

SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54278 / August 7, 2006

Admin. Proc. File No. 3-12144

In the Matter of the Application of

MORTON KANTROWITZ
10841 Sunset Ridge Circle
Boynton Beach, Florida 33437

For Review of Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION - - REVIEW OF DENIAL OF
MEMBERSHIP CONTINUANCE APPLICATION

On remand for reconsideration of member's application to permit employment of individual subject to a statutory disqualification, association again denied the application. Held, the application for review is dismissed.

APPEARANCES

Morton Kantrowitz, pro se.

Marc Menchel, Alan Lawhead, and Deborah F. McIlroy, for NASD.

Appeal filed: January 9, 2006
Last brief received: April 10, 2006

I.

Morton Kantrowitz appeals from the denial by NASD of an application by Great Eastern Securities, Incorporated ("Great Eastern" or the "Firm"), an NASD member firm, to employ him as a limited representative—corporate securities (Series 62). NASD's action followed our earlier remand to it of this matter to reconsider the record before it in accordance with the standard

established in recent Commission precedent. ^{1/} To the extent we make findings in addition to those we made in our earlier review of this matter, we base them on an independent review of the record.

II.

As set forth more fully in the Remand Opinion, Kantrowitz became subject to a statutory disqualification ^{2/} in 1969 as the result of a permanent injunction entered against him ^{3/} prohibiting him from further violations of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(a)(2) of the Securities Exchange Act of 1934 and Exchange Act Rules 10b-5 and 15c2-7. ^{4/} Kantrowitz consented to the entry of the permanent injunction without admitting or denying the allegations in the complaint. ^{5/} In 1992, Kantrowitz pled guilty in New

^{1/} Morton Kantrowitz, Securities Exchange Act. Rel. No. 51238 (Feb. 22, 2005), ___ SEC Docket ____ ("Remand Opinion").

^{2/} Under Section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(39), a person is subject to a "statutory disqualification" if, among other things, "such person . . . is enjoined from any action" specified in Exchange Act Section 15(b)(4)(C), 15 U.S.C. § 78o(b)(4)(C).

Under NASD By-Laws, Article III, Section 4(h), a person is subject to a "disqualification" if, among other things, such person "is permanently or temporarily enjoined." NASD Manual at 1307 (Nov. 2003).

Under Article II, Section 3(b) of NASD's By-Laws, NASD may bar a person from becoming associated or continuing association with a member if such person is subject to a disqualification. NASD Manual at 1305.

^{3/} SEC v. American Continental Indus. (D.Md. 1969).

^{4/} 15 U.S.C. §§ 77q, 78j, and 78o, and 17 C.F.R. §§ 240.10b-5 and 15c2-7.

^{5/} This order was entered in settlement of our complaint in SEC v. American Continental Indus. (D. Md. 1969), summarized in Litigation Rel. No. 4296 (Apr. 22, 1969), 1969 SEC LEXIS 1196. The conduct underlying the injunction involved Kantrowitz's participation in a scheme in which Kantrowitz and others created the false appearance of a market for the stock of American Continental Industries ("ACI"). As a result, various lending institutions were induced to make loans totaling more than \$720,000 with ACI stock pledged as collateral for the loans. The loans subsequently defaulted. Kantrowitz, at the time a vice president, director, 30% shareholder, and trader of a broker-dealer, inserted 45 to 50 quotations per day during the relevant time period.

(continued...)

York state court to falsifying business records. 6/ Kantrowitz was sentenced to a one-year period of conditional discharge. This conviction ceased to be a statutory disqualification as of October 15, 2002. 7/

In January 2003, Great Eastern submitted an application to NASD to employ Kantrowitz. In this application, as amended in subsequent discussions with NASD staff, Great Eastern proposed that Kantrowitz would function in a limited capacity, placing orders with Great Eastern to buy or sell securities for his own brokerage account at the Firm and for the brokerage accounts of his wife and step-daughter, if they granted appropriate trading authority. The application also provided that Kantrowitz could introduce potential customers to the Firm to buy or sell securities for their own accounts solely on an unsolicited basis. All accounts referred to Great Eastern by Kantrowitz were to be reviewed by his supervisor, Craig T. Feltz, Great Eastern's Chief

5/ (...continued)

In 1970, we instituted administrative proceedings arising from the same facts. Finding that Kantrowitz had aided and abetted a fraudulent scheme, the law judge determined that it was in the public interest to suspend Kantrowitz from association with any broker-dealer for three months. Alessandrini & Co., 1971 SEC LEXIS 3975 (Dec. 10, 1971). We subsequently declared the law judge's order final. Wellington Hunter dba Wellington Hunter Associates, Exchange Act Rel. No. 9480 (Feb. 8, 1972), 1972 SEC Lexis 1300.

6/ People v. Morton Kantrowitz (Wakefield Financial Securities Case), Ind. No. 289/91 (S.Ct. N.Y.) (1992). Kantrowitz admitted that, while employed as a trader for Nash Weiss Securities, an NASD member firm, he agreed to "park" securities for another broker-dealer which ultimately resulted in false entries in the firm's FOCUS report that misrepresented the firm's financial condition.

7/ Kantrowitz, __ SEC Docket at ____. Under Exchange Act Section 3(a)(39), 15 U.S.C. § 78c(a)(39), and under NASD By-Laws, Article III, Sections 4(g)(1)(i) and (ii), NASD Manual at 1307, a person is subject to a statutory disqualification if, among other things, he or she is convicted of a misdemeanor, within 10 years preceding the filing of any application for membership or association, arising out of the conduct of the business of a broker-dealer or involving the making of a false report.

Before the expiration of this statutory disqualification, three different member firms submitted MC-400 applications on behalf of Kantrowitz seeking to employ him. NASD denied these applications, and the Commission sustained the two denials that Kantrowitz appealed. Morton Kantrowitz, 55 S.E.C. 98, 102 (2001) (noting that the proposed supervisor had left the member firm, and that the firm had not amended its application to propose a new supervisor), and Morton Kantrowitz, 52 S.E.C. 721, 723 (1996) (stating that the "conviction at issue, while a misdemeanor, reflects poorly on Kantrowitz's integrity" and noting our earlier suspension).

Operating Officer. ^{8/} Although Kantrowitz was to be listed on Great Eastern's new account form as the representative who introduced these new accounts, he would not perform any of the duties of a registered representative for the accounts. Upon acceptance of an account referred to Great Eastern by Kantrowitz, the Firm proposed to assign another qualified registered representative to carry out the duties with respect to the account. Kantrowitz's sole compensation from Great Eastern would be an override, no more than fifty cents per transaction, of the commissions earned from unsolicited transactions executed by the Firm for the accounts introduced by Kantrowitz. Kantrowitz would not have authority to hire any person, would not trade a firm proprietary account, and would not handle customer or firm funds or securities.

In December 2003, NASD's National Adjudicatory Council ("NAC") denied Kantrowitz's application to associate with Great Eastern. The NAC specifically found that the Firm's proposed heightened supervisory structure was "not inadequate." ^{9/} The NAC concluded, however, that Kantrowitz's regulatory history was "so grave" that he should not be permitted employment in the securities industry. Kantrowitz appealed NASD's denial to the Commission.

On February 22, 2005, we issued the Remand Opinion. In the Remand Opinion, we held that, pursuant to our decisions in Reuben D. Peters and Harry M. Richardson, ^{10/} the analysis set forth in Paul Van Dusen and Arthur H. Ross ^{11/} should be used when evaluating the application of a statutorily disqualified person who was also the subject of Commission administrative

^{8/} Great Eastern had initially proposed that Kantrowitz be supervised by Ernest Viola, its Director of Compliance. However, after NASD staff raised concerns about Viola's lack of supervisory experience and Viola subsequently left Great Eastern for another firm, Great Eastern amended its application on July 8, 2003 to substitute Feltz. According to the amended application, Feltz had previously been approved by NASD to supervise a statutorily disqualified individual and had no prior disciplinary problems.

^{9/} The NAC also stated that it did "not find the Firm's regulatory history to be troublesome." In 2002, the Firm consented to a fine of \$7,500 in an Acceptance, Waiver and Consent for failing to comply with the reporting requirements of the Order Audit Trail System. In November 2003, NASD issued a Letter of Caution to the Firm for failing to submit a copy of a response to an information request.

^{10/} Reuben D. Peters, Exchange Act Rel. No. 49819 (June 7, 2004), 82 SEC Docket 3959, reconsideration denied, Exchange Act Rel. No. 51238 (Feb. 22, 2005), 84 SEC Docket 3497; and Harry M. Richardson, Exchange Act Rel. No. 51236 (Feb. 22, 2005), 84 SEC Docket 3485.

^{11/} Paul Edward Van Dusen, 47 S.E.C. 668 (1981); Arthur H. Ross, 50 S.E.C. 1082 (1992).

sanctions imposed under the Exchange Act. ^{12/} We noted that under Van Dusen, where the time period specified in a conditional bar order has expired and where no "new information" or additional misconduct has been raised, it is inconsistent with the remedial purposes of the Exchange Act to deny an application for reentry. ^{13/} However, the Remand Opinion also explained that, as emphasized in Van Dusen, an applicant's reentry is not "automatic" after the expiration of a given time period and that NASD should consider other factors, such as "other misconduct in which the applicant may have engaged, the nature and disciplinary history of the prospective employer, and the supervision to be accorded the applicant." ^{14/} The Remand Opinion further noted that, in Ross, we held that, if an applicant had engaged in additional misconduct "which was similar to the misconduct underlying a bar order in which the time prohibiting application had passed," it was appropriate to consider the instances of misconduct "as forming a significant pattern" that might justify the denial of an application. ^{15/} As we summarized in Richardson, "Van Dusen and Ross instruct that an SRO ordinarily may not deny reentry based solely on the underlying conduct that led to the statutory disqualification and the conditional bar; something more is needed." ^{16/}

The Remand Opinion concluded that, because NASD had not engaged in the above analysis, it was unclear whether denial of association was consistent with the purposes of the Exchange Act and, accordingly, remanded the matter for further consideration. In doing so, the Remand Opinion noted that the 1992 conviction is no longer a statutory disqualification but it is additional misconduct that occurred after the Commission had imposed its 1972 suspension. The Remand Opinion further noted that, in justifying its denial of Kantrowitz's application, NASD asserted the importance of its ability to evaluate "appropriate business standards for its members . . . [p]articularly in matters involving a firm's employment of persons subject to a statutory disqualification," ^{17/} but, notwithstanding that, the NAC stated that it had no objection to the supervision to be provided Kantrowitz or the regulatory history of the Firm.

Following the remand, Great Eastern submitted letters to NASD stating that it continues to support Kantrowitz's application under the terms proposed in its earlier application, which included Feltz serving as Kantrowitz's supervisor. On August 18, 2005, the NASD Remand Subcommittee (the "Subcommittee") sent a letter to the Firm and NASD notifying them that the

^{12/} Kantrowitz, SEC Docket at ____ (citing Peters, 84 SEC Docket at 3499-3500).

^{13/} Id. at ____ (quoting Van Dusen, 47 S.E.C. at 671).

^{14/} Id. at ____ (quoting Van Dusen, 47 S.E.C. at 671).

^{15/} Id. at ____ (quoting Ross, 50 S.E.C. at 1085 n.10).

^{16/} Richardson, 84 SEC Docket at 3489.

^{17/} Id. at ____ (quoting Halpert & Co., 50 S.E.C. 420, 422 (1990)).

Subcommittee had discovered, through an updated report from NASD's Central Registration Depository ("CRD"), that the Firm had discharged Feltz on June 27, 2005, due to "company downsizing." The Subcommittee requested that the Firm promptly submit the name of a successor supervisor for Kantrowitz and confirm whether the terms and conditions of Kantrowitz's proposed employment were different from those stated earlier. By letter dated August 26, 2005, the Firm advised NASD that Charles D. Harbey would be Kantrowitz's supervisor. Harbey has been a general securities representative since March 1993 and a general securities principal since November 1998 and has no prior disciplinary history.

On December 14, 2005, the NAC again denied Great Eastern's application, finding that "it would not be in the public interest to permit Kantrowitz to re-enter the securities business and that his employment in the industry may create an unreasonable risk of harm to the market or investors." The NAC noted that the underlying conduct resulting in Kantrowitz's 1969 injunction and 1992 misdemeanor conviction involved his engagement in activities that were part of fraudulent schemes designed to mislead the market and investors for his personal gain and that they "constitute a pattern of deceptive conduct that . . . seriously undermines his integrity and ability to deal fairly with public investors."

The NAC noted that, in addition to the disciplinary history identified in the December 2003 denial of the application, the Firm had incurred three new disciplinary sanctions. On November 6, 2003, the Firm entered into an Acceptance, Waiver and Consent ("AWC") with NASD as a result of the Firm's having allowed its debt-equity ratio to exceed the acceptable level. ^{18/} In May 2005, the Texas State Board of Securities reprimanded the Firm and fined it \$4,000 as a result of the Firm's failure to reestablish a designated officer registered with Texas after it had removed its previous designated officer. On August 4, 2005, NASD accepted an AWC from the Firm that resulted from the Firm's permitting its president to conduct a securities business with an inactive securities registration, charging excessive commissions in agency transactions, and failing to report timely two customer complaints and one customer settlement with respect to two registered representatives. The NAC concluded that "these recent violations demonstrate the Firm's continuing inability to attend to routine details involved in the ongoing daily management of a securities business . . . [and] show a breakdown in the Firm's required daily supervisory and management controls [and demonstrate] that the Firm is not capable of assuming the additional heavy burden of supervising a statutorily disqualified individual such as Kantrowitz." Another negative factor, according to the NAC, was the Firm's failure to inform NASD that it had terminated Kantrowitz's proposed supervisor Feltz in June 2005.

The NAC also considered the proposed supervision of Kantrowitz. While the NAC stated that it had no problem with the Firm's selection of Harbey as Kantrowitz's supervisor, it expressed concern that, in light of the Firm's recent regulatory problems, the Firm may be

^{18/} This AWC was accepted by NASD prior to the issuance of the NAC's December 2003 opinion. In its brief on appeal, NASD explains that the NAC was unaware of this AWC at the time it rendered its decision.

incapable of properly supervising Kantrowitz, a man who, according to the NAC, "has proven in the past that he is capable of engaging in deceitful conduct that escapes the detection of his supervisors." The NAC further noted that it was troubled by the Firm's proposal that Kantrowitz be permitted to place orders with it to buy and sell securities for his own brokerage account at the Firm and for the brokerage accounts of his wife and step-daughter, noting that Kantrowitz can already trade these accounts as a customer without the necessity of being associated with a member firm and that such association should not be granted "merely to accommodate a desire to facilitate personal and family-related trading activities." Lastly, the NAC expressed concern over the Firm's proposal to have Kantrowitz act as a finder for potential new customers and to receive an override of up to fifty cents per transaction on the commissions earned by the Firm from any unsolicited transactions executed by the Firm for the accounts introduced by Kantrowitz. The NAC contended that this financial arrangement would give Kantrowitz a financial incentive to find as many of these customers as possible and that, given his regulatory history, the NAC was "not persuaded that Kantrowitz has the judgment and integrity to be engaged with the public in such a manner."

III.

Our review of NASD's denial of the Firm's application is governed by standards set forth in Section 19(f) of the Exchange Act. 19/ We must dismiss Kantrowitz's appeal if we find that the specific grounds on which NASD based its action exist in fact, that the denial is in accordance with NASD rules, and that those rules were applied in a manner consistent with the purposes of the Exchange Act, unless we determine that NASD's action imposes an unnecessary burden on competition. 20/

We conclude that the grounds on which NASD based its decision, Kantrowitz's statutory disqualification resulting from the injunction and his other conduct, as well as the facts and circumstances surrounding the Firm's proposed supervision of Kantrowitz discussed in the NAC opinion, exist in fact. Kantrowitz does not dispute that he is statutorily disqualified from NASD membership nor does he claim that the terms of the Firm's proposed supervision are inaccurately stated in the NAC opinion. 21/ Further, the record gives no indication, and neither party

19/ 15 U.S.C. § 78s(f).

20/ Id. Kantrowitz does not claim, and the record does not support a finding, that NASD's action has imposed an unnecessary burden on competition.

21/ Kantrowitz contends that NASD incorrectly found his 1992 New York State misdemeanor conviction to be a "statutorily disqualifying offense," despite the fact that we had earlier stated in our Remand Opinion that this conviction "ceased to be a statutory disqualification as of October 15, 2002." However, Kantrowitz's assertion is incorrect. Rather, the NAC explained that it considered the 1992 conviction because, together with
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contends, that the proceeding was not in compliance with NASD rules. Whether NASD's application of its rules in reviewing applications involving certain statutorily disqualified persons was consistent with the purposes of the Exchange Act requires that we apply the principles set forth in our precedent and discussed above.

NASD asserts that the misconduct underlying Kantrowitz's injunction and misdemeanor conviction constitutes a "pattern of misconduct" and that, consistent with Ross, NASD may consider this pattern of misconduct in determining whether Kantrowitz's reentry is consistent with the purposes of the Exchange Act. NASD focused on the deceptive nature of the misconduct underlying Kantrowitz's misconduct, and the consequent fraud on the investing public in both circumstances. We agree that these events demonstrate a sufficient pattern of misconduct to make consideration of the earlier statutorily disqualifying event appropriate under Van Dusen and Ross. 22/

21/ (...continued)

the manipulative activities underlying the 1969 permanent injunction, it formed a part of a significant pattern of misconduct. The NAC expressly stated in its opinion that "[t]his conviction ceased to be a statutorily disqualifying event on October 15, 2002."

Kantrowitz also claims that NASD failed to consider his entire record in denying his application. It appears to be undisputed that Kantrowitz, now over 70 years old, began working in the securities industry in 1959 and stopped working in the industry in 1992. Kantrowitz asserts that NASD failed to consider that he had not had any disciplinary problems since 1992 and that he had "frequently performed volunteer work for the securities regulators, including the NASD and received many compliments and letters of gratitude from the regulators including the NASD for [his] efforts." Contrary to Kantrowitz's contention, there is nothing in the NAC opinion that contradicts or denies Kantrowitz's assertions and, indeed, NAC expressly stated in its opinion that it had reviewed "the entire record in this matter." We find no evidence to refute the NAC's statement.

Lastly, Kantrowitz asserts that NASD's decision mischaracterized the two disciplinary matters brought against him and that "NASD's description of [his] activities in these cases is significantly different than the reported decisions." Kantrowitz does not explain how NASD mischaracterized the prior disciplinary proceedings and we find no basis for his claim.

22/ Kantrowitz contends that NASD failed to follow our directive in the Remand Opinion to explain why Dennis Milewitz, 53 S.E.C. 701 (1998), did not inform its analysis of Great Eastern's application or how Kantrowitz's situation differed from Milewitz's. In Milewitz, the applicant, already subject to a permanent injunction and a misdemeanor conviction, engaged in additional misconduct resulting in administrative proceedings. As is the case
(continued...)

In addition to NASD's concerns about Kantrowitz's past misconduct, NASD relied on the Firm's disciplinary history in denying the application. Kantrowitz correctly notes that NASD, in its 2003 denial of his application, had not been troubled by the Firm's regulatory history. He claims that NASD's reliance on subsequent disciplinary actions against the Firm in support of its current denial is not justified because, according to Kantrowitz, "these new matters are wholly unrelated to [his] very limited proposed [trading] activities." We disagree. The Firm's recent regulatory violations, when considered with the disciplinary sanctions imposed against it in 2002 and 2003, suggest that the Firm has continuing difficulties with strict compliance with its regulatory obligations, raising doubts as to the Firm's ability to provide the supervision required to ensure that Kantrowitz does not engage in future violative conduct. We also agree with NASD that the Firm's failure to notify NASD following our Remand Opinion that it had dismissed Kantrowitz's proposed supervisor Feltz showed "inattention to . . . a key element of the Application [that] suggests that [the Firm] may not be able to maintain heightened supervisory controls over Kantrowitz, a person with a history of deceitful misconduct."

22/ (...continued)

here, by the time of our review, the ten-year statutory period making Milewitz's conviction a disqualification had expired. We remanded Milewitz's application for further consideration of the effect of the injunction on his application. On remand, NASD determined to permit Milewitz's association in spite of the injunction and the prior criminal conviction. SD99004, available at http://www.nasd.com/web/groups/enforcement/documents/nac_stat_dq_decisions/nasdw_011574.pdf (NASD 1999).

Kantrowitz asserts that NASD "failed to provide any explanation whatsoever as to how the applications are different and, if so, why the differences justify the denial of [his] application." NASD points out, as an initial matter, that each of its decisions is based on the facts and circumstances before it. NASD contends that "Kantrowitz's repeated securities-related violations and the inadequacies of his sponsoring firm clearly set this apart from the Milewitz case." NASD notes that Kantrowitz's statutorily disqualifying events both involved deceptive conduct connected to schemes to perpetuate a widespread fraud on the market and investors. Although in Milewitz there were two statutorily disqualifying events, no similar pattern of deceitful misconduct emerges from them. The first, resulting in respondent's criminal misdemeanor conviction and entry of a permanent injunction, was based on respondent's conspiring to violate the Currency and Foreign Transactions Reporting Act, 18 U.S.C. § 371, 31 U.S.C. § 5322. The second, resulting in respondent being censured, ordered to cease and desist, fined, barred from acting in a supervisory capacity, and suspended from association for six months, was based on Milewitz having aided and abetted and caused his employer to improperly hypothecate customers' securities, violated certain recordkeeping provisions, and failed to supervise an unregistered employee with a view to preventing these violations. Milewitz, 53 S.E.C. at 702-03.

In concluding that the proposed supervision of Kantrowitz would not be adequate, NASD noted that, although Harbey has an unblemished disciplinary record, this is outweighed by the concerns raised by the disciplinary histories of both Kantrowitz and the Firm. NASD also raised concerns with the proposed securities activities to be engaged in by Kantrowitz. Regarding the proposal for Kantrowitz to introduce potential customers to the Firm to buy or sell securities for their own accounts on an unsolicited basis, NASD objects to the compensation arrangement under which Kantrowitz would receive an override of the commissions earned by the Firm from the unsolicited transactions executed in the accounts he introduces. NASD asserts that this compensation arrangement would give Kantrowitz "a financial incentive to find as many of these customers as possible," which NASD found problematic because it was "not persuaded that Kantrowitz has the judgment and integrity to be engaged with the public in such a manner." We agree that NASD has cause for concern that the proposal to compensate Kantrowitz by providing him with transaction overrides, where there is already doubt about his supervision, could undermine the protections that may somehow have been achieved by having the accounts introduced by Kantrowitz serviced by another registered representative.

In light of the deceptive nature of the misconduct underlying Kantrowitz's statutory disqualification and his earlier misdemeanor conviction (and the consequent fraud on the investing public in both circumstances), the Firm's recent regulatory troubles which raise doubts concerning its ability properly to supervise Kantrowitz, and the proposed securities activities to be engaged in by Kantrowitz, we conclude that NASD applied its rules in a manner in accordance with the principles set forth in our precedent in finding that the Firm's application to employ him as a limited representative—corporate securities would not be in the public interest. In accordance with Section 19(f) of the Exchange Act, this review proceeding must be dismissed. An appropriate order will issue. 23/

By the Commission (Chairman COX and Commissioners CAMPOS and CASEY);
Commissioners ATKINS and NAZARETH not participating.

Nancy M. Morris
Secretary

23/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
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SECURITIES EXCHANGE ACT OF 1934
Rel. No. 54278 / August 7, 2006

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In the Matter of the Application of

MORTON KANTROWITZ
10841 Sunset Ridge Circle
Boynton Beach, Florida 33437

For Review of Action Taken by

NASD

ORDER DISMISSING APPEAL FROM REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the review proceeding of the application by Great Eastern Securities, Incorporated to employ Morton Kantrowitz as a registered representative is hereby dismissed.

By the Commission.

Nancy M. Morris
Secretary