

IN THE MATTER OF
THE SECURITIES ACT, 1988, S.S. 1988, C. S-42.4

AND

ROSS MICHAEL TAYLOR

REASONS FOR THE DECISION OF THE DIRECTOR

Before:

Barbara L. Shourounis, Director

Appearances:

James M. Hall, for the Commission staff

Ross Michael Taylor, for himself

Heard:

In Regina, Saskatchewan on June 27, 1990

The Hearing

This hearing was held pursuant to section 28(3) of The Securities Act, 1988 ("the Act") to determine the suitability of Ross Michael Taylor for registration as an officer of Metropolitan Financial Advisors Limited ("Metropolitan").

Facts

On May 15, 1990, Mr. Taylor applied to the Saskatchewan Securities Commission ("the Commission") for registration as an officer of Metropolitan. His application indicated that he was a vice-president of Metropolitan, responsible for all aspects of Metropolitan including sales and marketing, product development, legal affairs, regulatory affairs, compliance and investment management.

Metropolitan is registered as a mutual fund dealer in Saskatchewan. It is also registered in British Columbia, Alberta, New Brunswick, Nova Scotia, and Newfoundland.

Carol Henrickson, Deputy Director, Registration, testified on behalf of Commission staff. She took the position that Mr. Taylor, who would be responsible for ensuring Metropolitan's compliance with regulatory matters, should not be registered. Her concern was based on his actions while he was employed by McLeod Young Weir Limited ("McLeod") in Hamilton, Ontario from October 1984 to January 1987 as a registered representative. She was also of the view that he did not have five continuous years related experience in the securities industry as required by subsection 38(4) of The Securities Regulations.

A Settlement Agreement dated March 11, 1988 ("the Settlement Agreement") between the Investment Dealers Association ("the IDA") and Mr. Taylor was entered into evidence. In the agreement, Mr. Taylor agreed to pay a fine of \$10,000, to be suspended as a registered representative for a period of eighteen months from February 1, 1987 to August 1, 1988, to rewrite and pass the

registered representatives examination and to pay costs of the investigation in the amount of \$500.00. Mr. Taylor acknowledged the IDA's allegations against him which can be summarized as:

1. On January 5, 1986 opening a margin account and options account and signing the necessary agreements on behalf of a client without the client's authorization or knowledge, and thereafter executing options trades without the authorization or knowledge of that client.
2. During the period from May, 1986 to January 23, 1987, executing a number of option trades on behalf of two individual clients without having received the required prior authorization.

Mr. Taylor submitted a form of Settlement Agreement with his Application for Registration which omitted Part I - Statement of Facts of the Settlement Agreement.

At the time of the Application for Registration, he had not paid the \$10,000 fine, had not paid costs of \$500.00 nor had he written the registered representative examination as required by the Settlement Agreement.

Mr. Ed Weiss, Director of Human Resources for Metropolitan testified that Mr. Taylor was first employed by Metropolitan in June of 1988 as a vice-president responsible - for product development and management. His duties were to "clean up the product mess" that existed from when Metropolitan bought its mutual funds from the defunct Principal Group.

He said that Mr. Taylor examined the prospectuses and other marketing material and brought them into line with National Policies on mutual funds. He also highlighted and dealt with several instances of questionable sales practices.

Since joining the firm, Mr. Taylor took on additional duties and responsibilities, and was appointed to his current position as "Compliance Officer" responsible for the distribution and sales of Metropolitan's mutual funds in March, 1990. As such, he would have to be registered and approved by the securities administrators. The firm was aware of Mr. Taylor's difficulties at McLeod, as he had disclosed these to Metropolitan's management when he was first employed. The firm was also aware that there may be difficulties with Mr. Taylor's registration because of this, but decided to proceed nonetheless.

Mr. Weiss took the position that Mr. Taylor was by far the best candidate for the job, and that the firm had confidence in his abilities and diligence. He said that there has been no hint of inappropriate behavior during his employment with Metropolitan. He was confident that Mr. Taylor has "turned over a new leaf" and that what happened during his employment with McLeod would not happen again.

Ross Taylor then testified. He outlined in detail the facts that led to his leaving McLeod in January 1987, and to the Settlement Agreement with the IDA. He acknowledged that his conduct was unbecoming a registered representative, but stated that it was an aberration in an otherwise strict approach to the securities business.

He saw himself while working at McLeod as a bright, intelligent, although somewhat over-confident person. As a student he had a special interest in derivative products, and while at McLeod developed some expertise in options. He achieved recognition in this area, and was approached by McLeod about becoming an options strategist. His goal was to acquire institutional accounts and advise them on hedging activities.

In the meantime, he said that about five to ten percent of his clients were engaged in trading in options. He had educated these clients about trading in options, and had taken all the necessary steps to open options accounts. They were prepared to take the high risk of options trading in return for expected high performance.

Mr. Taylor said that his difficulties, which culminated on January 23, 1986, involved three clients. Two of them had options accounts for about one year. He said that he had had prior discussions with these clients to the effect of "if the market does this and this, we should do that". While a strategy had been pre-authorized some specific trades were not. He acknowledged that while he did have authority for the majority of the trades in the two accounts, he did not have authority for some of the options trades for these clients.

The third client was his wife to whom he had been recently married. She had been holding a sum of money in trust for her family which was invested in treasury bills. On January 5, 1986, without her authorization or knowledge, Mr. Taylor opened an options account and began trading in options with this money. He stated that he was overconfident and thought he knew what the market would do. He believed that he could make a lot of money for his new wife and her family and thereby impress them.

However, in January of 1987 the market didn't behave as expected, things went gravely wrong and he lost over \$60,000 of his wife's trust money. He lost significant sums for the other two clients as well. He stated that all of this occurred in a three week period ending January 23, 1987. On that date he disclosed all of his transgressions to McLeod and subsequently resigned. McLeod paid compensation to Mrs. Taylor as well as to the other two clients. Although the incident initially caused significant

difficulties between them, he and his wife are presently living together.

The IDA began an investigation and reviewed all of his past transactions. However, Mr. Taylor stated that no questionable transactions were revealed other than those he had disclosed to McLeod.

He wanted to remain in the securities industry, but knew that he would have difficulty getting employment with another firm because of the outstanding IDA investigation. He therefore began carrying on a fee-based financial planning practice. A settlement with the IDA was reached on March 11, 1988, but by then he had an offer of employment with Metropolitan which he accepted.

He said that he threw himself into his work with Metropolitan updating the product and cleaning up the mess that had been inherited from the Principal Group back in 1987. He described in detail the management system he has developed to ensure compliance on regulatory matters. It includes weekly conference calls with district sales managers during which they discuss compliance problems, the review with sales staff of new regulatory rules, and an approval process for advertising. He ensures that memos concerning compliance are catalogued and retained. He stated that compliance is very important for him because he is so painfully aware of what can go wrong.

He explained why he submitted an edited version of the Settlement Agreement with his registration application. During discussions in March 1990 with Metropolitan regarding his appointment as compliance officer, he gave them an edited version of the Settlement Agreement. He had deleted Part I which outlined facts relating to his wife because these facts were too personal and painful for him to discuss. This edited or abridged version was sent in with the Application for Registration by mistake. He

stated that he had recently paid the outstanding \$10,000 fine to the IDA. It wasn't paid sooner because he was of the view that it was payable only in the event that he sought reregistration with the IDA. There had initially been an understanding that Metropolitan would pay the fine on his behalf, but the matter was reconsidered and it was agreed that it was more appropriate that he pay the fine personally.

Decision

Section 28(1) of the Act requires that a registrant be suitable for registration and that registration is not objectionable. The issue is therefore whether Mr. Taylor's actions in late 1986 and January of 1987 cause Mr. Taylor to be unsuitable for registration.

The principle set forth in the case of Lymburn v. Mayland, (1932) 2 D.L.R. 6 (P.C.), is that persons dealing in the securities industry should be honest and of good repute. I accept Mr. Taylor's account of the events that led to his leaving McLeod. It is largely borne out on a review of the Settlement Agreement. Mr. Taylor appears to be an honest and competent individual.

I am concerned about the fact that Mr. Taylor submitted an edited Settlement Agreement with his application for registration. Although I am satisfied that he did not intend to mislead the Commission, he was responsible for insuring that the registration information was complete, and should have exercised more care. I am also concerned about his position regarding payment of the IDA fine and the fact that it was so recently paid. The Settlement Agreement, which he signed states that \$5,000 of the fine was payable on approval of the Ontario District Council and the balance was payable by January 15, 1989.

His behavior in January of 1987 was grave and his actions cannot be minimized. However, he acknowledges the seriousness of his conduct, and he doesn't attempt to excuse or justify it except to

admit to over-confidence, even arrogance, about his knowledge and expertise.

The evidence indicated that his misdemeanors were focused in a fairly short period of time, and didn't amount to an extended course of conduct. Except for one trade on May 7, 1986, all of the unauthorized trades took place in late December, 1986 and the first three weeks of January, 1987. In the three and one-half years that have elapsed since then there is no evidence of complaints about his behavior. His present employer praises him highly and has full confidence in his abilities and character.

Mr. Taylor says that he has learned from his mistakes. He appears to have been humbled by the experience.

Ross Michael Taylor made serious errors of judgement and failed to comply with some of the basic rules of the securities industry. However, he is entitled to a fresh start. Because Mr. Taylor does not meet the experience requirements of subsection 38(4) of the Regulations, and because he has not been directly involved in the securities industry for a sufficient period of time since January, 1987 to fully redeem himself, Ross Taylor will be registered as an officer of Metropolitan subject to the following conditions:

1. That the President of Metropolitan submit a satisfactory plan setting out the manner in which Ross Taylor will be supervised to ensure that he is properly performing the functions of his position;
2. That Ross Taylor be under supervision according to the terms of the supervision plan for a period of one year following initial registration; and

3. That the President of Metropolitan submit bi-annual written reports within six months and one year of the initial registration of Ross Taylor outlining:
- (a) the management system developed and implemented by Ross Taylor to ensure compliance with security regulatory requirements;
 - (b) actions taken by Ross Taylor during the reporting periods to deal with compliance problems within Metropolitan; and
 - (c) the manner in which Ross Taylor has performed the functions of his position generally.

Dated at Regina, Saskatchewan, this 27th day of July, 1990.



Barbara L. Shourounis

Director
Saskatchewan Securities Commission