

Province of New Brunswick

In the Matter of the Securities Act, R.S.N.B. 1973, c. S-6, and amendments thereto;

and

In the Matter of the Registration of Peta Shaughn Marie Drummond.

Decision and Reasons

Hearing: Wednesday, December 12, 1990, 2 p.m.

Appearances: Edouard O. LeBlanc, Deputy Administrator of Securities, New Brunswick;
(Mrs.) Peta Shaughn Marie Drummond, Registrant;
Peter Leger, Branch Manager, Mutual Investco Inc.,
Fredericton, New Brunswick.

Decision and Reasons of Donne W. Smith, Jr., Administrator of Securities, New Brunswick:

At the request of the Deputy Administrator of Securities, and pursuant to the Securities Act, (Security Frauds Prevention Act) R.S.N.B., 1973, c. S-6, and amendments thereto, a Hearing was ordered to review the suitability of Peta Shaughn Marie Drummond for continuing registration as a salesperson under the Act. At the time of the Hearing, Mrs. Drummond was an employee of the Mutual Group, including Mutual Investco Inc., a registered mutual fund dealer.

At the Hearing it was disclosed that Mrs. Drummond commenced her employment with the Mutual Group in April, 1990, at their Fredericton branch office. By an application form dated August 22, 1990 she requested registration as a salesperson under the Securities Act. This application was approved by the Administrator on November 8, 1990 and a certificate of registration subsequently issued effective November 1, 1990 to expire on October 31, 1991. Like Mutual Investco Inc. her activities as a salesperson were then and remain restricted to the distribution of mutual funds sponsored by the Mutual Life Assurance Company of Canada.

Pursuant to the registration requirements of the Office of the Administrator, Mrs. Drummond executed a Security Frauds Information Centre Records Request form on August 22, 1990. Subsequently the form was returned by the Security Frauds Information Centre indicating that a conviction might be on record as relating to the applicant. Only with fingerprints could a conclusive determination be made. No conviction was disclosed on Mrs. Drummond's application form as required by question 15(B).

Upon receipt of the returned SFIC form, the Deputy Administrator commenced an investigation pursuant to normal practice. He determined that the disclosed conviction did relate to the registrant, Peta Shaughn Marie Drummond. As a consequence, he requested that the Administrator order a Hearing to determine the suitability of Mrs. Drummond's registration under the Securities Act. After due notice to the registrant and her employer, a Hearing was conducted on December 12, 1990.

The Deputy Administrator alleges that by failing to disclose a prior criminal code conviction, Mrs. Drummond committed a fraudulent act contrary to section 41 of the Securities Act, for which her registration should be cancelled. The 1987 conviction involved obstructing justice for which the accused was given a conditional discharge and placed on six months probation. In addition to the nature of this conviction is his concern regarding the registrant's failure to disclose it, both in the application form submitted to the Administrator and on that to the Security Frauds Information Centre.

In her evidence, given under oath, Mrs. Drummond acknowledged the conviction. She was stopped for speeding by the Toronto Police. When, contrary to her assertion to the police, it was discovered that she did not have a valid driver's licence, she was subsequently arrested at work, fingerprinted, charged and convicted.

At the Hearing Mrs. Drummond explained the circumstances surrounding her conviction. She was scared when she was stopped for speeding and did not know how to respond to the police. She was 22 years old. Subsequently, she misunderstood the effect and the consequence of a conditional discharge. Both her lawyer, who was not a criminal specialist, and the judge explained, according to her, that if after the passage of 6 months, she was convicted of no other offence, then her current charge would be dropped. Consequently, when she did not return to court after 3 years, she put the matter completely out-of-mind.

In response to questions regarding the application form, Mrs. Drummond testified that Part C took the least amount of time to complete. She believed that question 15(B), dealing with convictions, related to security frauds or frauds only, the subject matter of question 15(A). She acknowledged that in hindsight she did not read the questions carefully. No instructions or assistance were given to her by management of her branch other than an administrative secretary.

The Deputy Administrator argues that Mrs. Drummond's registration should be cancelled. Because Mrs. Drummond made no effort to change her statement after the initial panic, but allowed the police to arrest her several weeks after the offence, her ability to maintain a position of trust might be doubtful. Furthermore, her failure to correctly answer question 15(B) can be interpreted as an intent to mislead the Administrator, bringing her integrity and honesty into question. He stresses the seriousness of improperly swearing an affidavit. He rejects Mrs. Drummond's assertion that she did not understand the nature or consequences of the 1987 conviction considering the manner in which she was arrested, and convicted.

In response, Mrs. Drummond expresses disagreement with the Deputy Administrator's conclusions. She acknowledges that she did not properly complete her application, but she had no intent to deceive anyone.

Pursuant to section 12(1)(c)(v):

The Administrator may order that

- c) a registration be suspended or cancelled upon
- v) the Administrator being satisfied that such action is in the public interest;

The Administrator may exercise a broad discretion in determining what is the public interest and how it should be protected.

The question before the Administrator at this Hearing is whether Peta Shaughn Marie Drummond, by reason of the nature of her 1987 conviction or by her acknowledged failure to fully disclose important information, has failed in the first instance, to meet the minimum standards necessary for registration, or subsequently, to maintain these standards, thereby rendering her unsuitable for continuing registration.

The New Brunswick Securities Act requires that the Administrator impose minimum standards so that the investing public is protected from fraudulent activity. If these corporate or individual standards are not met or maintained the integrity of the industry is rightfully questioned. This is especially important in the securities industry where substantial client sums are entrusted by individuals to their advisors. Investors expect their investment advisors to be truthful, honest and forthright, and should they not be, the Administrator is directed by the Act to take appropriate action.

There is no question that Mrs. Drummond has met the standard proficiency requirements in that proof of successful completion of the Investment Funds Institute of Canada mutual funds course has been filed. Furthermore, it is evident that no or little instruction was given to her by management when completing the application form. For this failure in administrative and supervisory procedure Mrs. Drummond cannot be faulted.

In reviewing the evidence given by Mrs. Drummond one might reach the conclusion she did not understand the nature and consequences of her 1987 conviction. However, it is questionable whether the experiences described by Mrs. Drummond could ever be forgotten.

Mrs. Drummond is starting a new career in the securities industry. She has been recruited by Mutual Investco Inc. which has confidence in her integrity and abilities. Over time Mrs. Drummond will seek to earn the respect of the investing public. They will demand that she maintains the high standards of her industry. While her conviction in 1987 might alone be viewed as a youthful indiscretion, her failure to properly disclose it in completing a very important registration document, must be viewed more seriously. Regrets are insufficient. Mrs. Drummond must start her career recognizing the vital importance of honesty and integrity, as well as thoroughness, in meeting her responsibilities.

Upon determining that administrative action is warranted, the Administrator can suspend or cancel a salesperson's registration. While Mrs. Drummond has been registered with this office since November 1, 1990 her branch manager advises she has not been permitted to distribute securities pending the outcome of this Hearing.

Regretfully, I believe the registrant's failure to disclose a criminal code conviction, which in itself and in the circumstances might not prevent registration, is evidence that she does not yet appreciate the standards required of registrants under the Securities Act. I am certain that, in the future, both Mrs. Drummond and her employer will be more diligent in fulfilling their responsibilities.

Pursuant to section 12(1)(c)(v), I order the salesperson's registration of Peta Shaughn Marie Drummond be suspended effective December 12, 1990 and remain suspended until April 1, 1991, at which time, at Mrs. Drummond's request, and in the absence of any further detrimental information, her registration may be reinstated.

Pursuant to the Securities Act, Mrs. Drummond has the right to appeal this decision.

Dated at Saint John, New Brunswick this 19th day of December, 1990.


DONNE W. SMITH, JR.
ADMINISTRATOR