IN THE MATTER OF

DUNHILL SECURITIES CORPORATION

PATRICK R. REYNAUD

File No. 3-1961. Promulgated July 14, 1969

Securities Exchange Act of 1934—Section 15(b)

BROKER-DEALER PROCEEDINGS

Suspension of Registration

Where record shows that registered broker-dealer or its president have been permanently or preliminarily enjoined from violations of the registration, antifraud, net capital and record-keeping provisions of the securities acts, and evidence in the record indicates that registrant violated registration and antifruad provisions, that subsequently to injunction against violations of net capital and record-keeping requirements, registrant and its president also violated those provisions, and that registrant failed reasonably to exercise supervision to prevent violations, *held*, sufficient showing made to require in the public interest and for protection of investors suspension of broker-dealer registration pending final determination of whether registration should be revoked.

APPEARANCES:

Michael L. Blane, William Nortman and *Thomas Beirne*, of the New York Regional Office, for the Division of Trading and Markets of the Commission.

Philip C. Schiffman, for Dunhill Securities Corporation and *Patrick R. Reynaud.*

FINDINGS, OPINION AND ORDER

The issue now before us in these proceedings under the Securities Exchange Act of 1934 is whether it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration as a broker-dealer of Dunhill Securities Corporation ("registrant") pending determination of whether such registration should be revoked. These proceedings were instituted on April 21, 1969, pursuant to Section 15(b) of the Exchange Act, and evidentiary hearings on the suspension issue were held for 10 days during the period May 5 through May 20, 1969. The hearing examiner filed an initial decision June 2, 1969 in which he concluded that suspen-

sion was required in the public interest and for the protection of investors. Registrant and Patrick R. Reynaud, its president and sole stockholder, filed a petition for review, which we granted. Briefs were filed on behalf of respondents and our Division of Trading and Markets. Respondents also requested oral argument, which was scheduled for July 1, 1969 but was not held due to the failure of counsel for respondents to appear.

After consideration of the briefs and an independent review of the record, we agree with the findings and conclusions of the hearing examiner and we adopt the detailed findings set forth in his initial decision. As the examiner found, the evidence in the record indicates that during the period February through May 1968, registrant violated the registration and anti-fraud provisions in connection with a large-scale distribution of unregistered shares of stock of Lynbar Mining Corporation, Ltd. A substantial number of the sales of these shares were made through registrant's own trading account and an account in the name of Panamerican Bank and Trust Company, a Panama firm of which Reynaud is president, for which Reynaud made the decisions and which the record suggests Reynaud treated as his own personal trading account. Reynaud also participated in certain of registrant's sales to customers whose accounts he brought to registrant when he joined it in 1967.

The record further indicates, as the examiner found, that notwithstanding an injunction in June 1968 enjoining registrant and Reynaud from violations of the bookkeeping and net capital requirements, registrant again violated those requirements in 1969. The record indicates that registrant's books were in various stages of incompleteness during the period from January 31, 1969 to April 21, 1969, the date of the order for proceedings, and that as of March 31, 1969, registrant had a net capital deficiency of $140,967. Finally, as the examiner also found, the record indicates that registrant failed reasonably to supervise employees with a view to preventing the Lynbar and record-keeping violations.

As the examiner also found, the record shows that registrant and Reynaud were the subjects of a total of four injunctions issued by the United States District Court for the Southern District of New York between May 1967 and February 1969. Thus, on May 10, 1967, Reynaud and Panamerican were permanently enjoined on consent from selling unregistered securities of Panamerican in violation of Section 5 of the Securities

Act of 1933. On February 20, 1968, registrant, with others, was preliminarily enjoined from violations of the registration and anti-fraud provisions of the Securities Act and of the Exchange Act in connection with the offer and sale of stock of the North American Research and Development Corporation. On June 18, 1968, as noted above, registrant and Reynaud were preliminarily enjoined from violating the net capital and record-keeping provisions of the Exchange Act and rules thereunder.[1] And on February 20, 1969, registrant was permanently enjoined on consent from violating the registration and anti-fraud provisions in connection with sales of stock of Lynbar or any other securities.[2]

Respondents do not deny the existence of the injunctions against them. They argue, however, that their "constitutional rights" were violated by the introduction and use of a certified copy of the consent injunction against Reynaud and Panamerican. The final judgment of permanent injunction in that case noted that the defendants (Reynaud and Panamerican), without admitting the substantive allegations of the complaint, consented to the entry of a permanent injunction "without this Final Judgment constituting evidence against, or an admission by said defendants." [3]

As the examiner pointed out, Section 15(b)(5)(c) of the Exchange Act specifically provides that the existence of an injunction relating to securities activities against a person associated with a registered broker-dealer is a basis for disciplinary action, including revocation, against that broker-dealer if such disciplinary action is in the public interest. We have consistently held that under these provisions of the Exchange Act a consent injunction, no less than one issued after trial, furnishes a basis for denial or revocation of a broker-dealer registration if such action is in the public interest,[4] even where the consent is accompanied by a denial of the allegations in the injunction complaint.[5] As we have stated before, "The recitals in the decree regarding the nature and

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[1] In this matter the Court on June 6, 1969 signed a judgment of permanent injunction, on default, against registrant and Reynaud. *S.E.C.* v*Dunhill Securities Corporation*, U.S.D.C., S.D.N.Y., 68 Civil Action File No. 2152.

[2] *S.E.C.* v. *Lynbar Mining Corporation, Ltd.*, S.D.N.Y., Civil Action File No. 68 Civ. 4493.

[3] *S.E.C.* v. *Panamerican Bank & Trust Co. and Patrick Reynaud*, U.S.D.C., S.D.N.Y., 67 Civil Action File No. 1825, May 9, 1967.

[4] *Balbrook Securities Corporation*, 42 S.E.C. 496, 497 (1965) and cases there cited.

[5] *Securities Distributors, Inc.*, 40 S.E.C. 482, 485 (1961); *Kimball Securities, Inc.*, 39 S.E.C. 921, 923 (1960).

purpose of the consent are all part of the affirmation that the consent did not constitute an admission of the allegations." [6]

In the instant case, the consents in the Panamerican injunction action did not deny the allegations of the complaint, they stated that no promise of any kind had been made by any representative of the Commission in consideration for the consents, and the court's final judgment did not state that the injunction could not be used in administrative proceedings.[7] Moreover, the Panamerican injunction is only one of four injunctions entered against registrant and Reynaud. Even if it were disregarded, any of the other injunctions together with the other evidence in the record would amply support the examiner's conclusion that suspension pending final determination of the revocation issue is in the public interest.

We have considered various other contentions of the respondents, including that they were deprived of due process, that the examiner acted in an arbitrary manner and that there is no substantial evidence to support his initial decision, and we find all such contentions to be without merit.

Among other things, respondents argue that the examiner erred in granting the Division's motion made during the hearings to amend the order for proceedings so as to add the allegation of a net capital violation as of March 31, 1969, claiming that such motion was untimely and that granting it was prejudicial to them. However, we are of the opinion that the examiner acted reasonably within his discretion in concluding that the Division presented an adequate justification for the failure to include the allegation earlier, and no showing of prejudice in their ability to present a defense has been made by respondents. In fact, respondents do not appear to deny the existence of a substantial net capital deficiency as of March 31, 1969, and registrant's own accountant called as a witness by respondents did not attempt to deny such a deficiency but only sought to establish that any such deficiency had been corrected by registrant and Reynaud as of April 30, 1969.[8]

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[6] *Balbrook Securities Corporation, supra*, p. 497.

[7] Respondents also complain that the examiner refused to direct the Division to produce as a witness the staff attorney assigned to the Panamerican matter. However, as the examiner advised respondents on the first day of the hearings, respondents could have appealed the examiner's ruling to us and requested a subpoena or order requiring the attendance of the witness but they did not do so.

[8] We agree with the examiner's finding that the record is inconclusive as to whether registrant had been brought into compliance by April 30, 1969. In the accountant's calculations upon which he based his testimony of compliance the accountant included as current assets all customer debit balances, totalling $111,000, which he assumed without verifying were fully secured, although he conceded that such asset figure would have to be reduced to the extent such balances were not secured. He also accepted as a current asset an item of over $16,000 listed as money of registrant on deposit with Panamerican, on the verification only of Reynaud himself who was president both of registrant and of Panamerican. In addition, the accountant's calculations included as an asset a loan of $125,000 from Reynaud only $100,000 of which was shown to be subordinated to claims of other creditors.

Respondents have not denied the record-keeping violations, arguing only that such violations were not willful and that they were corrected by the time of the hearings. It is well established, however, that a finding of willfulness under Section 15(b) of the Exchange Act does not require an intent to violate the law and that it is sufficient that a respondent intentionally engagee in conduct which constitutes a violation.[9] Reynaud as the president and sole stockholder was in active management of registrant in 1969 and was aware of the state of registrant's records. Moreover, at this stage, on the issue of an interim suspension, it is not necessary to and we do not find that willful violations have been established,[10] only that there is a prima facie showing that willful violations have occurred.

The order for proceeeings originally included as a respondent one Edward Flinn, a former salesman of registrant who testified at the hearings as a witness. On the basis of his consent, in which he neither admitted nor denied the charges as to him, an order was issued on May 9, 1969 barring him from association with any broker or dealer.[11] We reject respondents' contention or implication that the examiner's reference, which was in a footnote, to the bar order against Flinn, was or could be used to "inflame" us into a prejudicial state of mind against respondents and create a "guilt by association." Any reading of the examiner's initial decision demonstrates that the reference to the Flinn order, which is a matter of public record, was merely a factual explanation of what had happenee to one of the original respondents in the proceedings and did not affect the findings as to registrant and Reynaud in any way.

Upon a review of the record, we also reject respondents' contentions that the examiner improperly relied on matters not in the record and improperly admitted into evidence certain documents in connection with the charges based on sales of Lynbar stock. These contentions relate to the evidence submitted by the Division, in the form of summaries and "flow charts" prepared by a staff investigator, to show the sale of large blocks of Lynbar shares by control persons in Canada and to trace these shares to registrant and other broker-dealers in this country. The investigator testified that the charts and summaries accurately reflected the basic underlying records which he had examined. All the material he

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[9] *E.g., Tager* v. *S.E.C.*, 344 F.2d 5,8 (C.A. 2, 1965); *Gilligan, Will & Co.*, 38 S.E.C. 388, 395 (1958), *aff'd sub. nom. Gilligan, Will & Co.* v. *S.E.C.*, 267 F.2d 461, 468 (C.A. 2, 1959), *cert. denied* 361 U.S. 896 (1959).

[10] *A.G. Bellin Securities Corp.*, 39 S.E.C. 178, 185 (1959).

[11] Securities Exchange Act Release No. 8604.

referred to in the preparation of his charts and summaries was either introduced into testimony or otherwise made available in the hearing room to respondents' counsel, and the investigator was subjected to cross-examination. Respondents have not pointed out any discrepancies between the underlying records and the summaries and charts.[12] It is permissible for a summary of material contained in a large number of documents to be admitted into evidence, even if all the documents themselves are not introduced into evidence provided the documents are made available to opposing counsel and he has an opportunity to cross-examine.[13]

Moreover, it may be noted that respondents do not dispute the examiner's findings that during the period February through May 1968, registrant purchased over 150,000 shares of stock of Lynbar, a Canadian corporation, and resold about 140,000 of those shares to purchasers in this country, that no registration statement under the Securities Act had been filed or was in effect with respect to such shares, and that prior to February 1968 there was no market for such stock in this country. Respondents have neither asserted nor attempted to establish that any exemption from registration was available for such sales.[14]

The purpose of a suspension proceeeing under the Exchange Act is to determine, where it is preliminarily shown that a registered broker-dealer has engaged in misconduct, whether the proper protection of investors and the securities markets requires that the statutory permission to engage in the securities business should be withdrawn pending final determination whether it should be revoked.[15] In this case any of the several injunctions and the other conduct described above, including failure to comply with record-keeping and net capital requirements after the entry of a court decree enjoining such conduct, together establish a prima facie case sufficient to require a

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[12] The only specific "discrepancy" alleged by respondents relates to the blotters of another broker-dealer, which had been used in preparation of the summaries. After a set of such blotters was introduced into evidence as an exhibit, it was discovered that it was incomplete, after which the remainder of such blotters were produced and admitted into evidence.

[13] *Ward* v. *United States*, 356 F.2d 938 (C.A. 5, 1966); *In Re Shelley Furniture, Inc.*, 283 F.2d 540, 543 (C.A. 7, 1960); *Gross* v. *United States*, 201 F.2d 780, 787 (C.A. 9, 1953); 4 Wigmore, Evidence §1230 (3d ed. 1940).

[14] It is well recognized that the burden of establishing the availability of an exemption from the registration requirements of the Securities Act is on the person who claims such exemption. See, e.g., *S.E.C.* v. *Ralston Purina Company*, 346 U.S. 119 (1953); *S.E.C.* v. *Culpepper*, 270 F.2d 241, 246 (C.A. 2, 1959).

[15] *A. G. Bellin Securities Corp.*, 39 S.E.C. 178, 185 (1959); *Biltmore Securities Corp.*, 40 S.E.C. 273, 276–7 (1960).

suspension in the public interest and for the protection of investors.

Our conclusion herein is not to be construed as a determination on the issue whether registration should be revoked; that issue is not now before us.

Accordingly, IT IS ORDERED that the registration as a broker and dealer of Dunhill Securities Corporation be, and it hereby is, suspended pending final determination of whether such registration should be revoked.

By the Commission (Chairman BUDGE and Commissioners OWENS and SMITH), Commissioners WHEAT and NEEDHAM absent and not participating.