

ALBERTA SECURITIES COMMISSION

**IN THE MATTER OF *the Securities Act*
R.S.A. 2000, c. S-4**

Citation: Phool, Re, 2008 ABASC 403

Date: 20080624

**IN THE MATTER OF Sunil Kumar Phool
Application pursuant to ss. 76(3) by Sunil Kumar Phool
for a hearing in relation to the denial of registration**

Decision of the Executive Director

Introduction

1. This is an application pursuant to ss. 76(3) of the *Securities Act* R.S.A., c.S-4 (the “Act”) by Sunil Kumar Phool (the “Applicant”) for a hearing to be conducted before the Executive Director relating to the refusal to grant the Applicant registration.

2. The Applicant made application on January 16, 2008 for registration as a salesperson with a mutual fund dealer (the “Application”). The application was made through the NRD system through a sponsoring dealer, Quadrus Investment Funds Inc. and, essentially, was a reactivation of the Applicant’s previous registration. The Applicant had previously been a registered mutual fund salesperson employed by Royal Mutual Funds Inc. (“RMFI”) but had resigned his position. The resignation was evidenced by a notice filed on NRD dated December 10, 2007. The notice stated that the Applicant had “[r]esigned for cause”. Further, the narrative in the notice described that the Applicant “was terminated due to honesty (*sic*) and integrity breach pertaining to lending practices.” It also alleged that the Respondent “falsified client’s information in order to obtain approval for credit facilities.” He was also alleged to have breached the firm’s code of conduct by “advancing credit to clients” who did not qualify under the firm’s normal lending criteria. Finally the notice pointed out that “[t]his was not related to the sale of mutual funds.”

3. Due to the nature of the information contained within the notice, staff of the Alberta Securities Commission (“ASC”) (“Staff”) contacted the Applicant on December

11, 2007 and asked for his explanation regarding the reasons for his resignation from his previous dealer. By letter dated December 14, 2007, received December 20, 2007, the Applicant advised that he had resigned and “presently I am looking different options” (*sic*).

3. After the submission of January 16, 2008 was received from Quadrus seeking the reactivation of the Applicant’s registration, Staff sought to determine from Quadrus what information they had obtained concerning the Applicant’s departure from his previous employer, specifically, with regards to his suitability as a mutual fund salesperson. Quadrus had been unable to get any information from the previous employer other than the commencement and termination dates for his employer. Quadrus did provide an email from the Applicant dated February 5, 2008 which blamed his departure upon an unreasonable manager who purportedly cut lunch hours, verbally abused him and did not appreciate his advice on goal setting and compliance, among other matters. A follow-up email from the Applicant to his sponsoring dealer dated February 22, 2008 was also provided. This email addressed an allegation by the previous employer that the Applicant had not verified client incomes in relation to providing mortgages. The Applicant stated generally all he did was submit paperwork and that others approved the mortgages. He then went on to deal with one specific incident where he provided all the required information in relation to one of his client’s mortgage applications and then was informed by his previous employer that he was under investigation for not having properly verified the client’s income. The Applicant decided that due to his stressful work environment, he would resign.

4. On February 22, 2008, Staff requested from the Applicant’s former employer information relating to the departure of the Applicant from RMFI’s employment. The reply received stated that “approx. 9 clients and over 20 occasions of falsification of client information (employment/salary, etc.) to obtain credit approvals.” Other comments made included obtaining 68 branch recourse VISA applications without proper approval, history of internal discipline matters (without details of what they were) and that the Applicant worked outside of his lending authority . However, it was also noted that there had been no write-offs to date with any of the credit advanced and none with the mutual funds.

5. By letter dated March 14, 2008, Staff wrote to Quadrus and advised that their recommendation was that “close supervision” be imposed as a term and condition upon the Applicant’s registration as a mutual fund salesperson. The Applicant by letter dated March 26, 2008, requested a hearing before the Executive Director.

6. Staff provided submissions dated May 14, 2008, and an affidavit of Mark Stott dated May 14, 2008 (the “Stott Affidavit”). The Applicant, through counsel submitted his submissions dated May 28, 2008 (received May 27, 2008), which also contained an affidavit of the Applicant dated May 26, 2008. Staff submitted a reply dated June 4,

2008. A further response to the Staff reply was provided by the Applicant on June 16, 2008.

Submissions

7. Staff submitted that although their original position was to recommend that the Applicant be granted registration with terms and conditions as outlined in their letter of March 14, 2008, they had determined that they were now completely opposing the registration of the Applicant. In the alternative, Staff retreated to their original position that close supervision terms be imposed upon the Applicant's registration.

8. Staff made reference to the relevant section of the *Act*, being s.76, and then included the following excerpt from January 13, 2006, CSA Registration Reform Project (*Proposal on Registration Reform*) as reflecting the proper standards for registration of salespersons in the securities industry:

The registration requirement protects investors from unfair, improper or fraudulent practices and enhances capital market integrity and efficiency. The cornerstones of the registration requirements are:

- proficiency -- only qualified persons can deal or advise
- integrity -- registered persons must be honest and of good repute
- solvency -- registered persons must be financially viable

The courts accept that the registration requirement is in the public interest and have framed their approval with reference to protecting the public from persons carrying on a securities business.

The paramount object of the *Act* is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such business.

9. Staff submitted that the evidence available "casts an overwhelming shadow on [the Applicant's] integrity. They refer to the information provided by his former employer and point to the fact that the Applicant did not explain these circumstances when asked to address his departure from his former firm. Staff allowed that the allegations did not occur in relation to the securities industry but rather in the banking context. However, it was pointed out that both are "financial industries with an expectation of trustworthiness and honesty".

10. Staff concluded by stating that if the Applicant had been unaware of the nature of the information provided by his former employer previously, since the tendering of the Staff submissions and Stott affidavit, he had notice and the allegations called for a refutation of the “evidence”.

11. The Applicant submitted that the entire situation was a result of the dysfunctional relationship he had with his former employer’s manager. He stated that the “substantial mental abuse” imposed upon him resulted in his departure from RMFI. Further, the Applicant submitted that the investigations conducted by his former employer and by Staff were improper and unreasonable.

12. The Applicant submitted three performance appraisals from his former employer for the periods 2006 (Q3&Q4), 2007(Q1) and 2007(Q2) and pointed out his performance rating up until the 3rd quarter of 2007 was “High Performance”. It should be noted that these appraisals were purportedly Exhibit “A” to the Applicant’s affidavit in these proceedings, however the copy received was neither notarized nor commissioned (see *Commissioners for Oaths Act*, R.S.A. 2000 c. C-20), so they are not sworn evidence but for purposes of this matter, it will be treated as an oversight.

13. The Applicant further made reference to the due diligence material collected by Quadrus and submitted to Staff, specifically, a series of emails which are contained within the Stott Affidavit at Exhibit L and reproduced in the Applicant’s brief at tab 3. These emails confirmed that the due diligence conducted by his current employer reflected that the Applicant was well thought of by his first manager at RMFI, and repeated the difficulties with the subsequent manager.

14. The Applicant’s counsel submitted that the Staff investigation into these circumstances was lacking. Specifically, he indicated that Staff should have put the NRD allegations to his client, suggesting that Staff was essentially attempting to entrap the Applicant. The allegation of counsel is that Staff had a duty to put the essence of the allegations against the Applicant to him directly so that he could reply. It is alleged that the failure to do so was unfair and unreasonable.

15. The Applicant further submitted that the conclusion Staff reached that the Applicant’s responses were inadequate were the result of Staff’s failure to put the allegations of the former employer to him. Furthermore, the Applicant pointed out that all the information against him came from one source, the former manager, a person with whom he clearly was at odds.

16. Staff’s reply does not raise any serious new issues. It restates Staff’s essential argument that the Applicant had a duty to respond to the allegations made by his former employer. Likewise the response filed by the Applicant’s counsel merely reemphasizes earlier arguments made. I do not propose to restate them here.

Discussion

17. I agree with Staff's submissions that the purpose of registration is as set forth in paragraph 8 above. The issue raised in this application is the question of integrity - is the Applicant of sufficient honesty and good repute that the public is protected?

18. The information contained on the NRD submission concerning the Applicant's departure from RMFI is troubling. It suggests that the Applicant's behaviour was dishonest and contrary to the Royal Bank's business conduct rules. Whether this behaviour took place in the context of a mutual fund or banking relationship is of no moment. The underlying concern is the ethics of the individual when dealing with the public.

19. Staff has maintained that the Applicant chose to ignore the allegations of RMFI. This would be a stronger argument if Staff had put these allegations directly to the Applicant. Staff suggests that the Applicant has a duty to correct the NRD record and should be pursuing the RMFI to provide him with information to "clear his name". Surely this is a decision for the Applicant as to whether he feels it necessary to amend NRD. Presumably if it caused concern, then a future employer would choose not to employ him.

20. Staff has concluded that the evidence against the Applicant is compelling. I am not convinced. Essentially, there are comments from a previous employer, which have not been verified. When Staff sought to confirm the information, they were advised that the Royal Bank would not willingly supply corroboration. I have no doubt that this is due to legal concerns relating to its position *visa vis* the Applicant. Staff further states that this was not an investigation, however, to the extent that they choose to rely upon comments such as those placed on NRD by the Applicant's former employer, then there has to be some corroboration of those allegations, particularly when the result would be the deprivation of the Applicant's ability to become registered.

21. Juxtaposed against the comments filed on NRD about the Applicant, are the observations of his present employer which are uniformly positive. In addition, the comments from his former manager at RMFI suggest the Applicant was doing at least a credible job.

22. The information posted on NRD regarding the Applicant is of concern. I find it difficult to understand that a registrant is able to publish comments on NRD for regulatory purposes but when asked by a regulator to justify those comments, refuses to do so voluntarily. Obviously, the ASC can compel that information and I would direct Staff to cause the former employer of the Applicant to deliver up its material relating to the Applicant to permit Staff to determine if the comments can be substantiated. If Staff discovers evidence that corroborates the concerns that the Applicant poses a risk to the

investing public, then this hearing will be recommenced to consider that information and to determine whether the Applicant's registration status should be revisited. If Staff determines that the comments on NRD cannot be substantiated, then I would expect that the previous employer would amend that language to properly reflect the true state of affairs. Regardless of the results of the inquiry, Staff shall report their findings to the Executive Director.

Finding

23. Subject to my direction in paragraph 22, I direct that this Hearing is suspended, pending the results of the inquiry I have directed. In the interim, I find that there is no reason at present to deny the Applicant registration as a mutual fund salesperson, nor to insist upon terms and conditions of such registration. This assumes that the Applicant is appropriately qualified to be registered, other than the issue which has been subject of this proceeding.

Dated at the city of Calgary, in the province of Alberta, this 24th day of June, 2008.

) "original signed by David C. Linder"
) David C. Linder
) Executive Director
) Alberta Securities Commission