ADMINISTRATIVE PROCEEDING
FILE NO. 3-1961

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of DUNHILL SECURITIES CORPORATION PATRICK R. REYNAUD EDWARD FLINN (8-11616)	INITIAL DECISION (On question of interim suspension of registrant)

Washington, D. C.
June 2, 1969

David J. Markun
Hearing Examiner

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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

BEFORE: David J. Markun, Hearing Examiner

THE PROCEEDING

This public proceeding 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 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 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 stock; violations of the record-keeping provisions of section 17(a) of the Exchange Act and Rule 17a-3 thereunder; violation of section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder (the Net Capital Rule)[1/]; and failure to supervise by respondents Dunhill Securities Corporation and Patrick Reynaud.

The Commission's order for a proceeding provided there be determined first the question whether suspension of the registration

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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.

of the registrant on an interim basis, pending final determination of the issues presented by the order, is 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. Respondent Edward Flinn (Flinn) did not appear either in person or through counsel.[2/] All other parties appeared and were represented by counsel. The parties represented at the hearing filed proposed findings, conclusions and supporting briefs pursuant to Rule 19 of the Commission's Rules of Practice. The findings and conclusions herein are based upon the record and upon observation of the various witnesses.

FINDINGS OF FACT AND LAW

The registrant

Dunhill Securities Corporation ("registrant") is registered as a broker-dealer under Section 15(b) of the Exchange Act, having its (only) 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 Co., which had been registered since August 15,

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2/ 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.

1963. In early 1967 the infusion of new capital permitted the firm to become more active. In March of 1967 respondent Patrick Reynaud ("Reynaud") became the President and 75% shareowner of the registrant and one Guido Volante ("Volante") (who had initially acquired the Forster-Nardone Co.) became Vice-President and 25% owner.[3/] In about June of 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.[4/]

Injunctions chargeable to registrant

Section 15(b)(5)(C) of the Exchange Act provides that one of the possible bases for revocation of a broker-dealer's registration (or the imposition of lesser sanctions) is the existence of a described permanent or temporary injunction issued by a court of competent jurisdiction.[5/]

3/ 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.

4/ Further findings respecting the registrant, its scope of operations, etc. are made below in the course of discussing particular issues to which they are especially relevant.

5/ Section 15(b)(5)(C) provides as follows:
"(5) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registra-
to, suspend for a period not exceeding twelve months,
(Continued on p.5)

The order for proceeding alleges, and the record establishes, four separate injunctions issued by U. S. District Courts within the past two years that are chargeable against the registrant under Section 15(b)(5)(C).

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 Panamerican. 6/ Since Reynaud is a "person associated" with the

(Continuation of footnote 5/)

> 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 -
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> * * *
>
> "(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."

6/ 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.)

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.

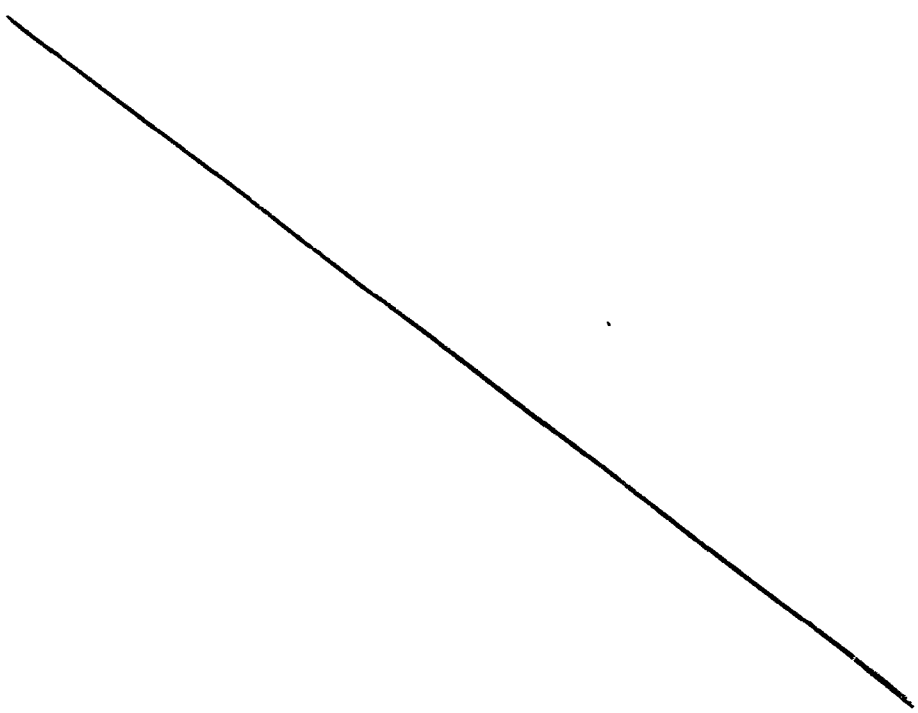
On February 20, 1968 the U. S. District Court for the Southern District of New York issued a preliminary injunction enjoining the registrant and others from violations of sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer and sale of stock of the North American Research and Development Corporation. 7/

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 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 required by the Commission's bookkeeping rules. 8/

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

8/ S.E.C. 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.

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 restraining and enjoining it from violations of section 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 or any other security. (Ex. 16).



In their answer, filed May 26, 1969, respondents Dunhill Securities Corporation and Reynaud admit the judgments referred to above were issued. However, they contend that two of the injunctions, being consent injunctions in which defendants neither admitted nor denied the allegations, should not be employed as a basis for revocation in this proceeding. The Commission has consistently held that such arguments are without merit.[9/]

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 willfully violated 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, 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.

9/ Balbrook Securities Corporation, January 28, 1965, Exchange Act Release No. 7522; Securities Distributors Inc., 40 S.E.C. 482, 485 (1961); Kimball Securities Inc., 39 S.E.C. 921, 923-4 (1960).

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 after a pilot plant might demonstrate 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 indicates 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. The registrant has not asserted or attempted to establish any statutory

exemption.[10/] The Division introduced at the hearing extensive proof designed to establish that the registrant participated in a large-scale distribution of Lynbar stock in this country triggered and sustained by stock emanating from control persons such as would make the registrant a statutory underwriter under section 2(11) of the Securities Act.

It appears 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 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.

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

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

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 occurred through three major accounts at Dunhill, as follows:

Account	Shares Bought	Sold	No. of Customers
Frey accounts	78,500	78,000	80
Dunhill firm trading account	54,000	45,000	173
Panamerican Bank & Trust	16,000	10,000	62
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 present state of the record in this proceeding 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"), Reynaud, the president of the registrant, made the investment decisions. Panamerican is a Panama-registered corporation, as mentioned earlier, of which Renaud is president but in which he testified he had no ownership interest. The present state of the record suggests but does not conclusively establish 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 said, registrant does not assert or urge the existence of any statutory exemption. It does, however, urge that certain exhibits introduced by the Division and the testimony related thereto be stricken. Respondents filed a motion during the course of the hearing [11/] to strike Division's exhibits 7, 8, 9, 10, 11, 12, 13, 14, 15 and 24 together with the testimony related thereto. The motion

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11/ Hearing Examiner's Ex. 2.

was taken under advisement for disposition in the initial decision. Primarily, respondent's contention is that various exhibits representing summaries prepared by Division's personnel on the basis of underlying records of various broker-dealers are not admissible either because the Division's personnel worked from copies rather than originals, that some of the originals themselves are not reliable, or that the underlying documents were not available to counsel for respondents.

Whatever merit the respondents' motion may have had when it was first presented, it is clear that any deficiencies or possible prejudice to respondents were cured by the subsequent recall to the stand, at respondents' request, of the witness of the Division through whom the questioned exhibits had been introduced. By the time this witness was recalled the basic documents that furnished the data reflected in the summaries had either been received in evidence or were made available in the hearing room to counsel for respondents for his use in cross examination, introduction into evidence, etc. Thus the questioned exhibits are clearly admissible under the general practice followed in judicial proceedings.[12/] The standard in administrative hearings, if anything, would be more liberal in admitting summaries. Accordingly, the respondents' motion to strike must be, and it hereby is, denied.

12/ Wigmore on Evidence, 3rd Ed., Vol. IV, p. 434.

Representations and omissions in sale of Lynbar

The order for proceeding alleges that in selling Lynbar stock to its customers the registrant 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 customer 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 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 this 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 ot time are inherently fraudulent when made without a reasonable basis in fact.[13/] 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.

In addition to Flinn's representations and omissions, the testimony indicates 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

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

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.[14/] They seemed to rely on his judgment that it would be a good purchase.

Record-keeping deficiencies

It is charged that from January 31, 1969, to the date of the order (4-21-69) the registrant has willfully 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.

The evidence indicates 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;

14/ 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."

(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;

(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 registrant does not dispute the occurrence of the deficiencies described above in the keeping of its books and records. It produced no employee charged with keeping the records in refutation. Registrant did produce as a witness the certified public accountant who has certified registrant's books for a number of years, who testified that as of the time he testified the books and records appeared to be currently posted. His examination had been cursory and he was of course unable to represent that the entries were either accurate or complete.

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.[15/] The amendment alleges that during the period from on or about March 31, 1969, to the date of the amendment the registrant

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15/ R. 391,394. Hearing Examiner Ex. 1.

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: 16/

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 existance 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 the

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16/ Ex. 26.

Net Capital Rule. Thereafter Mautner 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 $125,000.00. A member of Mautner's staff had calculated a net capital deficiency of $111,120.80 as of the end of March 31, 1969.

Mautner 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.[17/]

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, Mautner accepted as current assets all the customer debit balance, amounting to $111,000, though he concedes that figure would have to be reduced to the extent the balances may be unsecured.

From the foregoing it would appear that the record in this proceeding does not contain a definitive calculation of the registrant's net capital position as of April 30, 1969.

17/ R. 1483

Failure to supervise

The order for proceeding includes an allegation that the registrant failed reasonably to supervise persons under its supervision with a view to preventing the violations respecting Lynbar and the violations respecting books and records.

The registrant did not attempt to show that it reasonably supervised the activities of Flinn, its then trader and registered representative, respecting transactions in Lynbar. It seeks 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 has dual flaws. First, registrant cannot escape responsibility for Volante's failure to supervise, even though he is no longer with the firm. His departure could only go to the question of public interest. Second, the record suggests 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 noteworthy 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 majority shareholder he could have required proper supervision even before he passed his NASD principal's exam on February 28, 1968.

As to the books and records, the record in this proceeding presents no satisfactory explanation as to why the record-keeping was

allowed to fall behind. The plea that the volume of business was just too high is unacceptable, since one of the requirements in the exercise of the supervisory and management functions is to see that the efforts of a firm's personnel are properly channeled so that required things do get done, even at the cost, if need be, of restricting operations.

Conclusions

While no ultimate conclusions are made herein respecting the violations charged in the order, it is concluded that the Division has made a strong preliminary showing of a likelihood that after full hearings on the revocation issue registrant will be found to have committed the willful violations charged and that the record satisfactorily establishes serious misconduct on the part of the registrant of a kind which would warrant revocation of its registration if it is ultimately concluded that violations as charged did occur and that the public interest requires such revocation. (The existence of the injunctions charged is not contested by registrant.)

PUBLIC INTEREST

Section 15(b)(6) of the Exchange Act obliges the Commission, pending final determination whether a broker-dealer's registration should be revoked, to suspend the registration if such suspension shall appear to be necessary or appropriate in the public interest or for the protection of investors. A number of Commission's decisions have directed themselves to defining the standards that are to

govern whether a registrant shall be suspended.[18/]

Does the public interest or the protection of investors require an interim suspension of the registrant? It is concluded on the record that each of the two factors requires a suspension.

During a two-year period preceding the order for proceeding four separate injunctions chargeable to the registrant were issued in

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18/ In A. G. Bellin Securities Corp., 39 S.E.C. 178, 185 (1959) the Commission stated in part:

"The suspension provision in Section 15(b) of the Exchange Act indicates recognition by the Congress that where it is preliminarily shown that a registered broker-dealer has engaged in serious misconduct, proper protection of investors and the securities markets requires that the statutory permission to engage in interstate securities transactions with others which is conferred by his registration be withdrawn pending further hearings on the revocation issue. Under that provision, we are only directed to inquire into the question of whether the public interest or the protection of investors warrants suspension, and there is no requirement that suspension be based upon findings of willful violations or the other grounds specified with respect to revocation. The pattern of Section 15(b) thus shows that in balancing the interests of the registrant on the one hand and of investors on the other, Congress viewed the interest of investors in being protected from such a broker or dealer as outweighing his interest in continuing to have full access to investors. Nor is it necessary, as urged by registrant, that the record show imminent danger to the public interest in connection with the particular securities involved. In our opinion we are required in the public interest or for the protection of investors to suspend registration where the record before us on the suspension issue contains a sufficient showing of misconduct to indicate the likelihood that after hearings on the revocation issue registrant will be found to have committed willful violations or any of the other grounds prescribed with respect to revocation in Section 15(b) will be established, and that revocation will be required in the public interest."

* * *

In Peerless-New York Incorporated, 39 S.E.C. 712, 715-6 (1960) it was put:

". . .The Exchange Act clearly contemplates that a suspension order is properly issued where a preliminary showing is made that

(Footnote continued)

the U. S. District Court for the Southern District of New York. The subject matter of the four injunctions included the registration provisions of the Securities Act, the anti-fraud provisions of the Securities Act and the Exchange Act, the bookkeeping rules, and the net-capital rule.

Beyond this, the record reflects a preliminary showing that this year the registrant again let his books and records "fall behind" after having been enjoined in 1968 in connection with similar problems. Again, there is presented a preliminary showing that the registrant as of close of March of this year had a net-capital deficiency, with the unhappy feature that this apparent deficiency was much more sizeable than that reflected by the injunction in 1968. Whether the registrant is presently in net-capital compliance is not definitely established by the evidence.

The preliminary showing made with respect to the alleged violations respecting Lynbar evidences a disturbing lack of supervision, as do the recurring bookkeeping and net-capital problems. Unfortunately the record does not show any improvement over the two-year period in terms of either the capacity or will to supervise so

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(Continuation of Footnote 18)

a registered broker or dealer has engaged in such misconduct, of a nature that would warrant revocation, that public investors would be jeopardized by registrant's continuing dealings with them during the more extended interval which development and determination of the issues relating to revocation would entail."

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as to avoid difficulties. This situation is aggravated by the fact that the firm has had a striking growth in terms of numbers of employees and customers from some 6 employees and 300 customers at the time that Reynaud bought into the firm to some 50-55 employees and 3,000 customers currently. Reynaud testified the firm is opening 5 to 6 new accounts daily. The firm trades in some 80 stocks, has some 10 underwritings in process of registration and some 20 further underwritings contemplated. Reynaud, the only active officer, personally handles the bulk of the underwriting and devotes substantial time thereto.

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.

In these circumstances, with the firm under Reynaud's management being evidently bent on rapid growth and expansion of activities, particularly underwritings, without sufficient regard for the consequences of such growth in terms of allowing the firm to comply with the basic securities laws and rules, it seems clear that continued operation by the registrant during the interim period would expose its customers and the public to inordinate and unacceptable risk. For these reasons it is concluded that the public interest and the protection of investors require that registrant's registration be suspended pending final determination of the issues framed by the order for proceeding.

Accordingly, IT IS ORDERED that pending final determination of the issues set forth in section III (A),(B) of the order for proceeding the registration of Dunhill Securities Corporation, a respondent herein, be and the same hereby is, suspended.

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice as modified by Rule 19.

This initial decision shall become the final decision of the Commission as to each party who has not, within three (3) days after receipt of the initial decision, filed a petition for review of this initial decision pursuant to Rule 17(b) as modified by Rule 19(c). If a party timely files a petition for review the initial decision shall not become final with respect to that party. 19/

David J. Markun
Hearing Examiner

Washington, D. C.
June 2, 1969

19/ To the extent that the proposed findings and conclusions submitted by the parties 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 issue presented.