

BEFORE THE NASD REGULATION, INC.

Application of

Carlisle Investment Group, Ltd.  
c/o Gary L. Blank  
Chicago, Illinois

For Hearing and Decision With Respect to  
Notice of Non-Summary Cancellation of  
Membership

DECISION

District No. 8 (CHI)

Dated: June 29, 1998

This matter was heard at the request of Carlisle Investment Group, Ltd. ("Carlisle" or "the Firm") pursuant to Rule 9514 of the National Association of Securities Dealers, Inc. ("NASD") Code of Procedure. In a notice letter dated April 22, 1998 (the "Notice Letter"), the District Director for District No. 8 sought cancellation of Carlisle's membership for: (1) associating with an ineligible person; (2) failing to respond timely and adequately to the Association's requests for information; and (3) failing to meet the qualification requirements for continuance in membership. The District Director alleged that the Firm violated the qualification requirements in that: the Firm had no qualified individuals to run it; the Firm had not demonstrated that it would conduct a securities business in accordance with the NASD's high standards of just and equitable principles of trade in light of the felony conviction and disbarment of the Firm's owner; the Firm had not provided evidence that it would be able to satisfy the net capital requirement; and the Firm had failed to demonstrate that it had adequate operational and supervisory systems in place. After an independent review of the entire record in this matter, we find that cancellation is appropriate.

Background and District Director's Notice Letter

The factual background in this matter is not disputed. On August 25, 1997, Joseph Moreland ("Moreland"), a principal and owner of Morevest Capital Company ("MCC"), an NASD member firm, informed the staff of NASD Regulation, Inc. ("NASD Regulation") that he had "sold the stock in [MCC] to Mr. Gary Blank ("Blank") of Chicago." Moreland also informed District No. 8 that it

should refer all communications concerning MCC to Blank. Blank thereafter changed the Firm's name to Carlisle Investment Group, Ltd.<sup>1</sup>

On September 30, 1997, District No. 8 staff received an amended Uniform Application for Broker-Dealer Registration ("Form BD") which reported that MCC's name had been changed. The Form BD had been executed by Blank as "President" and "CFO."<sup>2</sup> Blank also disclosed on the Form BD that in 1991, he had been convicted of perjury, a felony, and had been sentenced to one year of probation.<sup>3</sup>

On October 3, 1997, the District staff notified Blank that Carlisle was subject to the Association's continuation of membership process under Membership and Registration Rule 1018 due to the Firm's material change in ownership, control, and operations. The District staff requested that Carlisle provide certain information and documentation within 30 days.<sup>4</sup> In addition, the staff notified Carlisle that the Firm was restricted from conducting any securities business because it did not maintain at

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<sup>1</sup> Carlisle was thus the successor of MCC.

<sup>2</sup> Blank was the only individual listed on the Form BD as a direct owner or executive officer.

<sup>3</sup> In the Form BD, Blank described the circumstances surrounding the conviction as follows: "Applicant was a practicing attorney, representing a client in Williamson County, [Tennessee] court [and] was charged with making a false statement in a Motion Pro Hac Vici [sic], which applicant denied was false."

The basis for Blank's perjury conviction was his false statement in an affidavit filed in support of the aforementioned Motion to the effect that there were no disciplinary actions or proceedings being conducted against him, when in fact disciplinary proceedings resulting in his disbarment were then pending against him in Illinois. The conviction was affirmed on appeal by the Court of Criminal Appeals of Tennessee in 1992.

<sup>4</sup> In accordance with Membership and Registration Rule 1013, the District staff requested, among other things, a detailed business plan; a list of the types of securities Carlisle intended to offer and sell and the types of retail or institutional customers to be solicited; a list of Carlisle's associated persons; amendments to the Form BD to report the changes in the Firm's ownership; documentation regarding criminal, civil, and regulatory actions taken against associated persons; a description of the nature and source of Carlisle's capital; corporate minutes; the purchase agreement; a description of the supervisory system and a copy of the Firm's written supervisory procedures; information demonstrating the applicant's ability to conduct the types of business intended and its principals' experience and qualifications; a description of the Firm's proposed record-keeping arrangements; and information regarding Carlisle's expense agreements.

least two registered sales principals and one financial and operations principal as required by Membership and Registration rules, but the staff permitted Carlisle to continue in membership pursuant to a pre-existing Membership Agreement. Carlisle did not respond to the request for information, except that on October 14, 1997, Blank provided via facsimile a copy of the Firm's quarterly FOCUS report for the period ending September 30, 1997.

By letter dated November 20, 1997, the District staff sent a second request for substantially the same information as had been requested in the October 3, 1997 letter. By letters dated November 21 and December 1, 1997, Blank provided certain information in response to the requests, including a copy of his Uniform Application for Securities Industry Registration ("Form U-4").<sup>5</sup> Blank's Form U-4 disclosed that in 1991, he was disbarred by the Illinois Supreme Court for attorney misconduct in the handling of client matters. The Form U-4 also disclosed that he was in the process of filing for reinstatement to the bar.

By letter dated December 31, 1997, the District staff sent a final request that more complete information be submitted by January 15, 1998. Due to the lapse of an earlier agreement, the staff enclosed a copy of a Membership Agreement dated December 31, 1997, to be put into effect until the Firm completed the membership continuance process. By letter dated January 6, 1998, Blank informed the staff that several corrections were needed to the Membership Agreement, claimed that Moreland was a registered principal with the Firm, and represented that the Firm would conduct an active business as soon as Blank had passed his qualification examinations. In response to the request for the Firm's written supervisory procedures, Blank stated that a copy was on file with the NASD. Blank also advised the staff that he would respond to the other requests for information by January 15, 1998. By letter dated January 13, 1998, Blank submitted additional information in response to the December 31, 1997 request. Blank enclosed an executed Membership Agreement and a copy of a document entitled "Morevest Capital Company Written Supervisory Procedures."

On April 22, 1998, the District Director issued the Notice Letter initiating non-summary cancellation of Carlisle's membership pursuant to Rule 9513. The District's notice letter set forth the following reasons for the non-summary cancellation: (1) that Carlisle was associated with an ineligible person, Blank, who was disqualified due to his felony conviction in the State of Tennessee in 1991; (2) that Carlisle had failed fully and adequately to respond to NASD Regulation's

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<sup>5</sup> Blank included with these responses a copy of the Association's Executive Representative Form, the Firm's purchase agreement, a balance sheet and income statement for the period ending October 31, 1997, a checking account statement, corporate minutes, a certificate of amendment of the articles of incorporation, and proof of purchase of a fidelity bond.

requests for information made pursuant to NASD Rules 1018 and 8210;<sup>6</sup> and (3) that Carlisle had failed to show that it had met the qualification requirements and financial and operational standards for continuance in NASD Membership.<sup>7</sup>

By letter dated April 27, 1993, Blank opposed the non-summary cancellation of Carlisle's membership and requested a hearing.

#### Hearing Panel Proceedings

On May 18, 1998, in accordance with Rule 9514, a hearing was held before a duly designated Hearing Panel composed of a current member of the NASD Regulation Board of Directors and a former member of the NASD Board of Governors.<sup>8</sup>

The Staff's Evidence and Arguments. The staff presented evidence and argument in support of the grounds for non-summary cancellation set forth in the Notice Letter. The staff noted that although Rule 1018 required that the membership

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<sup>6</sup> The Notice Letter stated that Carlisle had failed adequately to provide information, including documentation pertaining to Blank's felony conviction in Tennessee, a complete business plan including the source of Carlisle's capital, an explanation as to the adequacy of the Firm's capital to commence requested business operations, a copy of the agreement detailing Blank's assumption of expenses incurred by Carlisle, a properly amended Form BD, and a current and relevant supervisory plan.

<sup>7</sup> The Notice Letter stated that Carlisle had failed to meet the qualification requirements for continuance in membership, including the standards of financial responsibility and operational capabilities as referenced in Article III, Section 2(a) of the NASD By-Laws and Rule 1014 in that: the Firm had no qualified individuals to run the Firm; the Firm had not demonstrated that it would conduct a securities business in accordance with the NASD's high standards of just and equitable principles of trade in light of Blank's felony conviction, and due to Blank's having been disbarred in 1991 for, among other reasons, conversion of client funds; the Firm had not provided evidence that it would be able to satisfy the net capital requirement; and the Firm had failed to demonstrate that it had adequate operational and supervisory systems in place.

<sup>8</sup> At the hearing, Blank objected to the staff's introduction of a copy of Blank's Central Registration Depository ("CRD") print-out and claimed that the CRD printout was not authenticated. In response to questions by the hearing panel, it was determined that the staff had considered the CRD record to confirm that Blank's U-4 had been filed with the Association. The CRD print-out was admitted as an exhibit for the limited purpose of establishing that Blank had filed a Form U-4 with the Association.

continuance proceeding be concluded within 180 days from receipt of the application, Carlisle had not yet responded adequately to the staff's requests for information. Robert O'Connor ("O'Connor"), a District No. 8 compliance specialist, testified that he was unable to determine the type of securities business the Firm would operate because no detailed business plan had been provided, nor was he able to evaluate whether the Firm would be able to comply with the net capital requirement because documentation of the source of the Firm's capital was not provided. O'Connor noted that Carlisle's written supervisory procedures had been requested several times, and that when Blank finally produced supervisory procedures in January 1998, they were in fact MCC's supervisory procedures, and listed Moreland as the Firm's responsible principal and compliance officer.

O'Connor testified that on January 27, 1998, he contacted Moreland in order to check the accuracy of the information that Blank had submitted regarding Moreland's association with Carlisle. When O'Connor asked Moreland whether he was associated with Carlisle, Moreland responded: "No, in fact I'm in the process of transferring my registration to [another firm]." Moreland also noted that under the terms of his agreement with Blank, he was to remain associated with Blank's firm for only 90 days after MCC's purchase.<sup>9</sup>

The District staff acknowledged that Carlisle had not conducted a securities business since August 1997. The staff noted, however, that Carlisle's membership recently had been suspended even before the issuance of the Notice Letter, due to its failure to file certain required reports. The staff argued that due to Blank's felony conviction and resulting statutory disqualification, and for the other reasons outlined in its Notice Letter, the District properly canceled the Firm's membership under Rule 9513.

The Firm's Arguments. Blank appeared on behalf of Carlisle. Blank argued that it was unfair for the District staff to permit him to proceed with the membership continuance application process when the District staff was on notice from the start of the process that he had a felony conviction. Second, Blank argued that it was merely O'Connor's subjective opinion that his responses to the District's requests for information were inadequate. Blank contended that he had submitted a "thick file" of responsive information to NASD Regulation offices in Rockville and in Washington, DC, but that O'Connor and the District had failed to communicate with other NASD Regulation offices to obtain that information.

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<sup>9</sup> When questioned at the hearing as to when Moreland "stopped working" for the Firm, Blank responded: "He never did any work for the Firm. He just said he would help out in the transition stage, and he helped me with the filing of the [October] FOCUS report last year."

Finally, Blank argued that under the terms of the Membership Agreement that he had executed in January 1998, Carlisle was permitted to retain its membership but was restricted from operating a securities business until it could meet the Association's qualification requirements. Blank argued the Firm was still abiding by the terms of the Membership Agreement and had not operated a securities business, and that therefore the District's cancellation of the membership was unnecessary.

### Findings and Conclusions

We find the cancellation of Carlisle's membership to be necessary and appropriate. Blank's association with Carlisle alone subjects the Firm's membership to cancellation. Rule 9511(a)(2)(A) necessitates cancellation of membership when a member continues to be associated with an "ineligible person."<sup>10</sup> Article III, Section 3 of the NASD By-Laws states that "no member shall be continued in membership, if any person associated with it is ineligible to be an associated person." Carlisle's association with Blank, the Firm's sole owner, sole employee, and an ineligible person, mandates cancellation of the Firm's membership.<sup>11</sup>

Even though we find that Carlisle's association with Blank, without more, warrants cancellation of the Firm's membership, we also note the other reasons for cancellation cited in the Notice Letter. Carlisle was required to provide adequate information for the District to evaluate the Firm's membership continuance application. We note that although the staff made several requests for documentation regarding Blank's felony conviction, it was the staff, and not Blank, who finally obtained the required documentation relating to the conviction. Although Blank

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<sup>10</sup> Article III, Section 4 of the NASD By-Laws states that a person is subject to a "disqualification" with respect to membership, or association with such member, if such person "has been convicted [of a felony] within ten years preceding the filing of any application for membership in the Corporation."

<sup>11</sup> NASD Regulation was informed by Carlisle's Form BD in September 1997 of Blank's 1991 felony conviction. The staff should have notified Blank at that time of his ineligibility and that he was prohibited from association with the Firm. Blank argued that the Association is estopped from taking subsequent regulatory action based on the staff's acceptance of the membership continuance application for processing. This is incorrect. The principle of estoppel has no application here, where the consequences would be to permit a statutorily disqualified person from operating a securities firm in violation of the securities laws and against the interest of investors. In addition, MCC failed to provide prior notice of the transfer of MCC to Blank, in violation of Rule 1018, which specifically requires, among other things, that a member provide notice of at least 30 days before effecting a change of ownership or control. Blank purchased MCC in August 1997, before he submitted the amended Form BD.

disclosed the existence of the conviction on his Form U-4 and on the Firm's Form BD, he failed to provide documentation to substantiate the nature of this conviction as requested by the Association. Blank also failed to provide the staff with an adequate business plan.<sup>12</sup> The District staff was therefore unable to ascertain the nature of the business Carlisle would be conducting, and whether the Firm would be able to meet its operating expenses and still comply with the net capital requirement.<sup>13</sup> Despite the staff's having made three requests, Carlisle failed fully and adequately to respond under Rules 1018 and 8210.<sup>14</sup>

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<sup>12</sup> For example, in his December 1, 1997 letter, Blank described his business plan as follows:

Carlisle plans on continuing as a full services investment banking and corporate financial services company. Carlisle will establish programs designed for institutional investors, and high net worth individual investors, and the securities broker/dealer community, for the many companies and real estate developers seeking to raise capital and other forms of financial support. Carlisle when appropriate, will implement investment vehicles, such as limited partnerships and other direct participation programs. Carlisle will not be involved in the re-sale of limited partnership interests. Further, Carlisle will not hold customer funds or securities, and will seek exemption from the Customer Protection Rule.

In response to the staff's December 31, 1997 request for monthly projections, Blank provided the following: "There will be no projections of future business made at this time, I do not engage in speculation." The failure to provide a business plan, without more, is sufficient to support denial of an application for initial membership. See, e.g., Grand Securities, Co., 51 S.E.C. 9, 11 (1992).

<sup>13</sup> Blank also failed to provide the District staff with updated information regarding Moreland's status with Carlisle. When Blank responded to the District staff's requests for Carlisle's supervisory procedures manual, Blank submitted a copy of MCC's manual, with Moreland still listed as Compliance Officer. The District staff subsequently contacted Moreland, who informed the staff that he was no longer involved with Carlisle.

<sup>14</sup> Blank argued that the District staff neglected to obtain information that Blank had sent to CRD and to Washington, D.C. We note that the applicant is specifically required under the rules to respond directly to the District when the District requests certain information. See, e.g., Rule 1018(c). Moreover, although Blank repeatedly made reference during the hearing to a "file" of information that he had provided to CRD and other NASD offices, he failed to provide a description of

Finally, in connection with the membership continuance process, Rule 1018(f) requires the District to determine whether a firm continues to meet the qualification requirements under Rule 1014, as well as the standards of financial responsibility and operational capability set forth in Article III, Sections 2 and 3 of the By-Laws. The firm has no qualified principals. Indeed, Carlisle's only associated person is Blank, who is statutorily disqualified. On this basis, Carlisle likewise would not qualify for continuance in membership.

Blank argued that cancellation of the Firm's membership was premature because, pursuant to its Membership Agreement with the NASD, it was not conducting a securities business. When a member firm undergoes a material change in ownership, the NASD is required to assure that it will be capable of continuing to satisfy all regulatory, financial, and operational requirements for the protection of the firm, other members, and the investing public. Where a member firm has been purchased and operated by a disqualified person, it is clearly within the public's interest to cancel such membership, even if the firm is not presently conducting a securities business.

Based on our independent review of the record, we consider the cancellation of Carlisle's membership to be warranted. Accordingly, cancellation of Carlisle's membership is effective immediately upon service of this decision.

On Behalf of the Hearing Panel,

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Joan C. Conley, Corporate Secretary

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the information contained in that "file."

June 29, 1998

**VIA FACSIMILE AND FEDERAL EXPRESS**

Carlisle Investment Group, Ltd.  
c/o Gary L. Blank  
Chicago, Illinois

**Re: Non-Summary Cancellation of Membership: Carlisle Investment Group, Ltd.**

Dear Mr. Blank:

Enclosed herewith is the Decision of the National Adjudicatory Council in connection with the above-referenced matter. Any fine and costs assessed should be made payable and remitted to the National Association of Securities Dealers, Inc., Department #0651, Washington, D.C. 20073-0651.

You may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, you must file an application with the Commission within thirty days of your receipt of this decision. A copy of this application must be sent to the NASD Regulation, Inc. ("NASD Regulation") Office of General Counsel as must copies of all documents filed with the SEC. Any documents provided to the SEC via fax or overnight mail should also be provided to NASD Regulation by similar means.

Your application must identify the NASD Regulation case number, and set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor. You must include an address where you may be served and phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and NASD Regulation. If you are represented by an attorney, he or she must file a notice of appearance.

The address of the SEC is:  
Office of the Secretary  
U.S. Securities and Exchange  
Commission  
450 Fifth Street, NW, Stop 6-9  
Washington, DC 20549

The address of NASD Regulation is:  
Office of General Counsel  
NASD Regulation, Inc.  
1735 K Street, NW  
Washington, DC 20006

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is 202-942-7070.

Very truly yours,

Joan C. Conley

Enclosure

cc: Daniel P. Moakley