase of the Victoria stock. Thus, notwithstanding the suspension of its registration by the Ontario Securities Commission because of statements referring to Victoria's possible major discovery, the Forecaster gave added emphasis to the false and misleading statements by subtly stating that "concern" was expressed (by the Commission) "regarding the veracity of the phrase may have been a major copper discovery" and followed such statement with a description of E/M (electromagnetic) work being done by Victoria and a statement by its consulting engineer that a "600-foot zone of 'very good' conductivity, still open in the Southwest has been outlined." It is clear that Munro knew that the Ontario Securities Commission had raised serious questions concerning any reference to major copper discoveries by Victoria particularly since Munro was unable to establish any reasonable basis for such statements and suspended the Forecaster for that reason. The hearing examiner finds that the manner in which the Forecaster described its suspension by the Ontario Commission was not only misleading but suggested that the Commission's

concern was unwarranted in light of work done and an engineer's statement. Under the circumstances, all the statements relating to Victoria were false and misleading and the Forecaster omitted to state material facts relating to Victoria as well as facts concerning its own suspension. The continued reference to a possible major discovery by Victoria evidences the careless and reckless manner in which the Forecaster was published.

In the following week's issue after repeating the canard that Victoria Algoma's property was 18 miles from Pine Point the Forecaster stated that when news of the Ontario Securities Commission action against the Forecaster was reprinted in leading Canadian newspapers an abrupt decline occurred in the Vancouver O-T-C market for shares in a company which we have seen as a potential major silver-lead-zinc producer. The hearing examiner finds that not only was the statement concerning Victoria's property location false but the remainder of the statement was misleading in giving the impression that the market decline in the Victoria stock was due solely to the Forecaster's suspension by the Ontario Securities Commission and compounded the misleading statement by giving an assurance that the company was a potential major silver-lead-zinc producer, a fact which was untrue.

In defending the statements appearing in the Forecaster Munro maintained at the hearing that not only were they justified by the fact that they came primarily from Victoria's president, which the record negates, but that in all of the publications he

pointed out that Victoria was a speculative security or characterized it as a gamble and that he did not, directly or indirectly, purchase securities in Canada or the United States and received no compensation directly or indirectly as a result of the statements published. The hearing examiner has given careful consideration to these factors but they are insufficient to negate the willfulness of the violations by registrant and Munro. The statements concerning Victoria which Munro maintains came from the president of the company were either falsely stated, grossly exaggerated or misleadingly presented in the Forecaster.

Registrant is registered with this Commission as an investment adviser and as such held itself out to the public as competent to furnish investment advice. Inherent in such competence is the duty and responsibility to render fair and impartial analysis and to make every reasonable effort to verify information received from whatever source prior to disseminating information to clients concerning companies, their operations or their securities. The Commission has held that an investment adviser is a fiduciary <sup>11/</sup> and must exercise such a high degree of care as to insure accurate and adequate representations concerning securities discussed in printed advisory material distributed to clients. <sup>12/</sup> The Courts have confirmed that an investment adviser has a fiduciary relationship to his clients

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11/ Frank Payson Todd, 40 S.E.C. 303, 307 (1960).

12/ Paul K. Peers, Inc., Investment Advisers Act Release No. 187 (1965).

and thus an affirmative duty of utmost good faith and full and fair disclosure of all material facts as well as reasonable care to avoid misleading clients.<sup>13/</sup>

In the instant case the statements concerning Victoria's properties and professed discoveries published in the Forecaster were either utterly false, misleadingly stated and in all instances unverified. The manner in which information obtained was ultimately reflected in the Forecaster evidences irresponsibility and a reckless disregard of the standards of care and responsibility which an investment adviser owes to his clients.

The Commission has also held that under the securities acts a person engaged in the securities business must be held to rigorous standards of full and fair disclosure in their dealings with investors. The rendition of investment advice is an integral part of the securities business and the Act reflects Congressional recognition of such fact and of the need to protect those who seek such advice.<sup>14/</sup> With respect to the techniques of selling securities the Commission has repeatedly held that lax merchandising standards are antithetical to the anti-fraud provisions of the securities statutes.<sup>15/</sup> Similarly, high standards of truthfulness and disclosure must also govern the propriety and legality of investment advisers

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13/ S.E.C. v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963).

14/ See S.E.C. v. Capital Gains Research Bureau, Inc., supra; Arleen W. Hughes, 27 S.E.C. 629 (1948).

15/ See e.g. Alexander Reid & Co., Inc., 40 S.E.C. 986 (1962).



who undertake to publish information, or analysis concerning securities particularly where such material is coupled with a recommendation to buy or sell such securities.<sup>16/</sup> The dissemination of investment advice, prepared irresponsibly or recklessly in violation of the advisers' duties and responsibilities operates as a fraud on the clients of the investment adviser.<sup>17/</sup> In the Report of The Special Study of the Securities Markets of the Securities and Exchange Commission (Special Study Report) it was pointed out that when investment advice is irresponsibly or recklessly prepared or when too casually based on unfounded statements they can start a chain reaction which may end in disaster for many investors.<sup>18/</sup> The Special Study Report further pointed out that irresponsible dissemination of advice has been responsible for injury to the public investor and to the reputation of the entire investment community.<sup>19/</sup>

There was no adequate basis for the predictions of a substantial price rise in the speculative securities of Victoria and they were completely unjustified. If, upon the basis of Munro's information, a salesman induced or attempted to induce a customer to purchase Victoria stock such unfounded predictions would have been considered fraudulent and in violation of the anti-fraud provisions

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16/ Spear and Staff, Incorporated, Investment Advisers Act Release No. 188 (1965).

17/ Anne Caseley Robin, 41 S.E.C. 634 (1963).

18/ H. Doc. No. 95, Pt. 1, 88th Cong., 1st Sess. (1963) p. 383.

19/ Ibid at p. 386.

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of the securities acts. No less a standard is applicable to investment advisers who publish and sell market letters containing unfounded predictions of price increases of a speculative security of an unseasoned company. Moreover, if at any time after January 20, 1966 Munro had made an effort to look at the prospectus filed with the Ontario Securities Commission he would have known that Victoria was making a public distribution of its stock and that Victoria's president was also president to Tuina Enterprises, the underwriter. With such facts publicly disclosed Munro should have realized the obvious incentives of Victoria's president and should have exercised caution and made every effort to verify statements emanating from such source.

The hearing examiner finds that registrant and Munro, singly and in concert, willfully violated Section 206 of the Act in that they employed devices, schemes and artifices to defraud clients, and engaged in practices and a course of business which operated as a fraud and deceit on clients. The hearing examiner further finds that in the course of such conduct registrant and Munro failed to carry out the fiduciary obligations which an investment adviser has toward his clients to render fair and impartial analysis, prepared and disseminated investment advice in an irresponsible and reckless manner in violation of an adviser's duties and

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20/ Alexander Reid & Co., Inc., supra; Mac Robbins Co., Inc., 41 S.E.C. 116, aff'd sub nom Berko v. S.E.C. 316 F 2d 137 (C.A. 2, 1963).

responsibilities and published false and misleading representations relating to Victoria, its properties, operations and results of exploration, made predictions of an increase in the price of such stock without any reasonable basis, made no effort to verify the information which they obtained and omitted to state material facts which they knew or could have easily ascertained.

The order for proceedings also alleges that as part of the scheme or device to defraud clients and course of business which operated as a fraud and deceit upon clients Munro and Jeffery recommended securities of speculative character and unknown investment worth including Victoria, Columbia River Mines Ltd. and Far East Minerals Ltd., together with securities of substantial companies of known investment merit in such a way as to create the false and misleading impression that the speculative securities were also of high quality, had mining or other properties of similar quality and that the market performance of the speculative securities would equal or surpass those of known investment merit.

The Forecaster in at least six of the issues mentioned above referred to Victoria along with Texas Gulf Sulphur in a manner which suggested that Victoria had properties and ore of similar quality to Texas Gulf and Pine Point Mines, Ltd. and intimated that the market performance of Victoria would equal or surpass that of both companies. The Forecaster repeatedly contained such statements as Victoria's holdings were the third largest in the Timmins area after Texas Gulf, that Victoria had one of the biggest mineral

discoveries since Pine Point and Texas Gulf or may have the biggest new copper discovery since Texas Gulf, that Victoria had staked a circle of claims around Texas Gulf, that Victoria's find may be a major discovery and finally in the March 4 issue that it advised those who were "following up in copper futures, Texas Gulf, Sunshine Mining, U. S. Smelting and other major ground gaining vehicles may employ whatever recent profits you can afford to risk in order to accumulate further positions in Victoria."

The Forecaster's recommendations relating to Far East Minerals, Ltd. included such phrases "Far East is trying to farm the deposit out on a royalty basis to bring in 40¢ or 50¢ for basic income" and "The stock is now \$2.70 and when spring breakup permits the company to get onto its ground we expect it to vault into the \$3 - \$4 range. The record is devoid of any basis for the foregoing statements. There is no evidence the company had any earnings or paid dividends in 1965 or in the first three months of 1966.

With respect to Columbia River the Forecaster's comments included the following statements: "Columbia has a new base that should easily support tripling action after tonnage estimates start becoming available sometime next month." The Forecaster thus implied it knew the company had tonnage estimates which would not be available until later and that when released the stock could triple. In another issue the Forecaster stated "This means we're pushing close to \$4 a share in our estimates of what Columbia should earn during its formative phase. So we see the stock trending somewhere between

\$40 and \$60 after liquidation in the \$4.50 - \$5 zone has dried up and we hope all clients with long-term speculative accounts are still accumulating. Your broker may tell you he has never heard of it or refuse to buy it -- which means you may have to ask him if he had heard of Dynasty at \$10, Pine Point at \$18 or. . ." Munro testified he was familiar with Columbia, that he knew the company had no earnings and paid no dividends in 1965 and 1966. There is no evidence in the record as to the basis for predicting Columbia would trend toward \$60 nor for the suggestion that it could be comparable to the companies mentioned.<sup>21/</sup> The Commission has held that it is violative of the anti-fraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 for a broker and dealer in the offer and sale of a security to represent that the company whose securities he was offering which had no history of operations or earnings was comparable to another company in the same industry which had experienced successful operations and had a history of earnings or to represent that the price of the securities he was offering should do as well or better than that of successful companies in the same industry.<sup>22/</sup> The Commission has also held it to be materially misleading for sales literature to make such comparisons without appropriate qualifications

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21/ The record shows that at the time the Forecaster published the statement quoted in the text Dynasty was trading in the \$20's and Pine Point was trading in the \$80's.

22/ Irving Grubman & Co., 40 S.E.C. 671 (1961).

and explanations pointing out material differences between the securities of the successful company and those being offered by the broker-dealer and pointing out that there was no assurance that the past performance of the selected company would be repeated by the company whose securities was being offered.<sup>23/</sup> The standards of care and responsibility for a broker-dealer in offering securities to customers and the duty to refrain from making misleading comparisons are equally applicable to investment advisers who publish and sell market letters to clients recommending the purchase or sale of securities by means of misleading representations and comparisons.

The hearing examiner finds that the Forecaster together with or aided and abetted by Munro recommended securities of speculative character and unknown investment worth including those of Victoria and Columbia with securities of established companies of understandable investment merit in such a way that they created the false and misleading impression that the speculative companies were also of high quality, had mining or other properties of comparable quality, that the market performance of the securities of the speculative companies would equal or surpass those of known investment merit. The hearing examiner also finds that the comparisons of the speculative securities of Victoria and Columbia with those of established companies, such as Texas Gulf and Pine Point, were made without appropriate qualifications and explanations pointing out the material difference which existed between Victoria on the one hand and Texas Gulf and Pine Point on the other. The hearing examiner further finds that Forecaster together with or aided and abetted by

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<sup>23/</sup> G. J. Mitchell, Jr. & Co., 40 S.E.C. 409 (1960)

Munro by publishing the comparisons referred to above employed devices, schemes or artifices to defraud clients and engaged in practices and a course of business which operated as a fraud and deceit upon clients and that such conduct failed to recognize the obligations of an investment adviser to adhere to standards of care and responsibility to render fair and impartial analysis, all of which was in willful violation of Section 206 of the Act.

Public Interest

The sole remaining question is what, if any, remedial action is appropriate in the public interest. The willful violations by registrant and Munro have been noted earlier. The record discloses that on April 14, 1966 the Ontario Securities Commission, after hearing, found that registrant was guilty of dereliction of responsibility in publishing information about Victoria in the Forecaster<sup>24/</sup> without adequate investigation, without independent analysis and without facts available to support its recommendations and held that registrant departed from any reasonable standard of responsibility required of a person who holds himself out as being qualified to advise the public on the purchase and sale of securities. The Commission determined to suspend the registrant for six months specifically stating that it is willing to permit registrant "to have a second chance," and added "We trust that the supervision will forcibly bring to Munro's attention the seriousness with which the Commission considers his conduct and will deter him from such conduct

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24/ The information was contained in the same issues of the Forecaster considered in the instant case.

in the future." However, neither registrant nor Munro were deterred. They continued publishing inaccurate information, uncorroborated statements and omitted to furnish material information which they knew or should have known about another Canadian mining company and on February 23, 1966 the Ontario Securities Commission, after hearing, cancelled the registration of the registrant. After noting that registrant had been suspended for six months in April of 1966 the Ontario Commission stated "that warning has not proved an effective way of instilling in the registrant a proper appreciation of its role as a securities adviser." The hearing examiner agrees. The record in the instant case clearly demonstrates that the registrant and Munro not only willfully violated the Act but their conduct grossly violated the fiduciary obligations and duties which an investment adviser owes to his clients to render fair and impartial advice and to refrain from imparting false and misleading information and to avoid publishing material in a careless and irresponsible manner. Though the hearing examiner recognizes that the dissemination of sound investment advice is beneficial to the investment community at large the practice of preparing market letters by an investment adviser which contain false and misleading representations concerning companies, their securities or the results of their operations and no attempt or effort made to verify information received from whatever source is one which should be severely condemned and persons who engage in such practices should not be permitted to be licensed as investment advisers.



The assertion by Munro that he did not profit directly or indirectly from the information published in the Forecaster hardly merits consideration as a mitigating factor.

Registrant and Munro have already been afforded an opportunity by the Ontario Securities Commission to observe the standards of conduct expected of an investment adviser and they demonstrated by their conduct not only a lack of understanding of such standards but an intention to continue conduct inimicable to the interests of clients. The registration statement of the registrant as an investment adviser should be revoked<sup>25/</sup> and Munro, the president, director and a controlling person of the registrant be found to have willfully violated Section 206 of the Act.

Accordingly,

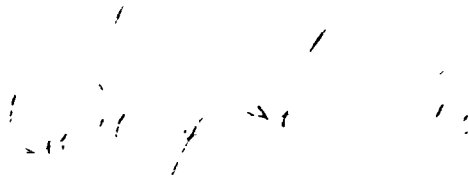
IT IS ORDERED that the registration, as an investment adviser, of Southern Brokerage & Holding Co., Inc., doing business as The Canadian Forecaster be, and same hereby is revoked and it is found that Munro willfully violated Section 206 of the Investment Advisers Act of 1940.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice.

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25/ In arriving at the sanction to be imposed upon registrant the hearing examiner has given consideration to the mitigating factors mentioned earlier in connection with violations of Sections 203(c), 204 and 207 concerning the failure of registrant and Munro to promptly file an amendment on Form ADV-SUP indicating that registrant maintains an office in Buffalo, New York and has concluded that such factors are sufficient to exclude the violation in assessing the appropriate sanction and he has done so.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.



Irving Schiller  
Hearing Examiner

Washington, D. C.  
July 31, 1967