

IN THE MATTER OF: THE SECURITIES ACT

-and-

IN THE MATTER OF: JAMES PETER YAWORSKI

STATEMENT OF ALLEGATIONS OF STAFF OF THE
MANITOBA SECURITIES COMMISSION

STAFF OF THE MANITOBA SECURITIES COMMISSION ALLEGE, INTER ALIA, THAT:

A. REGISTRATION

1. James Peter Yaworski ("Yaworski") was first registered as a salesman under The Securities Act (the "Act") on October 1, 1987 and has since been registered during the following periods:

(a) from October 1, 1987 to April 6, 1989;

(b) from October 24, 1989 to February 15, 1990;

(c) from March 23, 1990 to May 1, 1991;

(d) from May 10, 1991 to May 23, 1995;

(e) from May 26, 1995 until on or about April 18, 1997 with Midland Walwyn Capital Inc. ("Midland"), except for a 4 week suspension and an additional suspension of 6 days with reinstatement effective September 16, 1996 pursuant to Commission orders No. 1122 and No. 1431;

2. On April 10, 1997, Yaworski was terminated by Midland and his registration was suspended on April 18, 1997.

3. On June 1, 1997, Yaworski's registration expired without having been transferred or renewed.

4. Yaworski has not been registered under the Act since his registration in 1997.

5. During the time that Yaworski was registered with Midland, Midland was registered under the Act as a Broker and Investment Dealer.

B. DETAILS

1. At all material times Mr. and Mrs. R (the "R's") were residents of the City of Winnipeg in the Province of Manitoba.

2. In November of 1996, Mr. and Mrs. R met with Yaworski.

3. Mr. R had some retirement money in a mutual fund, namely BPI T-Bill Fund (the "BPI funds"). The R's were looking to increase the amount of their retirement monies and were interested in purchasing some MTS stock.

4. Neither of the R's had any prior investment experience in stocks, bonds, GIC's or Canada Savings Bonds.
5. A New Account Application Form was completed following which an RRSP account in the name of Mr. R (the "Account") was opened. Mrs. R was given Power of Attorney by Mr. R in respect of the Account.
6. Yaworski did not discuss risk or risk tolerance with the R's.
7. As a result of their meeting with Yaworski, the R's understood that the BPI funds would be transferred to Midland and that Yaworski would use a portion of those funds to purchase some MTS stock for them, when it became available.
8. The R's further understood that the remainder of the BPI funds, not used to purchase MTS stock, would be held to purchase other stocks at some future time. The specifics of any future investments were to be determined at a later date by the R's, based upon Yaworski advising them of any given stock opportunity available and the R's instructing him as to whether or not to proceed with any given purchase or sale.
9. At no time was Yaworski given any authority to purchase or sell investments through the Account without having first obtained the instructions and consent of Mr. or Mrs. R.
10. On or about December 5, 1996, the BPI funds in the amount of \$38,437.52 were transferred into the Account.
11. On or about December 10, 1996, 400 shares of Trimark Financial Corp ("Trimark") were purchased by Yaworski at a cost to the Account of \$17,100.00. These shares were later sold on or about January 27, 1997 for \$17,480.00.
12. On or about January 7, 1997, 1,600 shares of MTS were purchased by Yaworski at a cost to the Account of \$11,200.00. These shares were later sold on or about January 15, 1997 for \$12,559.96.
13. The MTS and Trimark transactions referred to above were done with the knowledge and consent of the R's.
14. During the period from December of 1996 through to March of 1997 both inclusive, Yaworski also executed a number of trades in the Account without the prior knowledge and consent of the R's, such trades being all of the purchase and sale transactions in the Account except for the MTS and Trimark transactions described above (the "unauthorized transactions").
15. The unauthorized transactions included the buying and selling of interests in the Atlas Canadian T-Bill fund, TKO Resources Inc., Middlefield High Income Trust Units, and Westcastle Energy.

16. In or about March of 1997, the R's received documentation from Yaworski indicating that the following transactions had occurred in the Account:

<u>Date</u>	<u>Activity</u>	<u>Quantity</u>	<u>Description</u>	<u>Price</u>
March 13	purchase	5,000	I/R-Middlefield HI-INCM T/U	6.00
March 19	sold	600	I/R-Middlefield HI-INCM T/U	5.80

Mrs. R contacted Yaworski for an explanation as to why he was selling for less than was paid to buy. Yaworski offered an explanation to the effect that "this happens" and that she should not be alarmed.

17. Mrs. R also asked Yaworski why only 600 shares were sold, when 5,000 were bought. Yaworski then informed her that there would be more confirmation slips coming. He did not provide any specific details. Yaworski merely indicated that he was going on holidays and when he came back they would sit down and go through this.

18. Following her conversation with Yaworski, the R's received confirmation slips which in total evidenced the sale of a further 4,400 shares of Middlefield.

19. In March of 1997, in total, all of the 5,000 shares of Middlefield which had been held in the Account were sold by Yaworski for a total dollar value of approximately \$28,000.00.

20. None of the Middlefield trades had been authorized by Mr. or Mrs. R.

21. Concurrently with the sale of the last of the Middlefield shares, on or about March 31, 1997, Yaworski purchased 5,000 shares of Westcastle Energy at a cost to the Account of \$27,609.63.

22. The above described purchase of Westcastle Energy was not authorized by Mr. or Mrs. R.

23. The R's were next contacted by Yaworski on April 10, 1997.

24. Yaworski advised that he was no longer with Midland, but that he wanted to keep the Account. Mrs. R conveyed to Yaworski that she did not want him to keep the Account.

25. During the April 10, 1997 discussion, Mrs. R reminded Yaworski that they were supposed to sit down and review the Middlefield transactions. Yaworski responded to the effect that it was unfortunate, they were new to the market, and those things happen and cannot be avoided.

C. ALLEGATIONS

1. Staff of the Commission allege that:

(a) Yaworski conducted unauthorized trades in an account of a client, including purchase and sale transactions of Atlas Canadian T-Bill fund, TKO Resources Inc., Middlefield, and Westcastle Energy, without his client's instruction, authorization or consent;

(b) Yaworski acted contrary to the best interests of his client;

and that due to these allegations, Yaworski should not be entitled to use any of the exemptions set out in the Act and should not participate in the exempt markets in Manitoba in the future.

2. Such further and other matters as counsel may advise and the Commission may permit.

DATED at Winnipeg, Manitoba this 28th day of February, 2001.

Director, Legal and Enforcement

TO: JAMES PETER YAWORSKI