

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 André F. Quéré.

Decision and Reasons

Hearing: Friday, August 23, 1991, 1:00 p.m.

Appearances: Edouard O. LeBlanc, Deputy Administrator of Securities, New Brunswick;
André F. Quéré, Registrant;

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

Pursuant to a Notice dated August 06, 1991, a hearing was held at the Office of the Administrator of Securities on August 23, 1991 commencing at 1:00 p.m. to consider whether, in the opinion of the Administrator, it is in the public interest to suspend, cancel, restrict or impose terms and conditions upon the registration of André F. Quéré ("Quéré"), a registrant under the Securities Act (Security Frauds Prevention Act) R.S.N.B 1973, c. S-6, (the "Act") by reason of his allegedly committing a fraudulent act, contrary to the Act.

The Notice of Hearing disclosed the following allegations:

1. On May 2, 1991 a Form "C" application for registration as salesperson for André F. Quéré was received at the Office of the Administrator.
2. Quéré was granted registration as a salesperson on May 14, 1991 based on the information he supplied on the application form, and was so registered until August 1, when he was advised that his registration was under immediate suspension and was to remain under suspension until such time as a hearing could be held.
3. Quéré indicated in response to Question 15 of the application for registration form that he had never been convicted of an offence when in fact he was charged and convicted on two counts of fraud in 1983 and one count of assault in 1989.
4. Quéré made a materially false statement on his application for registration and making such false statements is an offence under the Act.
5. By affidavit, Quéré swore that the information contained in the application for registration was true, when in fact certain information was not true, thereby rendering this affidavit false, which is an offence.

Pursuant to section 21 of the Act, the Administrator has jurisdiction to examine any person to determine whether, inter alia, any fraudulent act or offence against the Act or Regulations has been committed. The Administrator or his representative has substantial authority and discretion to conduct investigations and examinations pursuant to this section.

Procedure at the hearing, while informal, was guided by principles of natural justice applicable to all administrative tribunals. The registrant, Quéré, acknowledges receipt of service of the Notice of Hearing. At Quérés' request the hearing was conducted in English. Both the Deputy Administrator of Securities, Edouard LeBlanc ("LeBlanc"), and Quéré gave sworn testimony. Each was given the opportunity to examine the other and to make final submissions to the Administrator.

The registrant, André F. Quéré, resides at 29, rue Ordonnance, Edmundston, New Brunswick, E3V 3S1 and was employed as a sales representative with Unicour Inc., a scholarship plan dealer. Quéré's home was the branch office of this firm in the Edmundston area and he was designated by his employer as "Branch Manager" responsible for other registrants. Quéré is forty-four years of age, married with one son.

By an application form dated April 30, 1991, Quéré requested registration as a salesperson under the Act. This application was approved by the Administrator on May 14, 1991 and a certificate of registration subsequently issued effective May 14 to expire on October 31, 1991. Quéré's registration was restricted to distributing those scholarship plans distributed by Unicour Inc.

Pursuant to the normal registration process a Security Frauds Information Centre ("SFIC") Records Request form was signed by Quéré and submitted to the SFIC for police check to determine whether previous criminal convictions were on record relating to the applicant. Question 15 of the application form also requested the applicant to disclose any such convictions. Neither on the SFIC form or on the application were convictions disclosed.

The SFIC subsequently advised that criminal convictions might be on record with regard to the applicant. Only identification through fingerprints could positively confirm this information. However, the SFIC disclosed, and Quéré confirmed, his conviction in 1983 on two counts of fraud contrary to subsection 338(1) of Criminal Code of Canada for which Quéré was sentenced to three months detention on one count, and a suspended sentence for 18 months with probation for two years on the other. In 1989, Quéré was convicted of assault contrary to section 266 of the Criminal Code, for which offence he was given a conditional discharge and placed on a further probation of two years. All these offenses occurred in Brandon, Manitoba.

Upon receipt of the returned SFIC form the Deputy Administrator immediately contacted the registrant. In a telephone conversation on July 29, Quéré admitted the convictions. On August 1 the

registrant travelled to the Saint John Office and submitted a letter describing his reasons for not disclosing the criminal convictions.

As further explained in his sworn testimony, Quéré indicates that he applied in 1986 for a pardon for the 1983 convictions. There was no response and, consequently, he believed that the pardon been granted. When he was subsequently convicted of an offence in 1989, no previous conviction was disclosed to the court, according to Quéré. Again, he believed this confirmed that the pardon had been granted. Quéré also argues that he thought the convictions for fraud occurred prior to the ten year period established by Question 15 of the application form, the time beyond which no convictions need be disclosed.

Quéré discussed the nature of his convictions for fraud at the hearing. He was a consultant for a metis and non-status Indian group in Brandon, Manitoba. Contracts with the government of Canada were misused and as president and chairman of the company founded to make use of furs, he "took the rap" and plead guilty.

The assault charge in 1989 related to his son. He testified that he was convicted of spanking his son in a restaurant.

Quéré submitted documents on his behalf including a copy of a 1986 letter from the National Parole Board acknowledging receipt of his request for information regarding pardons, as well as a letter to the Administrator acknowledging his errors in this application process and requesting consideration.

In this matter two questions are before the Administrator. Firstly, is there evidence of a fraud or a fraudulent act having been committed by Quéré, contrary to the Act? Secondly, if such an offence has occurred, what penalty, if any, should be imposed against Quéré?

With regard to the first question I find in the affirmative that a "fraudulent act" as defined by the Act was committed by Quéré. Pursuant to section 1 such acts include "the making of a materially false statement in any application, information, material or evidence submitted or given to the Administrator".

In this case, the registrant committed a fraudulent act by responding falsely to Question 15 of the application form when he knew or should have known that the answer was wrong. Quéré testified in cross-examination that he understood Question 15 of the application form. Criminal convictions are material facts which may significantly influence the Administrator's decision to grant registration. That is the purpose behind Question 15. Criminal convictions relating to fraud and assault are of

particular concern because the handling of client monies and similar fiduciary responsibilities are crucial to the integrity of the securities industry and effective investor protection.

Having found that a fraudulent act has occurred, contrary to the Act, it remains for me to determine what penalty, if any, should be imposed in the circumstances of this case. Pursuant to section 12(1)(c)(v) of the Act:

- 1) 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 Act requires that the Administrator impose 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 of good character, and should they not be, the Administrator is directed by the Act to take appropriate action.

Quéré admits his convictions for fraud and assault, two very serious offenses under the Criminal Code. Quéré recognized the seriousness of the fraud convictions when he inquired in 1986 about being pardoned. Regrettably, he did not follow through the process at that time. While the circumstances of his convictions for these offenses are not strictly related to his involvement in the securities industry, they do serve to question his fitness for registration at this time. I do not believe that such individuals so convicted are suitable candidates for registration under the Securities Act without the benefit of a thorough and knowledgeable review of the circumstances of conviction by appropriate parole authorities resulting in the granting of a pardon.

The Deputy Administrator has argued, and I agree, that Quéré's suspension from registration under the Act which commenced on August 1, 1991 should continue to remain in full force and effect until October 31, 1991, at which time the current Certificate of Registration number 91-823 will expire. Should Quéré seek to renew his application subsequent to that date, I would propose not to grant such application, subject nevertheless to the appeal processes of the Act, until Quéré files with this Office proof that he has been granted a pardon from all criminal offenses for which he has been convicted.

Finally, I wish to stress two points. With regard to Mr. Quéré, I very much regret the necessity for this hearing. Mr. Quéré has been cooperative as well as regretful in this matter. However, these circumstances do not by themselves render the registrant suitable for continuing registration.

This matter also raises serious concerns with regard to the employer, Unicour Inc., and the inadequate supervision and instruction, which this registrant firm appears to be providing. The broker firm has an obligation to the Administrator under the Securities Act to supervise its individual registrants. A corollary is the broker's responsibility to present for registration individuals of a suitably high calibre. It is obvious in this matter that insufficient investigation of its employee applicants is being carried out by Unicour Inc. However, this is an issue separate from the matter before me.

Pursuant to the Securities Act, Mr. Quéré has the right to appeal this decision.

Dated at Saint John, New Brunswick this 17th day of September, 1991.


DONNE W. SMITH, JR.
ADMINISTRATOR