

**IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
THE APPLICATION FOR REGISTRATION OF
NEIL DICOSTANZO**

**HEARING BEFORE THE DIRECTOR
PURSUANT TO SUBSECTION 26(3) OF THE SECURITIES ACT**

Held On: December 14, 2000

Held At: Ontario Securities Commission
20 Queen Street West
17th Floor
Toronto, Ontario

Director: Robert F. Kohl
Senior Legal Counsel
Capital Markets

Counsel: Paul Le Vay
for the Applicant Neil DiCostanzo

Counsel: Kathryn J. Daniels
for the Staff of the Ontario Securities Commission

DECISION

The Decision of the Director was to refuse the application of Neil DiCostanzo for registration to act as a salesperson on behalf of a dealer registered in the category of "investment dealer" and "broker". The decision was issued by the Director on January 11, 2001 with Notice that reasons for the Decision would follow at a later date. These are the reasons for the decision.

REASONS FOR DECISION

The applicant for registration, Mr. Neil DiCostanzo, was previously employed at Gordon-Daly Grenadier Securities ("Gordon-Daly"), first as a non-registered telemarketer (qualifier) and, then, as a registered salesperson.

In response to Mr. DiCostanzo's application (OSC Registration File Number 193025) under the Securities Act (Ontario) (the "Act") for registration as a salesperson to act on behalf of BMO Nesbitt Burns Inc. ("Nesbitt Burns"), staff of the Ontario Securities Commission (the "Commission") advised Mr. DiCostanzo, in their letter dated August 22, 2000, that staff were recommending that Mr. DiCostanzo's application for registration be denied on the grounds that he was not suitable for registration.

Nesbitt Burns is registered under the Act as a "dealer" in the category of "investment dealer" and "broker".

In staff's letter, Mr. DiCostanzo was advised that, pursuant to subsection 26(3) of the Act, before a decision of the Director would be made in respect of his application for registration, he would have a right to be heard. Mr. DiCostanzo requested that right and a hearing was held before me on December 14, 2000, where I acted as Director pursuant to the current Determination by the Executive Director of positions within the Commission that are designated as "Director" for the purposes of the Act.

Prior to the hearing, I received a transcript of Mr. DiCostanzo's examination interview held on August 2, 2000 pursuant

to section 31 of the Act. At the hearing on December 14, 2000, I heard testimony from Mr. DiCostanzo and from Mr. Tim Logan, who is the supervisor of registration at Nesbitt Burns. I also heard submissions from counsel for Mr. DiCostanzo and counsel for staff of the Commission.

On the basis of the testimony, and after having considered the submissions, the section 31 transcript and the transcript of the hearing, it appeared to me that the applicant, Mr. Neil DiCostanzo, was not then suitable for registration as a salesperson to act on behalf of Nesbitt Burns, and that such registration would, at that time, be objectionable. Accordingly, on January 11, 2000, I refused Mr. DiCostanzo's application for registration as a salesperson to act on behalf of Nesbitt Burns. At the same time that I issued my refusal, I spoke to counsel for Mr. DiCostanzo and advised that, in my reasons that would follow, I would state that, provided that:

- (i) no new facts arise that are relevant to Mr. DiCostanzo's suitability for registration,
- (ii) Mr. DiCostanzo successfully completes the Conduct and Practices Course; and
- (iii) I were to remain seized of the matter,

I would be inclined to approve Mr. DiCostanzo's application for registration as a salesperson one year from the date of staff's letter informing Mr. DiCostanzo that the Commission had recommended to the Director against his registration.

Following are the reasons which I said would follow my decision:

EVIDENCE

In its letter of August 22, 2000, staff submitted that Mr. DiCostanzo's application for registration should be denied on the grounds that Mr. DiCostanzo was not suitable for registration because, while employed by Gordon-Daly, Mr. DiCostanzo resold stocks to his clients at excessive mark-ups and failed to deal fairly, honestly and in good faith with clients. In the hearing, staff submitted that Mr. DiCostanzo's transfer of registration to Nesbitt Burns be denied, or, in the alternative, that the following terms and conditions be imposed upon his registration:

- i) no principal trading by the applicant;
- ii) strict supervision by a senior, registered officer of the sponsor [Nesbitt Burns] for an indefinite period pending further application by the applicant; and
- iii) successful completion by the applicant of the Conduct and Practices Handbook Course, prior to the resumption of his registration.

In his testimony, Mr. Logan, Supervisor of Registration at Nesbitt Burns, confirmed that Nesbitt Burns was willing to accept the above conditions on Mr. DiCostanzo's registration that had been proposed as an alternative for the Director to consider to declining Mr. DiCostanzo's registration. Moreover, in addition to the conditions proposed by staff, Mr. Logan confirmed that Nesbitt was prepared to implement the following additional supervisory conditions:

- i) put Mr. DiCostanzo on a zero-per cent commission rate (which he suggested might serve to discourage Mr. DiCostanzo from any incentive to churn accounts);
- ii) strict supervision of Mr. DiCostanzo, in accordance with the special supervisory criteria of the IDA; and
- iii) provide that all trades by Mr. DiCostanzo be required to be signed off, or at least supervised by, another person at the firm, prior to entry, with a monthly filing report made to the IDA.

Mr. Logan confirmed that these additional conditions might be placed *pending* further application for their removal.

The personal circumstances of Mr. DiCostanzo's employment history with Gordon-Daly, based upon his testimony at the hearing and the section 31 examination, may be summarized as follows:

At the time of the hearing Mr. DiCostanzo was 32 years old.

In 1991, Mr. DiCostanzo received a Bachelor of Arts Degree, in Geography, from York University. Following graduation, Mr. DiCostanzo worked briefly for a year at Eatons, but was laid off after approximately one year. Following his lay-off from Eatons, Mr. DiCostanzo was unemployed for a period and subsequently obtained employment with his father as an assistant property manager. In 1993, Mr. DiCostanzo attended York University and obtained a second degree in Urban Studies. Following his second graduation, Mr. DiCostanzo took approximately one year off to visit relatives in Italy.

Upon his return from Italy, Mr. DiCostanzo recognized that job prospects weren't too promising and decided to register in the Canadian Securities Course, hopeful that he might be able to pursue an interest in the securities industry that he was introduced to at a young age, by his parents, who were investors. At the same time, Mr. DiCostanzo applied for jobs in the securities industry at, in his words, "the big bank-owned firms, like BMO Nesbitt Burns, RBC, Scotia, TD, HSBC Capital, which wasn't part of the bank owned firms, and subsequently – I got no response from those firms". According to Mr. DiCostanzo, they wanted experience and he decided that he would like to get some experience with a smaller firm so that he might have an opportunity to grow as an investment representative at one of these firms. He therefore decided to apply to a smaller firm, with Gordon-Daly one of those smaller firms, at which he was successful in receiving a job offer. He did not receive a job offer from any other firms.

In 1995, Mr. DiCostanzo's offer of initial employment with Gordon-Daly, which he accepted, was to act as a telemarketer, at which time, Mr. DiCostanzo had not yet completed the securities course, so he was therefore not then eligible to be registered as a salesperson. As a telemarketer, Mr. DiCostanzo would make cold calls to identify persons with businesses who were interested in having information delivered to them about certain companies, whose stock Gordon-Daly was selling. As a telemarketer, Mr. DiCostanzo was paid \$12 an hour.

In August 1996, Mr. DiCostanzo completed the Canadian Securities Course and the Conduct and Practices Course and, on October 9, 1996, was registered under the Act as a salesperson to trade on behalf of Gordon-Daly.

Upon becoming registered as a salesperson, Mr. DiCostanzo's employment at Gordon-Daly changed: he became an Account Executive and was physically moved in the Gordon-Daly premises from the bottom floor to the second floor. The second floor housed all the junior account executives, with the senior account executives located on the third floor. Experience distinguished the juniors from the seniors.

None of the senior account executives was made available to Mr. DiCostanzo to mentor or assist him in his employment activities. Mr. DiCostanzo was, however, given certain advice by the firm with respect to abiding by suitability standards: he would not under any circumstances recommend a speculative stock to someone who was not working, was disabled, or was retired or had an income of under \$20,000 (if the individual's net worth was not in excess of \$1 million) -- in these cases, Mr. DiCostanzo would be inclined to recommend a mutual fund. Except for training with respect to how to call clients, Mr. DiCostanzo did not receive any other form of training from Gordon-Daly.

For the first six weeks of his employment as a salesperson, Mr. DiCostanzo was compensated by salary plus commission and after that strictly commission.

As a junior account executive, Mr. DiCostanzo would use leads identified by the telemarketers. From time to time, Gordon-Daly would have identified a particular speculative stock that would recommend for a few months and then it would move on to another stock. The prospects of the company whose stock was being recommended would have been identified in a meeting of the brokers [at Gordon-Daly] and management of the company with, usually, the president of the company, whose stock was being recommended, present at such meeting.

In his testimony, Mr. DiCostanzo seemed unclear as to whether or not the securities being recommended were being offered by way of prospectus.

In his section 31 examination, Mr. DiCostanzo stated that he did not know why Gordon-Daly's selling campaign for a particular stock would be terminated by Gordon-Daly.

Except for the meetings with the principals, Mr. DiCostanzo did not attempt to obtain any other information or do any other research with respect to the companies. He said he would research news releases that the companies had released and that he would be just up to date with what was happening with the company in terms of the press releases.

The companies would be emerging companies. Mr. DiCostanzo said that, it was his understanding that, Gordon-Daly would acquire up to 10 per cent of the companies pursuant to an initial option agreement, only up to 10 per cent, and then Gordon-Daly would be constantly buying the company's stock at the current market prices, so that, as the stock was subsequently acquired, the average price paid by Gordon-Daly for the stock would increase. Mr. DiCostanzo, however, also said that he did not receive specific information from his employer about the volume that it was purchasing or the price that it was paying for the stock, nor the amount of stock that would be purchased at current market; consequently, he asserted, he did not have any knowledge of the specific mark-up (above acquisition cost) that Gordon-Daly was earning on its principal trading.

Mr. DiCostanzo asserted that he would tell his clients that Gordon-Daly was trading as principal in the securities. In his initial sale to a client, Mr. DiCostanzo would explain that it was the firm's policy at Gordon-Daly for him to then pass the account on to a senior executive.

When asked as to whether an explanation had been given by the firm as to why this policy was adopted, Mr. DiCostanzo explained that the firm felt that they wanted their clients to deal with somebody that was "more senior and more experienced than myself".

The commission rate paid by the firm to a salesperson on an initial sale by the salesperson to a client was 16.8 per cent. When asked to explain how the 16.8 per cent was charged, Mr. DiCostanzo explained that, if the purchase price of, for example, 100 shares, at \$ 10 per share, was an aggregate of \$1,000, the client would be charged an additional brokerage commission of 3 per cent (for a total price to the client of \$1030), with the other 13.8 per cent (\$138) paid by Gordon-Daly (the vendor). When asked to explain the logic behind the commission calculation, Mr. DiCostanzo was not able to articulate the logic of the calculation. Mr. DiCostanzo was not able to offer any rationale as to why it would make sense for Gordon-Daly to pay 13.8 per cent out of the market price, if, indeed, the price paid by the client, truly was "a market price".

When questioned about how he knew that he was selling the securities at market price, Mr. DiCostanzo said that the prices were showing on the computer screen in front of him. The computer was, according to Mr. DiCostanzo, reporting "bid price, ask price, last sale price".

Mr. DiCostanzo was asked if any of his clients who purchased securities subsequently sold them. He replied that the securities would not be sold through him, but rather through the seniors. When asked about the rationale for the seniors having to effect all such sales, Mr. DiCostanzo replied that, when he first started at the firm, he felt that he was going to be looking after that, buying and selling, but it was the firm's policy to give that to the seniors. When questioned about the commissions payable by clients in respect of a subsequent sale by the client of securities acquired by the client from Gordon-Daly, Mr. DiCostanzo confirmed that the commission would, most of the time, not even be 3 per cent, and most of the time 1 per cent, if the client were to change his/her mind after effecting a purchase. Mr. DiCostanzo did not volunteer any suggestions as to why, on the purchase side, a total commission of 16.8 per cent of the vendor sale price would be paid (with 13.8 per cent paid by the vendor Gordon-Daly), whereas, on a sale of the same security by a client, only 3 per cent would be paid by the selling client.

When Mr. DiCostanzo was asked whether he recommended stocks to anyone other than people who had been telemarketed and identified as prospects by the firm, such as family, he replied that it was the firm's policy that the salespersons could not buy any of the stocks, either for themselves or any family members or friends. Mr. DiCostanzo was not told why this was the firm policy, although he said he believed that it was the firm's policy because, if an issue arose as to which stock should be sold first, he suggested that, this would avoid any conflict in the decision. Mr. DiCostanzo also confirmed that it was also the firm's policy, which he had agreed to, that he could not sell to any business associates, notwithstanding the fact that Mr. DiCostanzo had acknowledged that one of the reasons he couldn't get a job at other firms was because of his lack of experience. Mr. DiCostanzo did not invest any of the commissions that he made in the stocks that he was recommending, because, as he explained, that would be against the firm policy.

Mr. DiCostanzo was a junior salesperson at the firm for about three years and during this time he made an average of about \$100,000 per year. By his own admission, Mr. DiCostanzo was closer to the top than the bottom in terms of commission earnings for staff at Gordon-Daly.

Throughout the course of his three years of employment at Gordon-Daly, Mr. DiCostanzo said that he was applying

to work at “the big banks, BMO Nesbitt Burns, RBC, Merrill Lynch, HSBC Capital, TD”. In July 2000, Mr. DiCostanzo said that he received an offer from Nesbitt, just before he started there in July 2001 (and just after he’d also received an offer from RBC). At the same time, he resigned his position at Gordon-Daly.

When Mr. DiCostanzo was questioned about his knowledge of any trouble Gordon-Daly had with the Ontario Securities Commission at the time he resigned, he said that he was not. Moreover, he asserted that at the time he was working for Gordon-Daly, he was not aware of the amount of mark-ups identified in Settlement Agreements made between certain members of the senior management of Gordon-Daly with the Commission.¹

In cross-examination, Mr. DiCostanzo confirmed that he had sold 11 of the 13 stocks identified in the Settlement Agreement. While Mr. DiCostanzo disclaimed any knowledge of the acquisition costs identified for Gordon-Daly in the Settlement Agreement for the subject securities, he acknowledged that Gordon-Daly required trade confirmation forms sent to clients to specify the firm’s acquisition costs. In the case of the securities of Black Mountain, for instance, Mr. DiCostanzo was not prepared to admit an awareness of the spread being earned by Gordon-Daly on the shares of Black Mountain if the selling price were \$1.90 and the initial acquisition costs were 50 cents, claiming that it was his understanding that Gordon-Daly had also been buying the stock at current market prices. When questioned about his awareness of the general market for the Black Mountain securities, including who on the street was selling these securities, Mr. DiCostanzo responded by saying that he’d asked his supervisor who had said that there were different market makers for the stock. He claimed that he was not aware of the fact that Gordon-Daly accounted for 99 per cent of the trading in Black Mountain shares, as admitted by its principals in the Settlement Agreement.

When he was questioned about his lack of knowledge concerning who the market makers were for a particular stock he was selling, and who was buying and selling in the market. Mr. DiCostanzo acknowledged that he could ask his supervisor questions, suggested that he sometimes did, but, when pressed on the point, said that he wouldn’t know who was involved in market making.

In his section 31 examination, Mr. DiCostanzo acknowledged that all the stocks he sold were listed on CDN, but at the same time professed ignorance about how the CDN process worked with respect to how trades got reported or what the time requirements for such reporting were.

I found Mr. DiCostanzo’s testimony with respect to his lack of awareness of the mark ups above acquisition cost, and the circumstances of the reported “market prices” of the stocks he was selling on behalf of Gordon-Daly to be less than credible. I do not believe that he was unaware of the significant mark-up on the securities acknowledged by principals of Gordon-Daly in their Settlement Agreement. Given the period of time he was at the firm, together with the success he had enjoyed as a salesperson, I find it hard to believe that he wasn’t aware of what the dynamics were at Gordon-Daly for generating the income that he was earning and if he didn’t know, he owed to his clients to find out why and at the very least disclose this to them.

In his testimony, Mr. DiCostanzo had confirmed that when selling or soliciting interest in the securities he was assigned to sell, he would tell his clients that “somebody would call them and tell them when it was a good time to sell”. Mr. DiCostanzo also confirmed that after his initial sale to a client and the client was transferred to a senior he would continue to receive commissions for sales made by the senior to his clients with the split being fifty-fifty, so that, for subsequent sales, he would receive half of the 16.8 per cent sales commission. With respect to these subsequent sales, Mr. DiCostanzo confirmed that he did not himself conduct any further review of the client’s suitability with further suitability for the subsequent sale the responsibility of the senior. Mr. DiCostanzo would however become aware of subsequent sales to these clients by the seniors by virtue of the 8.4 per cent commission being identified on his pay stub. Although Mr. DiCostanzo claims that he had never really worked it out, he estimated that half of his earnings for a year would be attributable to be fifty-fifty split on subsequent sales made by seniors.

In his section 31 examination, Mr. DiCostanzo said he did not know what the seniors would tell clients to make them buy more stock.

Mr DiCostanzo acknowledged that in his initial sale to a client he did not inform his clients that he would receive an 8.4 per cent commission on subsequent sales that were made on behalf of Gordon-Daly by a senior.

¹(2000) 23 OSCB 5529 et seq.

In his testimony, Mr. DiCostanzo also explained that if the client had not yet paid for the stock and wanted to re-sell it, in these circumstances, the client would be able to discuss the sale with Mr. DiCostanzo, but otherwise any sale of stock acquired by a client in an initial sale by Mr. DiCostanzo would have to be handled by the senior, and, even if the client spoke to Mr. DiCostanzo, he would have to refer the matter to a senior. Mr. DiCostanzo also explained that, since there was not a direct telephone line to him, calls by a previous client for a subsequent sale would be routed to the senior by the receptionist, so these clients wouldn't be given the opportunity to speak to him. When questioned about what he considered to be the rationale for this practice of insulating him from the client, Mr. DiCostanzo was only able to suggest that it was the firm's policy and that the seniors had a lot more experience – notwithstanding the fact that the firm was apparently satisfied that Mr. DiCostanzo had sufficient experience to sell the securities in the first instance. Mr. DiCostanzo was not able to explain why additional experience would be necessary to dispose of such securities on behalf of a client. When further pressed, Mr. DiCostanzo suggested that he thought a bit more experience was required to sell a stock on behalf of a client than to the client.

Although Mr. DiCostanzo confirmed that he would share in the commission earned by a senior on the sale of a stock out of the client's account, he couldn't recall the exact percentage, which I inferred as suggesting that this rarely occurred, if at all.

In his testimony describing the steps or the questions that he would ask to ascertain whether or not the speculative stock that he was selling on behalf of Gordon-Daly would be suitable for a particular client, Mr. DiCostanzo identified certain parameters specified by Gordon-Daly (referred to above). Mr. DiCostanzo was not able to explain why, if he had done his job properly and sold the appropriate quantum of stock for the client's portfolio, it would be appropriate for further speculative stock to be subsequently sold to the same client by a senior.

When Mr. DiCostanzo was questioned about the mark-ups on stocks he sold that were admitted in the Settlement Agreement, he explained that he didn't know that the mark-ups were excessive at the time because he did not know how much stock Gordon-Daly was then buying at current market prices. While he acknowledged that Gordon-Daly was a market maker for these stocks, he was careful to point out that it was his understanding that Gordon-Daly was "one of the market makers".

When directly asked about whether, knowing what he knows now, and knowing what the mark-ups were with respect to stocks listed in the Settlement Agreement, whether he would again recommend those stocks that he had recommended to his clients, Mr. DiCostanzo acknowledged that, if he had to do it all over again, he would not – but, at the same time, seemed unaware of why the recommendation would be inappropriate, focusing on issues of speculation and suitability, and not seeming to get the fact that the large mark-ups from the firm's acquisition price would be unfair if they could not be justified by then current and credible market trading prices.

Mr. DiCostanzo said that he was not aware who the promoters of any of the issuers whose securities he was recommending were; and was not aware of the fact that Harry Bregman, being the father of David Bregman (an officer of Gordon-Daly), was a promoter for many of the issuers whose securities were being sold by Mr. DiCostanzo for Gordon-Daly (and for which Gordon-Daly acted as market maker).

With respect to his professed ignorance of what was going on at Gordon-Daly, I am of the belief that Mr. DiCostanzo knew much more than he was prepared to admit and that in many cases his answers reflected a convenient ignorance. In his section 31 exam, Mr. DiCostanzo suggested that one of the reasons he was looking for employment with other firms the entire time he was at Gordon-Daly was because he was not able to make sales on behalf of clients. However, in his examination under section 31 of the Act, in the following exchange, Mr. DiCostanzo reveals in my view an awareness that there must have been something artificial in the so-called market price for the securities he was selling to clients on behalf of Gordon-Daly, for which he was paid an aggregate 16.8 per cent commission, and that this awareness may afford a better explanation of why Mr. DiCostanzo remained anxious to leave his lucrative employment at Gordon-Daly:

450. Q. If Gordon-Daly had adopted a policy where principal commissions were the same as agency commission, and what was the agency commissions? What were they paying? What commissions were they giving you for agency trades?
- A. I believe one-and-a-half maybe percent, 1 percent.

451. Q. If they were the same, would you have stayed? Instead of making 16.8 percent, if you were making one-and-a-half percent, would you have stayed at Gordon-Daly?
- A. I would have stayed if -- basically the reason I was looking to leave is the fact of the seniors, so if basically they didn't have the policy where you would pass it down to another broker.
452. Q. If it were the same policy --
- A. Where is it right now?
453. Q. Yes.
- A. If they did both you are saying?
454. Q. If it was the same policy and your commissions, you are only going to make one-and-a-half percent on all your principal trades, would you have stayed?
- A. If they did both or just one you are saying?
455. Q. Pardon me?
- A. If they did principal and agency.
456. Q. If they did --
- A. And agency you are saying.
457. Q. If the operation was exactly the same, however, instead of paying you 16.8 percent on your principal trades, they would have only given you one-and-a-half percent, would you have stayed?
- A. If it was exactly the same, I would still be looking because they still had the policy with the seniors in terms of passing down accounts. That's why I wanted to leave.
458. Q. *Would you have stayed there for three years making one-and-a-half percent on all your principal trades?*
- A. *Of course. That's what you would be making anywhere else.*

(Emphasis added)

LEGAL ANALYSIS

There was no argument that salespersons have an obligation as a registrant to deal with clients fairly, honestly and in good faith. Those duties are set out in section 2.1 of Ontario Securities Commission Rule 31-505: Conditions of Registration. The duties set out in the section are for both the individual salesperson and the firm that they represent. As staff submitted, and I would agree, Mr. DiCostanzo did not have – or conveniently suggested – he did not have the firmest grasp of the policy and procedures in place at Gordon-Daly, notwithstanding the fact that he had been employed as a junior salesperson at Gordon-Daly for three and a half years and had earned an average of \$100,000 in each of the three years he worked as salesperson for Gordon-Daly.

Staff counsel cited authorities of the Commission for the proposition that selling to clients in excessive mark-up is contrary to the public interest, with principal sales as dealer with excessive mark-ups, especially where the dealer is able to set the selling price, not considered to be fair dealing or in the interest of the clients, as was the case in the reasons of the Commission for its Decision to approve the Settlement Agreement, *In the Matter of Gordon-Daly*

*Grendier Securities, David Bregman, Alan Greenberg, Oron Sternhill and Wangyal Tulotsang.*²

In staff counsel's submission, which I agree with, Mr. DiCostanzo *knew or ought to have known* that the conduct engaged in by the firm, which was the subject of the Settlement Agreement and included stocks that Mr. DiCostanzo sold on the firm's behalf during the relevant period, did not amount to acting fairly, honestly and in good faith to his clients. Mr. DiCostanzo participated in sales of at least 11 of the securities identified by Gordon-Daly as being sold at excessive mark-ups. While Mr. DiCostanzo's testimony suggested he was unaware of the precise acquisition costs of the securities he was selling on their behalf of Gordon-Daly, or how the selling price was determined, and whether the determined selling price was really reflective of a true market price, I found it to be either not credible or not reasonable for an employee of his period of employment and success to maintain such a convenient lack of knowledge. If Mr. DiCostanzo was truly unaware of the mark ups for stocks that he was selling on behalf of Gordon-Daly, he should have made himself aware.

CONCLUSION

On the basis of the evidence described above, I found that Mr. DiCostanzo, in recommending the purchase by his clients of stocks Gordon-Daly as principal, did not discharge his obligations to act fairly, honestly and in good faith with his clients. In the circumstances, I was not, immediately following the hearing, prepared to register Mr. DiCostanzo, without Mr. DiCostanzo having a further period of time to reflect upon his past conduct and the significance of the obligations he owed to his clients. In my view, an appropriate period for reflection would be not less than the one year, from the August 22, 2000 staff letter (in which staff drew to Mr. DiCostanzo's attention, his past failure to act fairly, honestly and in good faith with his clients in their letter and their recommendation to the Director that he not be registered). After such a period of reflection, and provided that:

- (i) no new facts arise that are relevant to Mr. DiCostanzo's suitability for registration,
- (ii) Mr. DiCostanzo successfully completes the Conduct and Practices Handbook Course, and
- (iii) I were to remain seized of the matter,

I would be inclined to approve Mr. DiCostanzo's application for registration as a salesperson one year from the date of staff's August 22, 2000 letter.

July 6, 2001.

"Robert F. Kohl"

²(2000), 23 OSCB 5541