

**In the Matter of Staff's Recommendation
for the Refusal of Reactivation of Registration
of Ramzee Tams**

**Opportunity to be Heard by the Director
Section 31 of the *Securities Act*, R.S.O. 1990,
c. S.5, As Amended (the Act)**

Table of Authorities

Re Thomas, (1972) OSCB 118

Re Doe (2010), 33 OSCB 1371

Re Sawh (2016), 39 OSCB 2477

Date of decision: June 29, 2020

Date of hearing: March 13, 2020

Decision

1. Ramzee Tams has applied for a reactivation of registration as a dealing representative with the mutual fund dealer, Scotia Securities Inc. (**Scotia**). In a letter dated January 22, 2020, Mr. Tams was informed that staff (**Staff**) of the Ontario Securities Commission (the **OSC**) had recommended to the Director that his application be refused. The basis for this recommendation is Staff's view that Mr. Tams lacks the integrity required for registration and that his registration would be objectionable.

2. Mr. Tams subsequently requested an opportunity to be heard (**OTBH**) pursuant to section 31 of the Act. The OTBH was held on March 13, 2020. Mark Skuce, Senior Legal Counsel, OSC, made submissions on behalf of Staff, and Mr. Tams made submissions on his own behalf.
3. For the reasons outlined below, my decision is to refuse the registration of Mr. Tams.

Background

4. Mr. Tams was first registered as a mutual fund dealing representative with Scotia in September 2016.
5. On July 22, 2017, Mr. Tams was charged with one count of operating a motor vehicle with more than 80 milligrams of alcohol in his blood, contrary to section 253(1)(b) of the *Criminal Code* (Canada) (the **Charge**). Mr. Tams was ultimately acquitted of the Charge on August 27, 2018, following a successful application by his defence lawyer to exclude evidence against him. The Charge was outstanding for approximately 13 months.
6. At the time of the Charge, Mr. Tams was registered as a mutual fund dealing representative with Scotia.
7. Subsection 4.1(1) of National Instrument 33-109 *Registration Information* (**NI 33-109**) required Mr. Tams, as a registered individual, to notify the OSC of a change to any information previously submitted in Item 14 – *Criminal Disclosure* of his Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form F4**) within ten days of the change, which he did not do (the first instance).
8. Item 14.1 of the Form F4 asks the applicant the following question:

Are there any outstanding or stayed charges against you alleging a criminal offence that was committed?
9. In April 2018, Mr. Tams left his position at Scotia and joined TD Investment Services Inc. (**TD**) a month later. The Charge was still outstanding at this time.
10. On May 31, 2018, Mr. Tams applied to reinstate his registration as a mutual fund dealing representative with TD by submitting a Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals* (**Form F7**). In his Form F7, Mr. Tams certified that there were no changes to the information previously submitted in Item 14 – *Criminal Disclosure* of his Form F4.
11. Once again, Mr. Tams incorrectly answered “No” to Item 14.1 of his Form F4 (the second instance). Furthermore, the TD Code of Conduct and Ethics specifically states that “Employees must inform their manager or Human Resources as soon as possible when charged with a criminal offence.”
12. As part of its review of Mr. Tams’ application for registration with TD, Staff conducted a routine criminal background check and discovered the Charge. On June 1, 2018, Staff sent a letter to Mr. Tams informing him of his obligation to disclose outstanding criminal charges. This letter also makes it clear that failure to provide details of all outstanding

and stayed charges, upon filing an application for registration, is an offence under section 122 of the Act. Mr. Tams never responded to this letter nor did he update his Form F4 to disclose the Charge. Mr. Tams' application for reinstatement with TD was withdrawn on July 3, 2018.

13. In August 2018, Mr. Tams rejoined Scotia and in August 2019 he applied for a registration as a dealing representative.
14. In October 2019, staff conducted a voluntary interview with Mr. Tams regarding this application. At the beginning of the interview, Mr. Tams was provided with the standard warning that it is an offence under Ontario securities legislation to make false or misleading statements to Staff and was also reminded that his answers must be truthful and complete.
15. Mr. Tams did not comply with his obligation under s. 4.1 of NI 33-109 to disclose the Charge within 10 days of the date he was charged. When Mr. Tams was asked why he did not, at the time, disclose the Charge to anyone at Scotia, he stated that "It's embarrassing that I was wrongfully accused of something like that, so because I was taking it to trial and I was confident that nothing would come of it I did not tell anyone because I didn't feel nobody needed to know."
16. Mr. Tams also told Staff, in the interview, that he disclosed the Charge to his manager, Antonio Esposito, upon rejoining Scotia in August 2018. However, Mr. Esposito told Staff that Mr. Tams had never informed him of any criminal charges.
17. By letter dated January 22, 2020, Staff informed Mr. Tams of its recommendation that his registration be refused. The letter also informed Mr. Tams that Staff was of the view that he lacks the integrity required for registration and that his registration would be objectionable.
18. The specific reasons for this view were that Mr. Tams:
 - a. as a registrant with Scotia, failed to disclose an outstanding criminal charge as required by NI 33-109;
 - b. as an applicant for registration with TD, failed to disclose his outstanding criminal charge as required by NI 33-109;
 - c. as an applicant for registration with TD, failed to respond to Staff's correspondence regarding his outstanding criminal charge; and
 - d. in connection with the application now under consideration, made false statements to Staff during a voluntary interview to consider his suitability for registration.
19. Although he was not convicted of the charged offence, Staff is of the view that Mr. Tams engaged in a pattern of conduct designed to withhold information that he was required to disclose to the regulator and his employers. Staff is of the view that this is inconsistent with the integrity expected of a registrant.

20. Mr. Tams submitted materials on March 5, 2020 for purposes of the OTBH. The materials included character letters of reference, various accomplishments and awards, proof of volunteer work and school transcripts. I note that the character letters of reference were intended for the Ontario Court of Justice in relation to the Charge and written by family and friends in July 2018.
21. During the OTBH, Mr. Skuce provided me with the affidavit of Brendan Smith, an articling student at the OSC. Mr. Smith's affidavit included materials in support of Staff's recommendation that Mr. Tams' registration be refused.
22. Mr. Tams spoke on his own behalf and admitted to the non-disclosure with both Scotia and TD. He explained that the reasons for this non-disclosure were in part due to ignorance and in part due to being worried and embarrassed. He stated that he understands the Charge should have been disclosed.
23. During the OTBH, I asked Mr. Tams if he had any letters of reference from his current manager or district vice president. He did not; however, Mr. Tams stated that he believed his managers and direct reports have confidence in him to take care of his clients.

Analysis

24. Subsection 25(1) of the Act requires any person that trades in securities to be registered in accordance with Ontario securities law. A registrant is in a position to perform valuable services to the public, both in the form of direct services to individual investors and as part of the larger system that provides the public benefits of fair and efficient capital markets. A registrant also has a corresponding capacity to cause material harm to individual investors and to the public at large. Therefore, determining whether an applicant should be registered is an important component of the work undertaken by the OSC.
25. Subsection 27(1) of the Act provides that the Director shall register a person unless it appears to the Director that the person is not suitable for registration or that the registration is otherwise objectionable.
26. The OSC has, over time, articulated three fundamental criteria for determining suitability for registration – integrity (which includes honesty and good faith, particularly in dealings with clients, and compliance with Ontario securities law), proficiency, and solvency. These three fundamental criteria have been codified in subsection 27(2) of the Act, which provides that in determining whether a person is suitable for registration, the Director shall consider whether the person has satisfied the requirements prescribed in the regulations relating to proficiency, solvency and integrity, and such other factors as the Director considers relevant. The issue in this proceeding relates to the integrity of Mr. Tams.
27. CSA Staff Notice 33-320 *The Requirement for True and Complete Applications for Registration (CSA Staff Notice 33-320)* alerts stakeholders to the serious problem of false or misleading applications for registration. It references an earlier case of the OSC that said:

The keystone to the registration system is the application form. A desire and an ability to answer the questions in it with candour in many respects can be said to be the first test to which the applicant is put.¹

28. CSA Staff Notice 33-320 also reminds registrants that, if information in an individual's Form F4 changes after the individual becomes registered, the registrant is required to update that information within the time periods provided in NI 33-109. It provides the example of a registrant that is charged with a criminal offence. In this case, the registrant must update their information within 10 days of the charge, and it is not acceptable to wait to disclose a criminal charge until after they have been found not guilty at trial.
29. Mr. Tams has explained that he did not disclose the Charge because he was embarrassed and believed that he had been wrongfully accused. Regardless of whether this belief was honestly held, the fact remains that he failed to disclose the information to the OSC twice. He even admitted to having spoken to his criminal lawyer about disclosing the Charge to TD. This lack of disclosure is inconsistent with what is expected of an applicant for registration and the duty set out in *Re Doe* (2010), 33 OSCB 1371.
30. While I have decided that Mr. Tams' application should be refused, I do not think that he should be barred from re-applying for registration in the future. Having heard from Mr. Tams at the OTBH, I am of the view that he is a young man who appears to have acted recklessly in his completion of the application forms and is remorseful for his actions.
31. The Director's decision in *Re Sawh* (2016), 39 OSCB 2477 set out the following six factors that must be considered in making a determination on an applicant's suitability for registration after a finding by the Director or the Commission that the applicant was not suitable for registration. Such determination includes evaluating the evidence supporting each of the factors, prior to making a decision on the subsequent application for registration:
 - a. the applicant must show by a sufficient course of conduct that he/she can be trusted in performing business duties;
 - b. the applicant must introduce evidence of other independent, trustworthy persons with whom the applicant has been associated since the prior refusal, suspension or revocation of registration;
 - c. a sufficient period of time must have elapsed for the purposes of general and specific deterrence;
 - d. where proficiency is at issue, the applicant must demonstrate how he or she has specifically remediated his or her proficiency;
 - e. the applicant must demonstrate that the misconduct that led to the prior refusal, suspension or revocation is unlikely to recur in the future by no longer engaging in business with non-compliant business associates; and
 - f. the applicant must demonstrate remorse and take full responsibility for his or her past conduct.

¹ Re Thomas, (1972) OSCB 118 at p. 120

32. In the event that Mr. Tams applies for registration in the future, he will need to be in a position to demonstrate, through his actions, that he can address each of the factors above and that he is suitable for registration.
33. Mr. Tams registration is refused. If he can demonstrate in the future that he is fit for registration, taking into consideration the factors above, Mr. Tams can re-apply for registration at that time.

"Pat Chaukos"

Director
Office of Economic Growth and Innovation

June 29, 2020