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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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C O N S O L I D A T E D

In the Matter of

DUNHILL SECURITIES CORPORATION
PATRICK R. REYNAUD
EDWARD FLINN

(8-11616)

and

In the Matter of

PATRICK R. REYNAUD DE SAINT OYANT, LTD.

(8-14598)

PATRICK RENE REYNAUD DE ST. OYANT
(a/k/a PATRICK REYNAUD)

INITIAL DECISION

Washington, D.C.
March 2, 1970

David J. Markun
Hearing Examiner

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INITIAL DECISION

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

Philip C. Schiffman, New York, N.Y.,
for Dunhill Securities Corporation and
Patrick Reynaud (at the May 1969 hearing
on question of interim suspension of the
registrant), Harvey A. Eysman, New York, N.Y.
(replacing Mr. Schiffman) for registrant,
applicant, and Patrick R. Reynaud (at the
July, 1969, hearing after consolidation of
the two proceedings.), Morris Rosenzweig,
New York, N.Y. (replacing Mr. Eysman) for
registrant, applicant, and Patrick R. Reynaud.

BEFORE: David J. Markun, Hearing Examiner

THE PROCEEDINGS

Public proceeding 3-1961 was instituted by an order of the Commission dated April 21, 1969, pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether the charges of the Division set forth in the order against respondents Dunhill Securities Corporation ("registrant"), Patrick R. Reynaud ("Reynaud") and Edward Flinn ("Flinn") are true and the remedial action, if any, that might be appropriate in the public interest.

Under the order the Division alleges the entry against each respondent of one or more court injunctions involving the purchase or sale of securities or the business of a broker dealer; violations by all respondents of the registration requirements of Section 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") and of the anti-fraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the sale of Lynbar Mining Corporation, Ltd. stock; violations by registrant and Reynaud of the record-keeping provisions of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder; violations by registrant and Reynaud of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder (the Net Capital Rule); and failure to supervise by registrant and Reynaud.

1/ The charge respecting net-capital violations was added by amendment to the order for proceeding authorized by the hearing examiner during the course of the hearing. R. 391-398. (See footnote 4 respecting references to the transcript of the record).

The Commission's order for a proceeding provided there be determined first the question whether suspension of the registration of the registrant on an interim basis, pending final determination of the issues presented by the order, was necessary or appropriate in the public interest or for the protection of investors.

The evidentiary hearing on the question of an interim suspension of registrant's registration was held at New York, N.Y., involving 10 hearing days during the period May 5 through May 20, 1969.^{2/} Respondent Flinn did not appear either in person or through counsel.^{3/} All other parties appeared and were represented by counsel. The hearing examiner's initial decision of June 2, 1969, concluded that suspension was required in the public interest and for the protection of investors. On appeal, the Commission concluded likewise and on July 14, 1969, ordered the registration of the registrant suspended pending final determination as to whether the registration should be revoked (Securities Exchange Act Release No. 8653).

Meanwhile, Reynaud had applied on May 8, 1969, to have Patrick R. Reynaud de Saint Oyant, Ltd. ("Applicant"), incorporated on February 3, 1969, of which Reynaud was president, treasurer, secretary, a director and sole shareholder, registered as a

2/ The order for proceeding provides that the record adduced respecting the issue of interim suspension constitutes part of the record as to all issues presented for determination by the order.

3/ Flinn testified at the hearing at the call of the Division. On May 9, 1969, the Commission issued an order barring Flinn from association with any broker or dealer, he having waived a hearing and post-hearing procedures and consented to certain findings without admitting or denying the allegations. Securities Exchange Act Release No. 8604.

broker-dealer pursuant to Section 15(b) of the Exchange Act. In response to the application the Commission on June 5, 1969, instituted Administrative Proceeding 3-2018 to determine whether certain allegations contained in the order respecting the applicant and Reynaud are true and, if so, whether the application for registration should be denied under Section 15(b) of the Exchange Act. The Commission's order of June 5 further provided for consolidation of Proceeding 3-2018 with Proceeding 3-1961 as to common questions of law and fact. By its order of June 20, 1969, the Commission ordered postponement of the effective date of the registration pending final determination as to whether the registration will be denied.

The hearing in the now consolidated proceedings was resumed on July 28, 1969, and was concluded on July 29, 1969.^{4/} Registrant, applicant, and Reynaud^{5/} were represented at this phase of the hearing by new counsel.

The parties represented at the hearing filed proposed findings, conclusions and supporting briefs, after respondents had elected a second time to employ new counsel. The findings and conclusions herein are based upon the record and upon observation of the various witnesses.

4/ Since the pagination of the transcript at the resumed hearing was again begun with page 1, references to the transcripts for July 28 and 29 are followed by an asterisk, e.g. R. 17*, to distinguish those pages of the record from the earlier transcripts made during the hearing on the issue of interim suspension.

5/ In Proceeding 3-2018 Reynaud is a respondent under his "full" name: Patrick Rene Reynaud de St. Oyant.

FINDINGS OF FACT AND LAW — PROCEEDING 3-1961

The Respondents

Dunhill Securities Corporation ("registrant") is registered as a broker-dealer under Section 15(b) of the Exchange Act, having its place of business at 21 West Street, New York City. It took that name in January, 1967, in a change of name from the then largely dormant Forster, Nardone Corp. which had been registered since August 15, 1963. In early 1967 the infusion of new capital permitted the firm to become more active. In March of 1967 respondent Patrick R. Reynaud ("Reynaud") became the President and 75% shareowner of the registrant and one Guido Volante ("Volante") (who had initially acquired the Forster, Nardone Corp.) became Vice-President and 25% owner.^{6/} In about June, 1968, Volante terminated his association with registrant (taking with him essentially all of the then employees), and Reynaud became and has since remained its sole stockholder and only officer actively engaged in managing the firm. Respondent Flinn was employed by the registrant as a trader and registered representative from approximately May, 1967, to May, 1968.^{7/}

Injunctions Chargeable to Registrant and Reynaud

Section 15(b)(5)(C) of the Exchange Act provides that one of the bases for revocation of a broker-dealer's registration or the

^{6/} Reynaud testified that the respective ownership proportions were 2/3 and 1/3. It does not appear that such a difference, if established, would materially affect any issue presented in this proceeding.

^{7/} Further findings respecting the respondents are made below in the course of discussing particular issues to which they are especially relevant.

imposition of lesser sanctions is the existence of a described permanent or temporary injunction issued by a court of competent jurisdiction.^{8/}

The order for proceeding alleges, and the record establishes, four separate injunctions issued by U.S. District Courts within a two-year period that are chargeable against the registrant under Section 15(b)(5)(C). In two of these injunctions proceedings Respondent Reynaud was specifically named a party defendant and was enjoined.

On May 10, 1967, the U.S. District Court for the Southern District of New York entered a consent judgment of permanent injunction against Reynaud and the Panamerican Bank and Trust Company ("Panamerican"), a Panama-incorporated firm of which Reynaud is President, enjoining them from violations of Section 5(a) and 5(c) of the Securities Act in connection with the sale of shares of

8/ Section 15(b)(5)(C) provides as follows:

"(5) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, suspend for a period not exceeding twelve months, or revoke the registration of, any broker or dealer if it finds that such censure, denial, suspension or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated —

* * *

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."

^{9/}
Panamerican. Since Reynaud is a "person associated" with the registrant as the term is defined in Section 3(a)(18) of the Securities Act, the registrant is chargeable with the injunction against Reynaud under Section 15(b)(5)(C) of the Exchange Act.

On February 20, 1968, the U.S. District Court for the Southern District of New York issued^a preliminary injunction enjoining the registrant and others from violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer and sale of stock of the North American Research and Development Corporation.^{10/}

On June 19, 1968, following a full evidentiary hearing, the U.S. District Court for the Southern District of New York issued a judgment of preliminary injunction enjoining the registrant, Reynaud, and Volante from (a) using the mails or any means or instrumentalities of interstate commerce to effect any securities transactions while and at a time when the registrant was in violation of the Commission's Net Capital Rule and (b) from using the mails or any means or instrumentalities of interstate commerce to effect any securities transactions while and at a time when the registrant failed to make and keep current all books and records

^{9/} S.E.C. v. Panamerican Bank and Patrick R. Reynaud, 67 Civil 1825. Ex. 2. (The Division's exhibits are numbered; the respondents' exhibits are lettered.)

^{10/} S.E.C. v. North American Research and Development Corporation, et al., 67 Civil 3724. Ex. 3.

required by the Commission's bookkeeping rules.^{11/}

On February 20, 1969, the U.S. District Court for the Southern District of New York entered a consent judgment of Permanent Injunction against the registrant and others restraining and enjoining them from violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the sale of shares in Lynbar Mining Corporation, Ltd. ("Lynbar") or any other security. (Ex. 16).

In their answer, filed May 26, 1969, respondents admit the judgments referred to above were issued. They contend, however, as to the injunction of February 20, 1969, involving sales of Lynbar stock, that registrant had voluntarily stopped such sales long prior to that time. The record indicates that registrant discontinued making such sales at about May 7, 1968, not so much by choice as because of the fact that on that date Lynbar stock was placed on the Commission's "Foreign Restricted List."

As to the June 19, 1968, injunction, respondents urge, firstly, that the cause of registrant's difficulties was Volante and not Reynaud and, secondly, that, as the court recognized in its opinion, substantial progress had been made in bringing registrant's books and records up to date by the time the injunction issued. The

^{11/} SEC v. Dunhill Securities Corp., 68 Civil 2152. Ex. 4. The court found in a memorandum opinion (Ex. 5) that as of May 31, 1968, the registrant had a net capital deficiency of over \$22,000.00 and that as of May 24, 1968, entries on seven separate records of the registrant had not been currently posted.

first contention could not help the registrant in any event, even if established as a fact, since registrant is responsible for the acts or omissions of Volante, its vice-president. Moreover, the record does not support the contention that Reynaud was blameless or powerless to have prevented the conditions that brought down the injunction. Reynaud was president and majority owner of the registrant from March, 1967, appeared more or less regularly at the office, and had a sufficient background in the securities business to have known what was going on.^{11a/} The second contention is relevant only to the question of public interest and appropriate sanctions, and will be taken into account in that connection.

Sale of Unregistered Stock of Lynbar

The order for proceeding includes a charge that during the period from approximately February 1, 1968, through May, 1968, the registrant, Reynaud, and Flinn^{12/} willfully violated and wilfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act by offering to sell, selling, and delivering after sale the common stock of Lynbar Mining Corporation, Ltd. ("Lynbar") when no registration statement was in effect as to the securities.

The record indicates that Lynbar was incorporated in Ontario, Canada, in August, 1964, for the purpose of acquiring, exploring,

^{11a/} See footnote 28 below.

^{12/} As already noted above — see footnote 3 — Flinn is no longer a respondent in this proceeding; findings respecting him are made herein only insofar as they bear on charges against registrant and Reynaud.

developing and operating mines, mineral lands and deposits. In July, 1966, Lynbar acquired a permit to mine potash in Saskatchewan and in November of that year obtained from Dr. Hans-Helmut Werner ("Werner") in exchange for royalties the exclusive right to use the so-called "Kali" process for the extraction and processing of potash.

In June of 1967 Lynbar entered into a "barter" agreement with an entity in Poland called "Centrozap" under which the latter would furnish machinery and equipment in exchange for potash, but the agreement was to become effective only if a pilot plant demonstrated the commercial effectiveness of the "Kali" process.

Since 1966 the sole activity of Lynbar has been the attempted mining of potash. Active operations did not commence until October of that year. The company has never had any income from operations; its funds were derived solely from stock sales. Its success appeared to depend largely upon the value of the land covered by its mining permit, the unproved efficacy of the "Kali" process, and the performance of the "Centrozap" agreements.

B.B. Jessel is and has been since Lynbar's formation the President, a Director, Chief Executive Officer, and a control person of the company. Jessel is also President and controlling shareholder of B.B. Jessel Investments, Ltd. ("Jessel Investments"), underwriter for Lynbar. Werner, mentioned above, is also a control person of Lynbar because of his holding of 250,000 shares of the

company and because of his development of the "Kali" process.

No registration statement has ever been filed with the Commission by or on behalf of Lynbar.

The record establishes that during the charging period -- February 1 through May 1968 -- the registrant purchased over 150,000 shares of Lynbar and sold some 140,000 of those shares. Respondents have not asserted or attempted to establish any statutory exemption.^{13/} The record establishes that registrant participated in a large-scale distribution of Lynbar stock in this country triggered and sustained by stock emanating from control persons; registrant thus was a statutory underwriter under Section 2(11) of the Securities Act.

It appears from the record that prior to February 1, 1968, there was no market for Lynbar stock in the United States. Between that date and May 7, 1968, when Lynbar was placed on the Commission's Foreign Restricted List, over one million shares of Lynbar were sold to over 1,000 customers in a large-scale distribution here. The distribution commenced with sales by Jessel and Werner in Canada on February 1, 1969, of substantial blocks of their personal "control" stock. Jessel sold 225,000 shares and Werner 50,000 shares. A substantial portion of this was resold through two Canadian broker-dealers -- Draper, Dobie & Company and J.L. Goad & Company -- to Grace Canadian Securities ("Grace Canadian"), a broker-dealer located in New York. A portion of this stock, in turn, was purchased by the registrant from Grace Canadian and thereafter sold to its customers.

^{13/} The burden of establishing any claimed exemption is on him who claims it. Ira Haupt & Company, 23 S.E.C. 588 (1946).

The record indicates that registrant purchased some 140,000 shares of Lynbar from Grace Canadian and sold in excess of 130,000 of such shares to over 300 customers. The evidence traces 34,700 shares purchased by registrant from Grace Canadian on March 5, 1968, to the 50,000 shares Werner had sold. Likewise, 2,200 shares bought from Grace Canadian by the registrant on April 15, 1968, are traced to the stock sold by Jessel on February 1, 1968.

The sales of Lynbar shares to individual customers of the registrant were made through three major accounts at Dunhill, as follows:

<u>Account</u>	<u>Shares Bought</u>	<u>Sold</u>	<u>No. of customers</u>
Frey accounts	78,500	78,000	80
Dunhill firm trading account	54,000	45,000	173
Panamerican Bank & Trust	<u>16,000</u>	<u>10,000</u>	<u>62</u>
Totals	148,000	133,000	315

The "Frey accounts" were in the names of Joan Frey and Kevin Frey, the daughter and grandson, respectively, of Flinn, who, as mentioned above, was employed by the registrant as a trader and salesman between May, 1967, and April, 1968. These accounts were atypical in that only a nominal \$10 flat fee per transaction was charged the accounts rather than the normal commission. The record suggests that these were Flinn's personal trading accounts and that the favored commission basis they enjoyed was somehow a factor in Flinn's overall compensation by the registrant. The registrant began its trading in Lynbar on February 2, 1968, with the purchase by Flinn of 37,500 shares for the Frey accounts. Flinn sold 78,000 shares of ^{the} 78,500 share total purchased for the Frey accounts, the

sales being to some 80 individual customers and 6 broker-dealers, including 10,000 shares sold to the registrant's firm trading account.

In the Panamerican Bank and Trust account ("Panamerican"), respondent Reynaud, the president of the registrant, made the investment decisions. Panamerican is a Panama-registered corporation, as mentioned earlier, of which Reynaud is president but in which he testified he had no ownership interest. The record suggests that the Panamerican account was in effect Reynaud's personal trading account.

In addition to selling Lynbar stock to customers from the firm trading account and through the Frey and the Panamerican accounts, the registrant also acted as agent for purchasers of Lynbar stock. Thus, between February 27, 1968, and April 10, 1968, the registrant purchased for some 18 customers approximately 16,000 shares of Lynbar. All but 2,200 of these shares came from Grace Canadian.

In connection with the registrant's purchases and sales of Lynbar stock the means and instrumentalities of interstate commerce were employed in solicitation of customers by use of the telephone and use was made of the mails in mailing confirmations.

As already noted, respondents do not assert or urge the existence of any statutory exemption. They do, however, urge that certain summary flow charts -- exhibits 7, 8, and 9 -- are "imperfect" and not entitled to "full" weight. Respondents do not specify the nature of any claimed imperfection, and the record does not establish any.

In effect, respondents appear to concede that registrant violated Sections 5(a) and 5(c) of the Securities Act (respondents' proposed conclusion of law No. III), although they suggest in their brief (p. 22) that perhaps registrant's violations were not "wilfull" on the unsupportable theory that the individuals responsible for the violations (contended by respondents to have been solely Volante and Flinn) are no longer with the firm. There is no support for such a contention. Registrant is accountable for the actions of Flinn and Volante under the concept of respondeat superior.^{14/} That Flinn and Volante are no longer with registrant bears only on the question of sanctions.

Moreover, the record does not support respondents' contention that respondent Reynaud was blameless in the Section 5(a) and 5(c) violations. To the contrary, the record shows clearly that Reynaud aided and abetted such violations. Thus, a substantial portion of the sales were made through the Panamerican account, for which Reynaud made the investment decisions. The record shows that Reynaud personally participated in selling Lynbar stocks to certain of "his" customers, i.e. former customers of his whose accounts he brought to the firm when he joined registrant in 1967. Reynaud testified that he did talk to certain of such customers respecting Lynbar even though he always turned over the actual execution of the orders to someone else in the firm.

^{14/} Armstrong, Jones & Co. and Thomas W. Itin v. S.E.C. (C.A. 6, Docket No. 19291, January 23, 1970), F.2d .

Contrary to respondents' contentions, these violations by registrant and Reynaud were "wilfull", under long-established criteria.^{15/}

Representations and Omissions in Sale of Lynbar

The order for proceeding alleges that in selling Lynbar stock the registrant, Reynaud, and Flinn^{16/} violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by making various untrue statements of material facts concerning the stock and by omitting to state other facts necessary to make the statements that were made not misleading.

The Division called three customers witnesses to testify respecting this allegation, and the testimony of Flinn and Reynaud also bears in part on this issue.

Flinn told purchaser R.K. that Lynbar was one of the world's largest potash companies having one of the largest known potash reserves. He said the stock was a "high flier" that could well go within 60 days from the 4-1/8 it was then selling at to 10. This customer witness was also told that Lynbar had developed a new technique for extracting potash and that the technique would make it^a valuable stock. He further testified that Flinn told him several foreign governments were interested in the potash product of Lynbar. The witness sold some AT&T stock to finance his purchase

^{15/}"Wilfully" in the context of the securities statutes and rules means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the Rules or Acts. Tager v. S.E.C., 344 F.2d 5, 8 (C.A. 2, 1965); Gearhart & Otis, Inc. v. S.E.C., 348 F.2d 798, 803 (C.A.D.C., 1965); Securities Forecaster Co., Inc., 39 S.E.C. 188, 191 (1959).

^{16/} See footnote 12 above.

of Lynbar. In the course of his conversations with this witness, Flinn failed to tell him, or to otherwise inform him, of various material facts, including: (a) the highly speculative nature of Lynbar; (b) the income or losses of Lynbar; (c) the contingent nature of the agreement Lynbar had with an agency of the Polish government; (d) the stage of development of the mining process that Lynbar was attempting to develop or prove-out; (e) the capital requirements for confirming the economic feasibility of the process; (f) the position that Flinn or his relatives had in the Lynbar stock.

Customer-witness S.C. testified that Flinn recommended Lynbar to him in a telephone conversation without giving any particular basis for the recommendation. In subsequent conversations Flinn told the witness that Lynbar was attempting to market its process in Canada; that the process had been developed by the Polish government; that Lynbar's operation involved developing and building a pilot plant so that it could sell its process to other potash mining companies; and that the stock would increase in value rapidly. In the discussions preceding this customer's purchase, Flinn omitted to give to him various material facts concerning Lynbar, including: (a) the income or losses of Lynbar; (b) the stage of development of the potash mining process; (c) the stage of construction of Lynbar's pilot plant; (d) the capital requirements for completion of the pilot program; (e) the conditional feature of the agreement with an agency of the Polish government; or (f) the position that Flinn or his relatives had in Lynbar stock.

The third customer witness, P.deR., had an oral understanding with Flinn whereby Flinn exercised discretionary authority in buying or selling for the customer's account within the limit of funds in the account. After Flinn had purchased 1,000 shares of Lynbar for the account, the customer inquired of Flinn as to what the company did. Flinn responded briefly and generally to the effect that the company mined potash and had an inexpensive water technique for doing it. Again, Flinn failed to give his customer various material facts running in scope and nature along the same lines mentioned above respecting the earlier two witnesses.

The Commission has held repeatedly that predictions of a material rise in price within a short period of time are inherently fraudulent when made without a reasonable basis in fact.^{17/} This record discloses no reasonable basis for such predictions.

Having made certain favorable representations respecting Lynbar, Flinn was duty bound to give the customers certain additional information, as indicated above, which was essential if the customers were not to be misled by the information that he did give them. In this connection, the record shows that at least some of this information was available to Flinn since he had personally talked to Jessel and there was maintained a loose file folder on Lynbar at the registrant's office that included prospectuses filed by Lynbar with the Ontario Securities Commission and various reports on the firm.

17/ Alexander Reid & Co., Inc., 40 S.E.C. 986 (1962).

In addition to Flinn's representations and omissions, the testimony establishes that Reynaud participated in selling Lynbar stocks to certain of "his" customers, i.e., former customers of his whose accounts he brought to the firm when he joined the registrant in 1967. Reynaud testified that he did talk to certain of such customers respecting Lynbar even though he always turned over the actual execution of orders to someone else in the firm. He stated that he told such customers next to nothing about Lynbar since they didn't ask. Only that the firm existed and the stock should be purchased.^{18/} The customers evidently relied on his judgment that it would be a good purchase.

Respondents' contentions that the antifraud violations involved herein were solely the work of Flinn and Volante, for which registrant and Reynaud should not be held to answer, and that the violations in any event were not wilfull, are both without merit.

Firstly, as found above, Reynaud was directly and personally responsible for fraudulent statements or omissions respecting certain of the customers.

18/ At p. 1293 of the transcript, Reynaud gives this response to a question from Division counsel:

"Q. Did you call any customers to mention Lynbar?

A. Well, in a general conversation when you talk to your customers, they ask you what you are doing, and I say I am buying now some Lynbar stocks, a Canadian stock, which I feel -- if everything is all right -- could be a good company later on, but I am not sure, and it's a gambling operation.

If they want to lose their money, they can."

Secondly, the registrant is clearly responsible for Flinn's violations under the doctrine of respondeat superior.^{19/} And, lastly, the violations found above, were clearly "wilfull" within the meaning of that term as used in the securities laws.^{20/}

Record-Keeping Deficiencies

It is charged that from January 31, 1969, to the date of the order (4-21-69) the registrant has wilfully violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder by failing to accurately make and keep current various specified books and records, and that Reynaud wilfully aided and abetted such violations.

The evidence establishes that as of March 10, 1969, the following deficiencies existed in registrant's books and records:

- (a) General Ledger Account -- not made or kept current beyond January 31, 1969;
- (b) Trading Account -- not made or kept current beyond February 27, 1969;
- (c) Stock Record -- not made or kept current beyond December 13, 1968;
- (d) Failed-to-Receive Ledger -- not made or kept current beyond February 31, 1969;
- (e) Failed-to-Deliver Ledger -- not made or kept current beyond January 31, 1969;

^{19/} See footnote 14 above.

^{20/} See footnote 15 above.

(f) Trial Balance -- not made after January 31, 1969;
and

(g) A record of a Computation of Aggregate Indebtedness
and Net Capital as of January 31, 1969 -- not made.

As of April 1, 1969, when the registrant's books and records
were again examined by an investigator of the Commission, the
following deficiencies appeared:

- (a) General Ledger Account -- not made or kept current
beyond January 31, 1969;
- (b) Stock Record -- not made or kept current beyond
January 9, 1969; and
- (c) Trial Balance -- not made or kept beyond January 31,
1969.

As of April 11, 1969, the investigator found these
deficiencies:

- (a) General Ledger account -- not made or kept beyond
March 31, 1969;
- (b) Stock record -- not made or kept current beyond
February 11, 1969;
- (c) Trial Balance -- trial balances furnished the investigator
on April 11, 1969 for the months ending February and
March 1969 were incomplete in that they were not accompanied
by various supporting schedules required to enable an
analysis of the trial balance, i.e., a schedule of the
firm's trading account, a schedule of the firm's fail

to receive and deliver accounts, and a schedule indicating the customer trial balances.

- (d) A record of Computation of Aggregate Indebtedness -- not prepared for February or March, 1969. Thus, as of April 11, 1969, registrant had not made computations of aggregate indebtedness or net capital for the months of January, February or March, 1969.

The respondents do not dispute the occurrence of the deficiencies described above in the keeping of registrant's books and records. They urge, however, that the violations were not willful because they resulted, it is urged, because of excusable man-power problems and shortages in registrant's record-keeping staff. Respondents argue further that the difficulties were compounded by the pressures and demands of these administrative proceedings and that their problem was partially caused by the seizure of some of registrant's books and records by New York's Attorney General. Respondents offer as a proposed finding (No. 15) that these violations are now only of "academic concern" inasmuch as the Commission's interim suspension order of July 14, 1969, required registrant to cease operations pending final determination of the issues in the proceeding, after which, it is contended, the records have been fully brought up to date.

None of these contentions or proposals is valid or supported by the record.

Registrant did indeed have inexperienced personnel, but this inadequacy was directly caused or aggravated by respondents and is not excusable. The record shows that Reynaud pursued an aggressive program for expanding the business of the registrant. Thus, from the time that Reynaud bought into the firm until the time of the hearing, the firm experienced a striking growth in terms of numbers of employees and customers from some 6 employees and 300 customers to some 50-55 employees and 3,000 customers. In view particularly of the June 19, 1968, injunction against respondents involving registrant's books and records, Reynaud should have been fully conscious of the need for restricting the growth of registrant to an orderly pace consistent with the capacity of its personnel properly to maintain required books and records. Reynaud's conduct aided and abetted registrant's bookkeeping violations.

Registrant's "manpower problems" may have been accentuated somewhat by a snowstorm in New York in early February, 1969, and an outbreak of Hong Kong flu during the winter of 1968-69, but its record-keeping deficiencies are not explainable on that basis, since sufficient time had elapsed between such events and the March, 1969, inspection of its books and records for registrant to have caught 21/ up.

The bringing of these proceedings in no sense caused the record-keeping violations, though it undoubtedly somewhat affected registrant's ability to bring itself into compliance after the

21/ Actually, the record contains no satisfactory proof of how many man-days of work were lost by registrant or what personnel were affected.

deficiencies were discovered. This is a factor to be taken into account on the question of sanctions.

Neither did the seizure of certain of registrant's records by the New York Attorney General's Office have any affect on the bookkeeping violations here found, for the dual reasons that the records involved were for the year 1967, a period not involved in the deficiencies here found, and because the records were not taken until May 1969, well after the dates on which the violations here found occurred.

Respondents grossly misconceive the relationship between bookkeeping violations and sanctions in urging that past violations, once the deficiencies have been corrected, are of "academic concern" only. In fact, however, the record herein does not establish that the deficiencies in registrant's books and records have been fully corrected or that the books were brought fully up to date.

Net-Capital Deficiency

A charge of net-capital violations by registrant was added by amendment to the order for proceeding during the course of the hearing on motion of the Division granted by the Hearing Examiner on May 7, 1969.^{22/} The amendment alleges that during the period from on or about March 31, 1969, to the date of the amendment the

^{22/} R. 391, 394. Hearing Examiner's Ex. 1.

registrant willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder in that the registrant effected non-exempted transactions at a time when its aggregate indebtedness to all other persons exceeded 2,000 per centum of its net capital.

Based upon a calculation made by its investigator after supporting schedules and all necessary data had been obtained, the Division introduced evidence showing the net-capital status of the registrant as of March 31, 1969, to be as follows:^{23/}

Aggregate Indebtedness	\$721,395.04
·Required Adjusted Net Capital	36,069.75
Adjusted Net Capital -- Deficit	(104,890.97)
Adjusted Net Capital -- Deficiency	(140,967.72)

During the weeks preceding and following March 31, 1969, the registrant continued to effect transactions as usual notwithstanding the apparent net-capital deficiency.

Registrant does not dispute the existence of a net-capital deficiency as of March 31, 1969. Indeed, the testimony of the registrant's witness in this area, Harry Mauntner ("Mauntner"), the certified public accountant who has for a number of years audited the registrant's books, would appear to confirm the existence of a net-capital deficiency as of March 31.

Mauntner testified that in April, 1969, he prepared a short computation of registrant's net capital as of March 31. Although he was unable to complete his computation because he did not have all the necessary data, he "felt" the firm was not in compliance with

^{23/} Ex. 26.

the Net Capital Rule. Thereafter Mauntner spoke to Reynaud advising him to contribute additional capital to the firm. This Reynaud did, in the form of a loan of cash and securities totaling approximately \$125,000. A member of Mauntner's staff had calculated a net capital deficiency of \$111,120.80 as of the end of March 31, 1969.

Mauntner further testified that in May he prepared an analysis of registrant's capital as of April 30, 1969. This calculation showed a capital excess under the Rule of \$26,986.^{24/}

The Division challenges the reliability of this calculation on several grounds. First, it questions the acceptance as a current cash item of an asset of \$16,464 listed as money of the registrant on deposit with Panamerican. Since the verification of the claimed deposit came from Reynaud, president of Panamerican and also president of the registrant, it is contended that the claimed asset should be disregarded in making net-capital computations.

In preparing his analysis as of April 30, 1969, Mauntner accepted as current assets all the customer debit balances, amounting to \$111,000, though he concedes that figure would have to be reduced to the extent the balances may be unsecured.

Also, the accountant's calculations included as an asset a loan of some \$125,000 from Reynaud only \$100,000 of which was shown to be subordinated to claims of other creditors.

From the foregoing it is concluded that the record in this proceeding does not contain a definitive calculation of the

registrant's net capital position as of April 30, 1969.

The Division introduced evidence intended to show that registrant had a substantial net-capital deficiency as of May 29, 1969 (Ex. 52 and related testimony), a date subsequent to the close of the period during which net-capital violations were charged, i.e. May 7, 1969. Under all the circumstances presented by this record, it is concluded that it would not be appropriate to infer a net-capital deficiency within the charging period predicated upon a finding of a net-capital deficiency outside the charging period. Accordingly, it is unnecessary to consider whether the May 29, 1969, computation, which respondents challenges, is valid or not.

As bearing on the question of the public interest and appropriate sanctions, it is concluded that the record contains no proof that registrant ever eliminated the net-capital deficiency found to have existed on March 31, 1969, before its operations were suspended by the Commission's order of July 14, 1969.

The net-capital violations occurring on and around March 31, 1969, were clearly wilfull, ^{25/} and Reynaud aided and abetted the violations. By February, 1968, when he passed his principal's examination, Reynaud became more active in managing the firm and in June, 1968, when Volante left the firm, Reynaud took over the sole management role in the firm. This was the month that registrant, Reynaud and Volante were preliminarily enjoined from further

25/ See footnote 15.

violations of the net-capital rules. Reynaud was thus well aware of the net-capital requirements. As registrant's president and sole shareholder he had the responsibility of ensuring that registrant conducted its operations in accordance with the net-capital rules and regulations prescribed for brokers and dealers. J.D. Creger & Co., 39 S.E.C. 165, 171 (1959).

Failure to Supervise

The order for proceeding includes an allegation that the registrant and Reynaud failed reasonably to supervise persons under ^{26/} their supervision with a view to preventing the violations respecting Lynbar and the violations respecting books and records.

The respondents did not attempt to show that they reasonably supervised the activities of Flinn, ^{27/} then registrant's then trader and registered representative, respecting transactions in Lynbar. They seek to avoid responsibility for such lack of supervision on the theory that the management responsibility was then solely in Guido Volante, Vice-President of registrant at the time, who has since left the firm. This defense fails for two reasons. Firstly, registrant cannot escape responsibility for Volante's failure to supervise, even though he is no longer with the firm. His departure could only go the question of public interest. Secondly,

^{26/} Section 15(b)(5)(E) of the Exchange Act, as added by the 1964 amendments, provides an independent ground for the imposition of a sanction against a broker or dealer or a person associated with a broker or dealer who ". . . has failed reasonably to supervise, with a view to preventing violations of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision."

^{27/} Flinn's activities, as already found above, clearly violated the registration and antifraud provisions of the securities laws as charged.

the record establishes that Reynaud was not without knowledge of what was going on and not without power to require that adequate supervision be carried out. In this connection it is significant that Reynaud was authorizing trading in Lynbar for the Panamerican account during this period and had personal contacts with a number of "his" customers who had transactions in Lynbar. With this awareness and with his position as president and majority shareholder he could have required proper supervision or exercised it himself ^{28/} even before he passed his NASD principal's exam on February 28, 1968.

The bookkeeping violations found above to have been committed by the registrant resulted in considerable part from the failure of Reynaud ^{29/} reasonably to supervise registrant and its bookkeeping personnel, all of whom were subject to his supervision, so as to prevent such violations. He had no established procedures for exercising supervision. Reynaud's efforts were apparently expended in other directions, such as building up the registrant's underwriting activities.

28/ Reynaud's background was such that he should have been able to exercise supervision. In France Reynaud received the equivalent of a Master's degree in Law and a PH.D. in Business and was associated with the French equivalent of a member firm. Upon coming to the United States in 1961 he served as a trainee at Wolfe and Co. until 1962 and later served as a registered representative with Dubasquier & Co. until 1964 or 1965. Since 1965 Reynaud has been President of Panamerican, responsible for its investment decisions.

29/ Under the terms of the supervision statute (see footnote 26 above) it is unclear whether registrant can be held to have violated the supervision provision with respect to substantive violations committed by itself.

Conclusions

In general summary of the foregoing, the following conclusions of law are reached:

(1) Between May 10, 1967, and February 20, 1969, four separate injunctions chargeable to the registrant under Section 15(b)(5)(C) of the Exchange Act were issued by the U.S. District Court. In two of these injunction proceedings Reynaud was enjoined as a named party defendant.

(2) During the period from about February 1, 1968, through May, 1968, the registrant wilfully violated and Reynaud wilfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act in connection with their offering to sell, selling, and delivering after sale the common stock of Lynbar Mining Corporation, for which no registration statement was in effect.

(3) During the period from about February 1, 1968, through May, 1968, the registrant wilfully violated and Reynaud wilfully aided and abetted violations of the anti-fraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer and sale of Lynbar stock, in the particular respects found above.

(4) During the period from about January 31, 1969, to April 21, 1969, registrant wilfully violated and Reynaud wilfully aided and abetted violations of the books-and-records requirements of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, in the particular respects found above.

(5) During the weeks preceeding and following March 31, 1969, registrant wilfully violated and Reynaud wilfully aided and abetted violations of the net-capital requirements of Section 15(e)(3) of the Securities Exchange Act of 1934 and Rule 15c3-1 thereunder, as found more particularly above.

(6) Within the meaning of Section 15(b)(5)(E) of the Exchange Act registrant and Reynaud failed reasonably to supervise Flinn with a view to preventing his violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer and sale of Lynbar stock. Reynaud also failed reasonably to supervise registrant and its record-keeping personnel with a view to preventing registrant's violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

FINDINGS OF FACT AND LAW — PROCEEDING 3-2018

The Applicant and Reynaud

Patrick R. Reynaud de Saint Oyant, Ltd. ("Applicant") was incorporated in New York on February 3, 1969, and has its place of business at 21 West Street, New York, New York. Applicant's application for registration as a broker-dealer with the Commission pursuant to Section 15(b) of the Exchange Act was accepted for filing on May 8, 1969. Patrick Rene Reynaud de St. Oyant ("Reynaud"^{30/})

30/ He is the same person who is a respondent in Proceeding 3-1961.

is the president, treasurer, secretary, a director and the sole shareholder of applicant.

Injunctions Against Reynaud

The Commission's order for proceeding of June 5, 1969, includes charges that on May 10, 1967, the United States District Court for the Southern District of New York entered a judgment of permanent injunction against Reynaud on his consent enjoining him and another from further violations of Section 5(a) and 5(c) of the Securities Act in connection with the sales of shares in Panamerican, and that on June 19, 1968, the same United States District Court issued a Preliminary Injunction enjoining Reynaud and others from further violations of Section 15(c) of the Exchange Act and Rule 15c3-1 thereunder (Net Capital Rule) and Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder (Bookkeeping Rules).

These injunctions are the same two injunctions found above to have been issued against Reynaud in the findings in proceeding 3-1961. Under Section 15(b)(5)(C) of the Securities Act such injunctions against Reynaud, a person associated with the applicant, are a basis for denial of registration to the applicant if denial is in the public interest.

Reynaud's Violations and Failure to Supervise

The order for proceeding includes charges that Reynaud committed or aided and abetted commission of, violations in substance identical to the violations found above to have been committed in paragraphs (2), (3), (4), and (5) of the conclusions reached in Proceeding 3-1961.

The order for proceeding also alleges that Reynaud failed reasonably to supervise persons under his supervision at the registrant broker-dealer firm with a view to preventing the violations respecting Lynbar, books-and-records, and net-capital that have been found to have been committed in proceeding 3-1961 above. It is concluded that the record fully establishes Reynaud's failure reasonably to supervise Flinn with a view to preventing Flinn's Lynbar violations and failure to supervise record-keeping "back office" personnel of the registrant with a view to preventing registrant's bookkeeping and net-capital violations.

Reynaud's aiding and abetting of the above violations and his failure to supervise are a basis for denial of registration to the applicant under Section 15(b)(5)(E) of the Securities Act if denial is found to be in the public interest.

PUBLIC INTEREST

The violations disclosed by this record are numerous, serious, and occurred and recurred over an extended period of time. Significantly, a number of the violations occurred notwithstanding clear warnings to respondents stemming from prior violations of the same kind.

Thus, notwithstanding the May 10, 1967, injunction against Reynaud enjoining violations of Sections 5(a) and 5(c) of the Securities Act in connection with the sale of shares of Panamerican and the injunction of registrant on February 20, 1968, from violation of

Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the sale of stock of the North American Research and Development Corporation, the registrant and Reynaud proceeded to commit the same kinds of violations respecting Lynbar stock.

Similarly, the June 19, 1968, injunction should have impressed indelibly on Reynaud's consciousness the critical importance of complying faithfully with the books-and-records requirements and the net-capital provisions, yet he went blithely ahead building up the size of his staff and the volume of his business and paying scant supervisory attention to these central regulatory provisions with the predictable result that in 1969 both of these provisions were again violated. As bearing on sanctions, respondents were unable to establish that registrant was ever brought into net-capital compliance after March 31, 1969, at which point it was clearly out of ratio, or that its books and records were ever made completely current and accurate.

Reynaud's assurances that in the future he will reform, institute new procedures, and the like, afford an unreliable basis for exposing the public to a high risk of further violations, in view of his manifest failure to profit from earlier clear warnings.

The personnel reporting to Reynaud are in general notably lacking in any substantial experience in the securities business. Most of the sales force appears to have been recently recruited through a trainee program. The record does not establish to what extent

personnel left the firm following the suspension of registrant.

Further indication of Reynaud's seeming inability to learn from past misfortune, as well as of his slight regard for regulatory requirements, is seen in connection with applicant's application, in which Reynaud certified that on May 1, 1969, applicant's capital was \$50,000. In his testimony, however, he disclosed that applicant had only \$2,000 on deposit, and that beginning on May 15, 1969, not May 1. He testified that the true capital was \$5,000, not \$50,000 (a typographical error, he claimed) and that the remaining \$3,000 was held by him personally in cash without having been reflected in any records of the applicant. This testimony was not convincing, and is not credited.

As to the violations involving Lynbar, respondents urge that they were entirely the fault of Volante and Flinn. But the record, as found above, discloses to the contrary that Reynaud knew of the Lynbar transaction,^A personally participated in them in a not insubstantial measure, and clearly had the responsibility and capacity to have avoided them through proper supervision. To the extent that Reynaud's testimony conflicts with such findings, it is not credited. Respondents urge, too, in connection with the Lynbar transactions, that Volante, had the Division called him, would have confirmed Reynaud's testimony, which to some degree conflicted with Flinn's. The short answer to this is that respondents were equally free to call Volante, as they were reminded in the course of the hearing. Moreover, the findings as to Reynaud's personal involvement in the Lynbar transactions are based as much on Reynaud's own

testimony as they are on Flinn's.

Reynaud's extensive testimony at the hearing was far from candid on a number of points, e.g. his relationship to the Panamerican account; his presence and functions in the office prior to June, 1968; his knowledge of the Lynbar transactions, and his ability to have supervised before February or June, 1968.

In view of the nature and extent of the injunctions and violations and the lack of any genuinely mitigating factors, it is concluded that the public interest requires that the registration of the registrant be revoked, that the application of the applicant for registration be denied, and that Respondent Reynaud be barred from association with a broker-dealer.^{31/}

ORDER

Accordingly, IT IS ORDERED that the registration as a broker-dealer of Dunhill Securities Corporation is revoked and the firm is expelled from membership in the National Association of Securities Dealers, Inc.; that the application of Patrick R. Reynaud De Saint Oyant, Ltd. is denied; and that Patrick R. Reynaud, also known as Patrick Rene Reynaud De St. Oyant, is barred from association with a broker-dealer.

^{31/} It should be noted that a bar order does not preclude the person barred from making such application to the Commission in the future as may be warranted by the then-existing facts. Fink v. S.E.C. (C.A. 2, 1969), 417 F.2d 1058, 1060; Vanasco v. S.E.C., (C.A. 2d, 1968) 395 F.2d 349, 353.

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

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (15) days after service of this initial decision upon him, filed a petition for review of this initial decision 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.^{32/}


David J. Markun
Hearing Examiner

Washington, D.C.
March 2, 1970

32/ To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the issues presented.