ADMINISTRATIVE PROCEEDING
FILE NO. 3-2393

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

LEE PETILLON

INITIAL DECISION

(Private Proceeding)

Washington, D.C.
November 30, 1972

David J. Markun
Administrative Law Judge

ADMINISTRATIVE PROCEEDING
FILE NO. 3-2393

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
LEE PETILLON	:	Initial Decision (Private Proceeding)
	:	

APPEARANCES: Jack A. Redden, of the San Francisco Branch Office of the Commission, for the Division of Enforcement.

George P. Michaely, Jr. of Sullivan & Worcester, Washington, D.C., for Respondent Lee Petillon.

BEFORE: David J. Markun, Administrative Law Judge

THE PROCEEDING

This private proceeding was instituted by an order of the Commission dated March 24, 1970, ("order") against four broker-dealer firms and nine officers or employees thereof pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 ("Exchange Act"), charging violations of the registration provisions of Sections 5(a) and 5(c) [1/] of the Securities Act of 1933 ("Securities Act") and of the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 [2/] thereunder in connection with the offer, sale and purchase of Omega Equities Corporation ("Omega") securities. The proceeding has been resolved as to all respondents but one through the Commission's entry of orders based upon offers of settlement or on the basis of default. [3/] Accordingly, this initial decision has application only to

---

1/ Under Section 5(a), unless a registration statement is in effect, it is unlawful to sell or deliver a security by use of the mails or the facilities of interstate commerce. Under Section 5(c), unless a registration statement has been filed as to a security, it is unlawful to offer to sell or offer to buy the security by use of the mails or such facilities.

2/ Section 10(b) as here pertinent makes it unlawful for any person to use or employ in connection with the purchase or sale of a security any manipulative device or contrivance in contravention of rules and regulations of the Commission prescribed thereunder. Rule 10b-5 defines manipulative or deceptive devices by making it unlawful for any person in such connection: "(1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person . . . ." Section 17(a) contains analogous antifraud provisions.

3/ Securities Exchange Act Releases No. 8945, July 28, 1970; (Cont'd)

the remaining respondent, Lee Petillon, even though the decision will necessarily, in view of the nature of the charges and of the factual circumstances, also involve findings concerning Respondent Petillon's employer during the relevant period, Kleiner-Bell & Co., Inc. ("Kleiner-Bell").[4/]

Respondent Petillon and the Division of Enforcement ("Division") have filed proposed findings, conclusions[5/] and supporting briefs[6/] pursuant to Rule 16 of the Commission's Rules of Practice, 17 CFR 201.16. The findings and conclusions herein are based upon the record[7/] and upon observation of the demeanor of the various witnesses.[8/]

3/ (Continued) No. 8989, September 25, 1970; No. 9031, November 30, 1970; No. 9298, August 19, 1971; No. 9330, September 10, 1971; No. 9446, January 11, 1972. These Commission's findings on consent or on default are not utilized to support any finding or conclusion made herein.

4/ Kleiner-Bell was one of the named respondents herein, as were also Burt Kleiner and Ralph Shapiro, owners and principals in the firm, and Stephen D. Askin, an employee of the firm. Findings and conclusions respecting alleged violations by Kleiner-Bell are made herein only as respects violations that the record herein establishes were aided and abetted by Respondent Petillon.

5/ Respondent's motion to strike various portions of the Division's proposed findings and conclusions on the ground they lack citations to the record, fail to find support in the record, and for other reasons, is hereby denied; however, Respondent's arguments in connection with such motion have been carefully considered in connection with evaluating the merits of the Division's proposed findings and conclusions.

6/ Permission to file briefs in excess of 60 pages is hereby given retroactively, pursuant to authority contained in 17 CFR 201.22(d).

7/ Findings made by the Commission in the course of issuing orders respecting other respondents, mentioned in footnote 3 above, which orders were based upon consent or upon default, are not considered to be a part of this record and have not been considered for any purpose in making findings and conclusions herein.

8/ The evidentiary hearing was held in Los Angeles, California, during six hearing days beginning March 20, 1972, and concluding on March 28, 1972. Preponderance of the evidence is the standard of proof applied.

FINDINGS OF FACT AND LAW

The Respondent

Respondent Lee Petillon ("Petillon") was employed during the times here material by Kleiner-Bell, a broker-dealer registered with the Commission whose principal offices were in Los Angeles, California, where Petillon worked. Petillon was employed by Kleiner-Bell in January, 1968, to work on corporate finance matters at an annual salary of some $27,000 plus whatever annual bonus the firm might pay its employees. 9/

Prior to coming to Kleiner-Bell, Petillon, an attorney, 10/ had been employed by Electronics Capital Corporation ("ECC"), a small-business investment company licensed under the Small Business Investment Act of 1958, from July, 1960, until August, 1967, when he left that firm in a policy-disagreement with its president. While with ECC, Petillon was on the house-counsel staff and later Assistant General Counsel and eventually became a director. ECC's principal business was investment in small companies in so-called "high technology" industries, with a large portion of its investments being in "start-up" situations.

9/ Petillon testified that he also expected to share with the firm in profits realized on particular financial transactions that he brought to fruition, and he presented a claim following his leaving the firm in connection with the three investment-capital situations he had worked out. The record shows, however, that this was merely an expectation or hope on Petillon's part since there is no evidence in the record of any written or oral agreement or even any discussion with Kleiner-Bell or any of its principals that Petillon was to share profits in transactions or "deals" that he worked out. His claim was never favorably acted upon.

Petillon had no ownership interest either in Kleiner-Bell or in its investment vehicle, "140 Associates". (See page 14).

10/ Petillon was admitted to the California Bar in January, 1960.

ECC had a technical staff to conduct investigations of the technology (actual or proposed) of the companies in which investments were considered and into the companies' financial histories and/or projections. Petillon worked, among other things, on drafting loan and acquisition agreements incident to such investments.

After leaving ECC Petillon was unemployed until he was engaged by Kleiner-Bell in January, 1968, on the recommendation of Ralph Shapiro ("Shapiro"), a partner and principal of Kleiner-Bell, who was impressed with Petillon's qualifications and personality and considered that his prior experience with ECC would make him useful in looking into investment deals for Kleiner-Bell.[11/]

Until he left Kleiner-Bell in February, 1969, Petillon was engaged predominantly in evaluating venture-capital investment possibilities in high technology areas[12/] that came to the firm's attention in one way or another, although from time to time he was given various other "corporate finance" assignments by Shapiro (his supervisor), or by other partners and principals of the firm.[13/]

11/ Shapiro was a vice president and part owner of Kleiner-Bell as well as its Chief Operating Officer and Chief Administrative Officer.

12/ Petillon had approached Shapiro, whom he had met socially several years earlier, in an unsuccessful effort to interest Kleiner-Bell in backing a plan Petillon and another former employee of ECC had for forming a private fund for investment in venture-capital situations.

13/ Though he "looked at" some 300 to 400 of these situations, he recommended only perhaps a dozen and only 3 of the recommendations were accepted by Kleiner-Bell. Petillon himself had no authority to commit the firm to any deal, and had to get prior authority from Shapiro or some other principal of the firm. However, Petillon exercised his own judgment and discretion as to which situations he looked into and how he went about it. Before any substantial expenditures were made on an investigation, though, e.g. engagement of an outside consultant, he would first check with Shapiro or another principal.

Petillon was not an officer and had no title. During his stay at Kleiner-Bell he had only one person working with him, Graham Miller, who was a combination of associate and understudy. Petillon was not the head of the "corporation-finance department" of Kleiner-Bell, as the Division contends — Kleiner-Bell had no such formally-structured department. Various principals of the firm, along with their aides and other personnel, e.g. research staff people, worked on corporation-finance matters, as did Petillon. While Miller worked along with Petillon, both were essentially under Shapiro's supervision; Miller's presence, even though he took some day-to-day directions from Petillon, was in no way sufficient to make Petillon the head of a "department". 14/

Omega's Private-Placement Acquisition Program

The charges against Petillon grow out of Kleiner-Bell's participation in 1968 in the "private-placement" of unregistered Class A stock by Omega. To put the activities of Kleiner-Bell and Petillon as they involve the charges into the required perspective, it is necessary to limn in some detail the nature of Omega's acquisition program in 1968 and the key financing role that its massive private placement of unregistered stock had in that program.

14/ Petillon had no authority to hire or fire personnel. He never got himself qualified as a registered representative, since Shapiro had told him he didn't want him to get involved in selling securities, as that might distract him from his assigned duties.

Omega[15] was incorporated under the laws of Delaware in 1960 and prior to 1968 was engaged in the real estate business. Commencing in 1963 it experienced severe financial difficulties and disposed of a major portion of its real estate holdings between 1963 and 1968. After having sustained losses for a number of years, Omega's capital deficit at the end of its fiscal year ending October 31, 1967 was in excess of $14 million.[16]

In April of 1968 Omega's Board of Directors entered into an arrangement with Harry W. Bank ("Bank") under which he would develop a financing plan to obtain additional capital in order to acquire a number of subsidiaries in diverse business fields.[17] The means selected for accomplishing Omega's diversification-through-acquisition program was a plan for raising new capital through the sale of large amounts of Omega's Class A stock through private placements at very substantial discounts from the over-the-counter trading price.[18]

15/ Until changed in 1967, its name had been Tenney Corporation, after Jerry M. Tenney, who, with family members, controlled the Class B stock, which had 2/3 of the voting rights. Class A stock had been sold in a public offering between 1960 and 1962, and had 1/3 of the voting rights.

16/ By 1968 Omega owed certain banks a total of some $4,500,000 plus interest of about $1,500,000, which obligations were discharged in full in 1968 under agreements with the banks by payments totaling some $900,000.

17/ Bank had earlier been instrumental in the reorganization of another company, named Transcontinental Investing Corporation ("TIC"). During his association with TIC, its stock climbed from 1 5/8 to 23. In August Bank was named to Omega's Board of Directors and became Chairman of its Executive Committee. From the time of Bank's association with Omega, the Board met frequently, and primarily, to discuss and ratify acquisitions and proposed acquisitions.

18/ The private placement price was generally half or less than half of the OTC market price. See footnotes 20 and 21 below.

Thus, at a special meeting of Omega's Board of Directors on July 10, 1968, [19] after a number of shares had already been sold earlier in private placements, directors were authorized to sell up to 3,000,000 additional shares of Omega "letter" stock at not less than $3 net to Omega. Provision was made that the stock should be sold at higher prices in the event the market price of Omega [20] increased materially over its price at the time of the July 10 meeting.

From May 2, 1968 through November 1, 1968, Omega offered and sold 2,677,600 Class A investment-letter shares to various mutual funds, investment groups, partnerships and individuals at prices ranging from $1.00 to $8.00 a share, for total gross proceeds of $9,967,750. [21]

19/ The meeting was conducted by telephone.

20/ During 1967 and 1968 the bid price range of Omega's class A shares was as follows:

	1967	:	15¢	to	35¢
Jan. - March	1968	:	30¢	to	62½¢
Apr. - June	1968	:	38¢	to	$ 7.75
Jul. - Sept.	1968	:	$5.50	to	$16.75
Oct. - Dec.	1968	:	$13.00	to	$33.50

21/ The purchasers, with those who bought through Kleiner-Bell being indicated by an asterisk, were the following:

Name of Purchaser	Date Subscription Agreement Executed	Number of Shares	Purchase Price
Amstoc Industries, Inc.	7/24/68	15,000	$ 48,750
Applegate, Leason & Co.	11/1/68	45,000	$ 236,070
Ask Mr. Foster Travel Service, Inc.	10/22/68	25,000	$ 100,000
Robert H. Bailey	7/24/68	30,000	$ 97,500
	7/26/68	20,000	$ 65,000
Erwin Bernstein and Leonard Cohen	7/9/68	100,000	$ 325,000
*Robert T. Blywise	8/9/68	35,000	$ 113,750
*Buttonwood Associates	8/9/68	15,000	$ 48,750
*Buttonwood International	8/9/68	10,000	$ 32,500
*Couri Industries Inc.	8/9/68	15,000	$ 48,750

(Continued)

In addition, from September 4, 1968 through December 12, 1968, Omega issued and sold promissory notes that were convertible into shares at conversion rates ranging from about $3.00 a share to $10.00 a share. 22/

21/ (Continued)

[illegible] Fund, Inc.	9/4/68	100,000	$ 334,500
Estate of George C. Fisher, deceased	10/30/68	25,000	$ 200,000
Jerome H. Feig	10/30/68	50,000	$ 250,000
Donald W. Fisher	8/13/68	100,000	$ 325,000
Madlyn G. Fisher	10/30/68	25,000	$ 200,000
Golden Gate Fund, Inc.	10/31/68	6,500	$ 35,750
[illegible] Jarwood	5/2/68	100,000	$ 100,000
[illegible] Investment Company	10/31/68	306,000	$2,371,500
Yuan Jen and Lancy C. Jen	6/12/68	15,000	$ 48,750
Philip Masakove	5/2/68	100,000	$ 100,000
Lobar One	7/23/68	12,600	$ 40,950
Theodore M. Lakos	7/17/68	15,000	$ 48,750
	10/30/68	50,000	$ 287,500
Landrich Investment Company, Ltd.	9/18/68	80,000	$ 420,000
*Maurice Lewitt	8/9/68	30,000	$ 97,500
Mates Investment Fund	7/9/68	300,000	$ 975,000
Robert Mellin	6/28/68	100,000	$ 100,000
Harvey B. Mickelson	7/15/68	33,000	$ 107,250
Oscar Gordon Nix, M.D.	7/3/68	15,000	$ 48,750
Ocean Technology Fund, Inc	10/31/68	6,500	$ 35,750
*140 Associates	8/9/68	150,000	$ 450,000
Pennsylvania Mutual Fund, Inc.	7/24/68	100,000	$ 325,000
*Robert L. Richards	8/9/68	10,000	$ 32,500
*Milton Rudin	8/9/68	40,000	$ 130,000
Irving M. Schuyler	8/16/68	200,000	$ 650,000
Scottsbluff Mortgage Loan Co., Inc.	10/11/68	25,000	$ 150,000
757 Associates	8/29/68	105,000	$ 341,250
Nathan Shapiro	5/2/68	100,000	$ 100,000
Charles A. Soule	6/12/68	23,000	$ 74,750
*Jack Tenkin	8/9/68	35,000	$ 113,750
*Varley & Co.	8/9/68	75,000	$ 243,750
*Harold Ziff	8/9/68	35,000	$ 113,750
	Total	2,677,600	$9,967,750

(1) Less a refund adjustment of 25 cents per share to the subscriber

(2) Less a refund adjustment of 55 cents per share to the subscriber.

22/ If all the notes had been converted the additional shares issued and sold thereby would have totaled 375,000 shares, which, combined with the 2,677,600 shares sold directly, would have totaled 3,052,600 shares.

The gross proceeds from these notes amounted to $2,668,750, which, combined with the proceeds from the sale of stock, resulted in total gross proceeds of $12,636,500.

In 1968 the Commission instituted a private investigation into various aspects of Omega's activities, including an investigation as to whether any portion of its Class A Stock and promissory notes issued in 1968 were issued in violation of the Securities Act and whether any misrepresentations were made by or on behalf of Omega, in connection with the sale of Class A Stock, the issuance of promissory notes, and the acquisition of various subsidiaries, in violation of the Exchange Act and regulations promulgated thereunder. In connection with said investigation, on December 20, 1968, the Commission issued an order under the Securities Act suspending trading in Omega's stock.

On April 10, 1969, the Commission filed a civil action against Omega, its officers, directors, a former director, and a former employee, (not Respondent Petillon), in the United States District Court, Central District of California (Civil Action No. 69-689 CC). The action, entitled Securities and Exchange Commission v. Omega Equities Corporation, et al., alleged violations of Sections 5(a) and (c) of the Securities Act, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. The complaint alleged that the defendants, acting in concert with others: offered and sold securities through the use of a "prospectus", and carried such securities through the mails and in interstate commerce for the purpose of sale and for delivery after sale, without a registration statement under the Securities

Act having been filed or being in effect with respect to such securities; used and employed manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities issued and to be issued by Omega by (a) employing a device, scheme, and artifice to defraud, (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and a course of business which operated and would operate as a fraud and deceit. The complaint alleged that the board of directors of Omega, acting in concert with others, conceived and executed a program whereby Omega was to be reconstituted as a "conglomerate" corporation, through the acquisition by purchase or otherwise of a number of enterprises engaged in various fields of business; that said plan to reconstitute Omega contemplated the issuance and sale of new securities for cash and the acquisition for cash or securities of sixteen different business entities; that it was not intended that the securities of Omega would be registered under the Securities Act; that as a primary inducement to the purchase of such "letter stock", the defendants made commitments for the sale thereof at prices which were set at a level substantially below the then current retail price, and Omega agreed that it would use its best efforts to accomplish registration of such stock at specified future dates under the Securities Act; that, in order to stimulate the sale of Omega's unregistered stock, the defendants agreed that a commission would be paid to finders or sellers; and that certain individuals and companies, at a time when they were engaged in the underwriting and distribution of Omega's Class A Stock, bid for and effected transactions

in such stock. The complaint also alleged that the defendants made various misrepresentations.

The complaint sought a determination that the defendants had violated the federal securities laws and sought an injunction against further violations. Although the defendants denied the allegations contained in the complaint, on April 10, 1969 they consented to the entry of an injunction which the Court granted on that date. As of April 29, 1969, after entry of the injunction mentioned above, Omega's stock was restored to trading by the Commission.[23/]

Subsequent to the entry of the injunction against Omega, on its consent, the president of Omega in a report to shareholders[24/] stated, among other things, that ". . . management agrees with the Commission that some unauthorized, inaccurate reports were circulated concerning the Company's acquisitions in the year 1968." The report then set forth the 11 companies that Omega had acquired or formed in 1968. In addition, the report to shareholders advised that Bank had been removed as a Director on March 14, 1969, that the Board's earlier

---

23/ During the period from April 29, 1969 to June 24, 1969, the reported high and low bid and asked prices for Omega's Class A Stock in the over-the-counter market were $2½ to $6½ bid and $3 to $8 asked. On June 24, 1969, the reported high bid and low asked prices for the stock were $2 7/8 and $3.00, respectively. See footnote 20 above for price ranges of the stock preceeding the suspension of trading therein on December 20, 1968.

The entry of the injunction described above, and the allegations of the complaint made in that injunctive action, are not utilized to support any finding or conclusion made herein.

24/ Exhibit 72.

authorization to issue Bank 1 million shares of Class A stock had been rescinded, and that Bank was contesting such action of the Board.

As part of the consideration in making feasible the "private placement" of some 3,000,000 [25/] shares of its stock, Omega undertook to have such shares registered under the Securities Act and, pursuant to that undertaking, it filed a Form S-1 registration statement under that Act on July 3, 1969. [26/] As of that date numerous civil lawsuits alleging breaches of contract, torts, and other miscellaneous causes of action were pending against Omega or its subsidiaries and officers or former officers thereof which suits had their genesis to one degree or another in Omega's acquisition program. Likewise, Omega had initiated various suits against persons who had sold Omega controlling-share blocs in various subsidiaries that had been acquired by Omega, alleging, inter alia, false representations as to the financial condition of the subsidiaries at the time their stock was being acquired by Omega. [27/]

As of October 31, 1968, Omega had a capital deficit of over $11 million.

By the time of the evidentiary hearing in March of 1972 the quotations on Omega shares had sunk, as of March 3, to from $.05 to

---

25/ Including the notes that were convertible to shares, as set forth above.

26/ Exhibit 1.

27/ E.g. Exhibit 49, a copy of a complaint filed by Omega against Raleigh Manufacturers, Inc. and others alleging that Raleigh's net worth had been materially overstated at the time Omega acquired its interest in the company.

$.10 on the bid side and $.15 to $.20 on the ask side.

Kleiner-Bell's Participation in the Private Placement of Omega Shares

On August 9, 1968, after negotiations with Bank, Kleiner-Bell entered into two separate purchase agreements with Omega; under one agreement Kleiner-Bell purchased 150,000 Class A shares of Omega letter-stock for 140 Associates, an investment partnership comprised predominantly of Kleiner-Bell officers and directors, and under the other agreement it purchased an additional 300,000 shares on behalf of 10 of its customers. Kleiner-Bell received 25¢ a share commission on the shares purchased for its 10 customers and was an underwriter within the meaning of Section 2(11) of the Securities Act.[28/] The 10 purchasing customers in this "private placement" arranged by Kleiner-Bell included 6 individuals and 4 corporate or associated entities.

Kleiner-Bell recommended the purchase of Omega's letter-stock to its customers without disclosing to them certain very material information.

Thus, although Kleiner-Bell relied very considerably on Bank's earlier success with Transcontinental Investing Corporation ("TIC") in its determination to buy and recommend Omega letter-stock, and its

---

28/ The entities and individuals who purchased Omega shares through Kleiner-Bell are indicated by asterisk in the schedule appearing in footnote 21 above. The price for the 300,000 share block was $3.25 per share of which Kleiner-Bell got 25¢ as commission, resulting in a commission to Kleiner-Bell of $75,000. The price on the 150,000 shares bought by 140 Associates was $3 per share. While the agreements were dated August 9, they provided by their terms that "closing" would be on August 14, 1968. The "closing" involved merely the exchange of the Omega shares for the purchase price. On August 16, 1968, Seymour Goldfeld in Kleiner-Bell's New York offices forwarded the executed

(Continued)

customers were so advised, Kleiner-Bell failed to advise its purchasing customers that it had adverse information on Bank. This information was sufficiently disturbing to have prompted Kleiner-Bell to order an investigative report on Bank. The investigative report, from the Bishop's Service, Inc. in New York, New York, where Omega and Bank were then headquartered, was requested by Kleiner-Bell on or about August 10, 1968. However, Kleiner-Bell, caught up in the "euphoria of the times" did not hold up signing its private-placement subscription agreements of August 9, 1968 with Bank or its "closing" thereof on August 14, 1968, until a report could be obtained on him, even though Kleiner-Bell had the information that prompted them eventually to request a report on Bank as early as July.[29/] After receiving the report on Bank on September 4, 1968, Kleiner-Bell did not disclose its contents, which included fairly negative data on Bank,[30/] to its customers.

28/ (Continued) purchase agreements to Shapiro. The agreement for the purchase of 300,000 shares referred to "the five funds named in Schedule A attached hereto" as the prospective purchasers, but the ultimate purchasers obtained by Kleiner-Bell were the individuals and entities shown in footnote 21. The record is not entirely clear when the 10 eventual purchasers were solicited (by three registered representatives of Kleiner-Bell) but it may well have been after August 9 when the subscription agreements were signed.

29/ It appears that Kleiner-Bell may have been more interested in the report on Bank in connection with a possible subsequent underwriting by Kleiner-Bell of the contemplated public offering of shares of one of Omega's subsidiaries, Omega Oceanographics, Inc., or, in connection with establishing an investment-banking relationship with Omega, generally, than it was with reference to its possible effect on the private placement. The Bishop's report on Bank was received by Goldfeld on September 4, 1968 and sent by him to Shapiro.

30/ The report indicated that on December 2, 1948, Bank was indicted under the U.S. securities laws with six other individuals and two corporations in connection with the sale of stock of Cosmo Records, Inc., a bankrupt corporation of which Bank had been president. On August 25, 1959, Bank and others were indicted on charges arising out of the purchase and sale of United Dye and Chemical Corporation. Charges against Bank and one other (Continued)

Kleiner Bell's recommendations to its customers that they participate in the private-placement purchase of the Omega stock were based in material part on Bank's sanguine predictions[31] as to what the earnings would be of the subsidiaries that Omega had acquired or was negotiating to acquire. Kleiner-Bell failed to disclose to its participating customers that it had made no adequate investigation of Omega or its subsidiaries to ascertain whether there was any reasonable basis for Bank's earnings estimates or projections, which were conveyed in very general terms to the customers. In particular, Kleiner-Bell failed to disclose to its participating purchaser-customers that Bank had not made available any certified financial statements respecting Omega or any of its subsidiaries. Moreover, Kleiner-Bell failed to disclose that there existed considerable uncertainty as to which of the proposed acquisitions that Bank talked about from time to time would actually be finally acquired by Omega.[32] In view particularly of the indications Kleiner-Bell had that Bank's background called for an investigative report on him, Kleiner-Bell came under a duty to make an adequate investigation of Omega and its subsidiaries to determine whether a reasonable basis existed for Bank's earnings projections[33] or, if Kleiner-Bell was unable to make such investigation, that fact, being highly

---

30/ (Continued) defendant were not pressed; the Government entered a nolle prosequi on March 24, 1965. The report also indicated that Bank had been sued in some fifty legal proceedings, with various judgments having been entered against him, including one for $110,000 on May 31, 1966.

31/ The record indicates that Kleiner-Bell derived the limited information it had on Omega and its subsidiaries, actual or prospective, almost entirely from Bank or from newspaper accounts of acquisitions which accounts frequently reflected releases from or interviews with Bank.

32/ See p. 12 above.

33/ Securities salesmen may not rely blindly upon the issuer for information concerning his company, although the degree of investigation which must be made will vary in each case. Hanly v. SEC, 415 F.2d 589, 597 (1969).

material,[34] should have been disclosed to its customers before they were induced to participate in the private placement.[35]

Kleiner-Bell's failures to make the aforementioned disclosures to its customers were wilful[36] and constituted violations of the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

It is uncontroverted that the some three million shares of Class A Omega stock distributed during 1968 as found herein[37] were not registered under the Securities Act and that no registration statement was on file as to the stock. The burden of proving an exemption to the registration requirements rests upon him who claims the exemption.[38] The fact that Omega obtained from each of the purchasers an "investment letter" reciting inter alia that he was acquiring the shares for

---

34/ It is clear from the record that participating customers who bought private-placement shares through Kleiner-Bell relied substantially on the fact that Kleiner-Bell was itself investing in Omega (through 140 Associates) and such customers had a right to assume, as they did, that Kleiner-Bell had made its decision to participate after reasonable inquiry, absent any contrary indications.

35/ One of Bank's more egregious misrepresentations to Kleiner-Bell was that Omega had orders from six oil companies for 58 underwater robots, called the UNAMO, to which Omega had acquired production rights and which was to be the principal product of the Omega Oceanographics, Inc. subsidiary which Omega formed. Such orders were in fact non-existent; the device had never been tested or approved by the Navy, as Bank misrepresented; and no tested, production model for the device was in existence.

36/ It is well established that a finding of wilfulness under Section 15(b) of the Exchange Act does not require an intent to violate the law and that it is sufficient that a respondent intentionally engaged in conduct which constitutes a violation. Tager v. Securities and Exchange Commission, 344 F.2d 5,8 (C.A. 2, 1965); Dunhill Securities Corporation, Sec. Exch. Act Rel. 9056 p. 4 (Jan. 26, 1971).

37/ See footnote 22 above.

38/ SEC v. Ralston Purina Company, 346 U.S. 119, 126 (1953); SEC v. Continental Tobacco Company of South Carolina, Inc., (C.A. 5th) No. 71-2955, June 2, 1972; SEC v. Culpepper, 270 F.2d 241, 246 (C.A. 2, 1959); In the Matter of Dunhill Securities Corp., et al., Sec. Exch. Act Rel. No. 8653, at p. 7 (July 14, 1969).

investment and that he had no "present intention" of selling or otherwise disposing of the shares is not alone sufficient to establish an exemption under Section 4(2) of the Securities Act, which section exempts "transactions by an issuer not involving any public offering."[39/] Particularly is this true here, where one of the primary inducements to purchasers of the stock was the undertaking by Omega to attempt to secure registration in early 1969 of the shares being distributed through the private placements.

As put by the Supreme Court in Ralston Purina,[40/]

> ". . . Since exempt transactions are those as to which 'there is no practical need for [the bill's] application,' the applicability of §4(1) [now §4(2)] should turn on whether the particular class of persons affected needs the protection of the Act. An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering.'
>
> * * *
>
> ". . . . The focus of inquiry should be on the need of the offerees for the protections afforded by registration. The employees here were not shown to have access to the kind of information which registration would disclose. . . ."

To the extent that Kleiner-Bell arranged to sell the "investment-letter" shares of Omega to customers that did not have access to information that would normally be available in the form of a registration statement,

---

39/ The signing of investment letters and the imprinting of restrictive legends on the stock certificates are not sufficient to constitute the offering a private one in the absence of proof that the purchasers actually had access to the kind of information that a registration statement would disclose. SEC v. Continental Tobacco Co., supra; U.S. v. Custer Channel Wing Corporation, (C.A. 4th, 1967), 376 F.2d 675, cert. den. 389 U.S. 850.

40/ SEC v. Ralston Purina Co., 346 U.S. 119, 125, 127 (1953).

they participated in violating Section 5 of the Securities Act.[41] Purchasers Richards, Temkin, Ziff and Blywise all testified that they did not have access to financial information, nor did they have other knowledge of Omega, which would have provided them the kind of information which registration would have disclosed. Moreover, the record lacks any satisfactory proof that the other purchasers who obtained their letter stock through Kleiner-Bell had access[42] to the kind of financial information and knowledge respecting Omega that would make unnecessary their receipt of the kind of information that a registration statement customarily discloses.[43]

As stated in Crowell-Collier Publishing Co.,[44]

> ". . . . Counsel and their issuer and underwriter clients cannot base a claim to exemption from registration under the Securities Act upon the mere acceptance at face value of representations by purchasers that they take for investment and disclaim responsibility for investigation and consideration of all relevant facts and circumstances pertinent to a determination that the transactions do not involve a public offering . . . ."

Respondent having failed to establish the availability of any exemption to the registration provisions of Section 5 of the Securities Act, it is concluded that Kleiner-Bell wilfully violated and wilfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities

---

41/ SEC v. Ralston Purina Co., supra; Gilligan, Will & Co. v. SEC, 267 F 2d 461, 466 (1959), cert. den. 361 U.S. 896.

42/ While 140 Associates, the investment partnership formed by Kleiner-Bell itself, would normally have access to such information, the fact is that Kleiner-Bell never obtained adequate data concerning Omega and its subsidiaries on its behalf.

43/ Nor, for that matter, has Respondent Petillon established that purchasers of Omega "letter-stock" who bought other than through Kleiner-Bell (see footnote 21 above), had access to information, or knowledge, concerning Omega that would make the §4(2) exemption of "transactions. . . not involving any public offering" available.

44/ Crowell-Collier Publishing Co., Securities Act Release No. 3825 (1957), p. 6.

Act. [45/]

Kleiner-Bell's Representations to OTC purchasers of Omega Stock

During July, August and September, 1968, one of Kleiner-Bell's registered representatives, Stephen D. Askin ("Askin") recommended the purchase of Omega stock to his customers in the over-the-counter market.[46/] Four customers who bought such OTC shares through Askin, at market prices[47/] that were then substantially above the $3.25 price of the private-placement Omega shares handled through Kleiner-Bell, testified at the evidentiary hearing. While they were told in general terms of Bank's optimistic projections and outlook for Omega in connection with its acquisition program, they were not told of the adverse indications in Bank's background or of the fact that Kleiner-Bell and others, including some Kleiner-Bell customers, had recently purchased, or were to purchase, substantial quantities of Omega stock at prices substantially below the market price. Kleiner-Bell's wilful failure to make these disclosures violated the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

45/ The record establishes that the mails and telephones were utilized in offering and selling the Omega shares.

46/ The record also establishes that several other registered representatives at Kleiner-Bell had customers who had OTC transactions in Omega, but the record does not establish whether these transactions resulted from recommendations of the registered representations or not.

47/ See footnote 20 above. The mails and telephones were utilized in connection with these purchases.

Petillon's Involvement in the Private-Placement and OTC Sales of Omega Shares

Respondent Petillon's involvement in the private-placement and OTC purchases of Omega stock was neither so central and pervasive as the Division urges nor was it so incidental and peripheral as the Respondent contends. His involvement falls somewhere between the strongly-opposed contentions; however, the record establishes it was sufficiently substantial and extensive to make unavoidable a conclusion that Petillon aided and abetted Kleiner-Bell's violations in connection with its participation in the private placement of Omega stock and that he aided and abetted, albeit in a much lesser degree, the violations respecting Kleiner-Bell's OTC sales of Omega stock.

During the summer of 1968 Lawrence Smith ("Smith"), mentioned[48/] to Shapiro, Petillon's supervisor, the opportunity for Kleiner-Bell's participating in Omega's "private placement" of its stock at a substantial discount from market price.

Shapiro turned Smith over to Petillon and asked Petillon to look into the Omega situation to ascertain whether the proposed private placement would be a good deal for Kleiner-Bell to get into.

After meeting with Smith on one or two occasions on the proposed Omega private placement,[49/] Petillon arranged through Smith to meet

---

48/ Smith at the time was a registered representative with Hornblower, Weeks & Company but was negotiating with Shapiro to come to Kleiner-Bell as a principal. Smith had earlier met Bank and learned of Bank's program to finance Omega's acquisitions through the private placement of stock. Smith told Shapiro he would personally invest in Omega if Kleiner-Bell did and that he expected a finder's fee if Kleiner-Bell went into the deal.

49/ Smith had made no personal or independent investigation of Omega or its actual or proposed subsidiaries and was therefore only able to relate to Petillon the somewhat general terms of the proposed private placement and of Omega's contemplated acquisition program as Smith had heard of them from Bank.

with Bank in New York, New York, in late June or early July, inasmuch as Petillon had to be in New York in any event on other business.

Petillon's meeting in New York City with Bank lasted several hours, during which Bank related various details of Omega's proposed acquisition program, including mention of the specific companies being acquired or whose acquisition was in various stages of negotiation or contemplation. Petillon made sketchy, handwritten notes of his discussions with Bank on the traditional yellow lawyer's pad. Based on the some 16 acquisitions contemplated, Bank estimated to Petillon that Omega would have projected sales for the fiscal year of $250,000,000 and earnings of $11,925,000 on 8,000,000 shares for net earnings of about $1.50 per share.

Based on his notes and his recollections, Petillon reported orally to Shapiro after his return to Los Angeles, California, what he had learned from Bank, but no written report or memorandum was submitted.

Subsequent to his meeting with Bank in New York, New York, Petillon met further with Bank at Los Angeles on two or three occasions prior to July 20, 1968, at the hotel at which Bank was staying. Smith was present at one or more of these meetings, and various other people were present at each of these meetings, whose general purpose was to enable Bank to expound, explain, and advance Omega's acquisition program and to interest people in the proposed private placements of Omega stock as well as to engineer acquisitions. Petillon made notes during at least one of these meetings. In the course of one of the meetings he met and talked to an officer of one of the companies Omega proposed to acquire.

Stephen D. Askin ("Askin"), then employed by Kleiner-Bell as a registered representative, also attended at least two of these meetings at Bank's Los Angeles hotel that Petillon attended. Askin's primary interest in the Omega situation was that he was attempting to earn a finder's fee in connection with presenting to Bank a firm that Askin was familiar with as a potential acquisition prospect for Omega.[50/] Askin became so interested in and involved with Omega that he later told Petillon he would be recommending Omega for OTC purchase by his customers at Kleiner-Bell.[51/] Upon learning of this intention of Askin's, Petillon did nothing to suggest to Askin or Shapiro or to anyone at Kleiner-Bell that before any such OTC purchases were recommended the customers be given the required cautionary advice concerning the lack of any satisfactory financial data on Omega and its actual or proposed subsidiaries and respecting the fact that Omega's acquisition program involved the sale of some 3 million shares of Omega "letter stock" to various customers at prices substantially below the market price.[52/]

50/ Askin left Kleiner-Bell in late September or early October, 1968, and went to work for Omega.

51/ See pp. 20 above.

52/ See findings at p. 20 above. Although it is true, as Petillon urges, that he had no assigned responsibility for determining what was told customers of Kleiner-Bell, it is nevertheless true that he knew as much as most at Kleiner-Bell of Omega's private-placement program and of the lack of information respecting Omega and its acquisition, and he must therefore share the responsibility for having failed to hoist a warning signal within Kleiner-Bell.

In the course of the meetings with Bank in Los Angeles, Petillon met Jerry Tenney, the president of Omega, as well as one of the principals of National and Western Technology, one of Omega's subsidiaries, and Larry Finley of North American Leisure Corporation, another subsidiary of Omega. As a further aspect of his looking into whether Kleiner-Bell should get into the Omega deal, Petillon called Harold Lifton, president of TIC, the company Bank had previously worked with in its acquisition program. From Lifton Petillon learned that Bank in the past had been indicted twice on charges of securities law violations. From Bob Berliner, who shared an office with Petillon, he learned that a customer of Kleiner-Bell's had had some dealings with Bank which had turned sour and for which the customer blamed Bank.[53/] Petillon related the gist of these indications of adverse information in Bank's background to Shapiro and suggested the desirability of a background investigation of Bank. Shapiro ordered a Bishop's report through Seymour Goldfeld, a vice president and house legal counsel of Kleiner-Bell's in its New York, New York offices,[54/] on or about August 10, 1968.

53/ Petillon also talked to Larry Finley about Bank, but it is not clear precisely what Petillon may have learned about Bank from this conversation, though there is some indication the indictments may have been mentioned.

54/ Goldfeld's former law firm was still outside counsel for Kleiner-Bell's New York office but Goldfeld handled certain legal matters internally as house counsel. Goldfield was a 4% partner in 140 Associates.

Sometime prior to July 20, 1968, on the basis of his meetings with Bank and his other very limited inquiry into the Omega situation, Petillon recommended to Shapiro orally that Kleiner-Bell participate in the private placement; his rationale for doing so, as he testified at the investigation preceeding the bringing of this proceeding, was as follows:

> Q. And you made this recommendation notwithstanding the derogatory information that you obtained about Mr. Bank?
>
> A. Yes, sir.
>
> Q. What were the reasons for your making this recommendation, Mr. Petillon?
>
> A. Well, I felt that Mr. Bank had the requisite business ability and competence to make attractive and favorable acquisitions for Omega Equities Corporation on a basis that would provide an earnings basis which was an attractive -- represented an attractive speculative businessman's risk. I did take into consideration that Mr. Tipton, [sic] 55/ who had retained this man as an associate, stated that he was competent and trustworthy in terms of his association with him and that he had a considerable expertise and experience in making acquisitions and that he knows the record publishing business and to a greater extent than the softgoods business, but has some familiarity with that business. 56/

55/ The individual being referred to was Harold Lifton (not Tipton) who was head of TIC, which Bank had been instrumental in diversifying and re-financing earlier.

56/ Petillon urges that this testimony and all of his testimony at the investigation is inadmissible in this proceeding on the ground that he lacked effective legal counsel at the investigation, where he was represented by Seymour Goldfeld, Kleiner-Bell's house counsel in New York, who also represented Shapiro and other Kleiner-Bell personnel at the investigation. Respondent urges this on the ground that Goldfeld, having himself been involved in the Omega private placement, had a conflict of interest and that he had a further conflict of interest from having represented Shapiro, who testified

(Continued)

In addition to receiving Petillon's assessment of the advisability of Kleiner-Bell's participation in the Omega private placement, Shapiro had been following the course of Omega's acquisition program independently, as evidenced by clippings from newspapers collected in the "banking" file kept on Omega in Shapiro's offices. In addition, Shapiro may have had a meeting or two with Bank prior to July 20, 1968.[57/]

At any rate, on July 20, 1968, Shapiro directed Petillon to prepare

---

56/ Continued
first and said he had received a recommendation re Omega from Petillon. Respondent urges that both Goldfeld and Division's counsel should have advised Petillon that because of possible conflicts between himself and Shapiro and Goldfeld, he might wish to obtain independent counsel. Respondent further urges that he should have been advised that Shapiro had testified in a manner that "implicated" Petillon. It is concluded that this position is without merit. Petillon, an attorney himself, was as aware as anyone that there was a potential conflict between his testimony and that of Shapiro and of a potential conflict of interest with Goldfeld. If Petillon had appeared with different counsel, such counsel would have been unaware of Shapiro's earlier testimony and in no position to apprise Petillon thereof. There is nothing in the record to suggest that Goldfeld's counsel was in fact ineffective or that Petillon's testimony at the investigatory hearing would have been significantly different had he had different counsel. Moreover, Petillon had, and fully availed himself of, the opportunity at the hearing in this proceeding to explain and put into proper context the testimony he gave earlier at the investigation. In addition, as is clear from findings made herein, the "recommendation" made by Petillon is not a critical element in the findings against him. His testimony at the hearing on the point was not essentially different.

57/ See footnote 70 below.

and forward to Goldfeld in their New York office, for further handling by Goldfeld with Bank, a "letter of intent" regarding the terms and conditions under which Kleiner-Bell would consider participating in the private offering. Petillon prepared such a draft letter of intent, for Goldfeld's signature, and forwarded it to Goldfeld under cover of his memorandum to Goldfeld of July 20, 1968. 58/ While Goldfeld and Petillon had one subsequent telephone conversation concerning the draft letter of intent (during which, incidentally, Petillon asked about the investigative report on Bank and learned that a Bishop's report had been requested) the letter was never signed by Goldfeld nor was it utilized by him as a basis for his subsequent discussions with Bank, during which Bank gave Goldfeld much the same kind of information regarding proposed acquisitions and projected earnings as he had previously given Petillon. After telephone consulations between Goldfeld and Shapiro, the latter gave the former the go-ahead to execute on Kleiner-Bell's behalf the two subscription agreements, 59/ signed August 9 and to be

---

58/ The two documents constitute Exhibit 35. The draft letter of intent contained three major conditions which would have required Omega to: (1) have consummated acquisition of the 16 companies set forth (or mutually-agreed substitutes) by August 31, 1968 and to have made available financial statements for each of them for themost recent fiscal annual period, including balance sheets and profit and loss statements; (2) file a registration statement with the Commission covering the contemplated 3,000,000 share private placement by March 31, 1969, and use its best efforts to make the same effective; and (3) give to Kleiner-Bell the right of first refusal to underwrite the public offering of the stock of Omega Oceanographics Inc. (a subsidiary of Omega formed around the UNAMO underwater robot device, of which Bank proposed selling 30% of the stock in a public offering) and the right of first refusal on any underwritings, whether primary or secondary, of Omega distributions until June 1, 1969.

59/ The subscription agreements were drafted by Richard Hull, a vice president, director, and General Counsel of Omega, who signed for Omega,

(Continued)

"closed" on August 14, under which 450,000 shares of Omega were placed through Kleiner-Bell.

At the time Shapiro told Goldfeld to go ahead with the subscription agreements he knew that not all of the 16 acquisitions contemplated by the letter of intent of July 20 had been consummated and that financial data concerning the subsidiaries that had been acquired had not been furnished. However, in the knowledge that a "substantial number" of the acquisitions had been consummated, and, caught up in the euphoria of the times, when it was not uncommon to go ahead with "deals" of this kind without requiring the normal investigations, financial data and warranties, Shapiro decided to go ahead. Shapiro could have "killed the deal", notwithstanding Petillon's assessment thereof, as Shapiro himself testified; however, this is not to say that Petillon's recommendation was not a contributing factor in the decision to go ahead.[60/]

59/ (continued)
and reflected some minor changes in language suggested by Goldfeld, who signed for Kleiner-Bell on Shapiro's authorization. While the agreements included provisions calling for Omega to seek registration of the stock not later than February 28, 1969, the other two "conditions" set forth in Petillon's July 20 draft "letter of intent" (see footnote 58 above) were not incorporated or reflected in the subscription agreements.

60/ Shapiro testified that to some degree he was influenced by Petillon's views on the Omega situation though he was unable to quantify the amount or degree of such reliance and though he readily conceeded that he was the person in authority who could have "killed the deal."

Sometime prior to the "closing" of the purchase of the 450,000 shares of Omega, on August 14, 1968, Petillon talked to three of the ten customers[61] who were to purchase portions of the Omega shares bought through Kleiner-Bell, at the request of Marty Shapiro,[62] a registered representative at Kleiner-Bell. Petillon related to them the substance of what Bank had told him about Omega's acquisition plans and spoke of Omega in an optimistic vein. He failed to tell them that he had negative indications concerning Bank's background[63] that were sufficiently disturbing to cause Kleiner-Bell to order an investigative report on Bank. Further, he failed to advise the three purchasers that Kleiner-Bell had no reliable financial data on Omega or its acquisitions and had not undertaken any real investigation of Omega even in the light of the adverse indications it had on Bank.

61/ The three individual purchasers were Harold Ziff, Jack Tempkin, and Maurice Lewitt.

62/ Marty Shapiro is a brother of Ralph Shapiro, who, as above found, was a partner and principal of the firm and Petillon's supervisor.

63/ At the investigation preceding the institution of this proceeding Petillon testified that he had advised the three that Bank had had some problem but had been exonerated. Respondent's testimony in this regard is not credited in light of the unequivocal contrary testimony at the hearing of witnesses Temkin and Ziff and in light of the observation of the demeanor of the two witnesses and Petillon at the hearing.

After the ten purchasers had agreed to purchase Omega letter stock through Kleiner-Bell, Shapiro by memo dated August 21, 1968 (Exhibit 38) [64/] gave Petillon the follow-up task of obtaining from most of them [65/] investment-letters, which Omega required, and which were designed to evidence that the purchasers were sophisticated investors purchasing for investment and not for resale. On August 28, 1968, Petillon had sent out over his signature [66/] draft investment letters to be signed by seven of the customers, and in due course such letters were executed and returned to Kleiner-Bell. [67/]

Petillon did not inquire into the status of the investigative report on Bank that Kleiner-Bell had ordered, on his recommendation, and did not advise the seven purchasers whom he contacted to get their "investment letters" that Kleiner-Bell had requested such a report

---

64/ Petillon testified that it was not until receiving the August 21 memorandum from Shapiro, with which he also received Kleiner-Bell's "banking file" on Omega, including the subcription agreements, that he learned such agreements had been signed. However, a letter dated August 20, 1968, from Petillon to Bank (Exhibit 76) indicates that Petillon knew of Kleiner-Bell's participation in the private placement at least as early as August 17. See footnote 73 below and text relating thereto.

65/ As reflected in Exhibit 78, Petillon obtained the investment letters from seven of the purchasers. Three others were obtained either in New York or by Shapiro or others.

66/ As authorized by him, his secretary actually signed the letters for him. The draft "investment letters" were back-dated August 14, 1968.

67/ Petillon had not had a hand in selecting any of the ten participating customers although, as noted above, he had talked to three of them. Shapiro had "approved" the alleged sophistication of these purchasers, but Petillon had a duty to check into the reality of their sophistication when assigned the task of getting "investment letters." It should have been quite evident to Petillon, an attorney, that the matter was being handled very perfunctorily, and he should not have lent himself to the process.

nor did he advise them that no adequate investigation had been made of Omega or its actual or potential subsidiaries. Petillon's argument that by this time the subscription agreements had already been signed is not valid because, though that was so, the individual purchasers could still have backed away from participation had they been properly apprised of the facts they had a right to know.[68/]

After the purchase agreements between Omega and Kleiner-Bell, Petillon continued to have contact with Bank.[69/] On two or three occasions, when Bank called at the offices of Kleiner-Bell to see one or more principals of the firm,[70/] he had brief conversations with Petillon.[71/]

The record also contains several documents evidencing Petillon's continuing contacts with Bank, apart from the brief conversations just mentioned. Thus, on August 20, 1968, Petillon wrote a letter to Bank[72/] referring to a discussion he had had the previous Saturday

---

68/ The participating purchasers' confirmations show August 15, 1968 as the trade date and August 22 as the settlement date. Had Petillon made proper disclosure to them, they could properly have declined to sign their "investment letters" and demanded return of their funds, in which event Omega, which had demanded the investment letters, would doubtless not have regarded them as proper purchasers in a private placement and would have called on Kleiner-Bell to produce proper purchasers, such as the "five mutual funds" contemplated by the subscription agreement. (Even if there were no "turning back" for the purchasers, Petillon should still not have lent himself to obtaining the confirmations and thus aiding completion of the fraudulently-induced transactions.)

69/ Petillon testified that he considered himself "out of the loop" after preparing the draft letter of intent dated July 20, 1968, but the record clearly contradicts this contention.

70/ The record indicates that Bank called at Kleiner-Bell to see Shapiro and perhaps other officers on a number of occasions, generally to talk about the possibilities of an investment-banking relationship, but one or two of these visits may have preceded July 20, 1968.

71/ In addition, Petillon received a number of phone calls from Bank, but they were not frequent.

72/ Exhibit 76.

(August 17) with Bank and Askin concerning, among other things, a proposed public offering of a portion of the stock of Omega Oceanographics, Inc. and a possible investment-banking relationship between Kleiner-Bell and Omega. Petillon's letter also asked Bank to furnish an opinion of Omega's counsel that the recent private placement by Omega was exempt from registration under the "private offering" exemption.[73/]

On August 20, 1968, Petillon also wrote Bank a separate letter[74/] enclosing two proposals by Bernard F. Klein "in the oceanographics area" with the suggestion that Bank might wish to have his technical expert, a Dr. Gould, interview Klein.[75/]

Respondent Petillon urges strenuously inter alia that he was never assigned the task of making a full and complete investigation of Omega; that after preparing the July 20, 1968, draft letter of intent (which he urges contained protective conditions that were thereafter not insisted upon by Kleiner-Bell) he had nothing further to do with Kleiner-Bell's decision to go ahead with the private-placement agreements and that he did not learn of them until after they had already been executed by Kleiner-Bell and Omega in New York, New York; that he had personal contact with only three of the ten Kleiner-Bell customers

---

73/ This indicates that Petillon knew of Kleiner-Bell's participation in the private placement at least by August 17, 1968, rather than not until August 21, as he testified. See footnote 64 above.

74/ Exhibit 77.

75/ In addition to Petillon's letters to Bank subsequent to the purchase agreements between Omega and Kleiner-Bell, Petillon also wrote a memorandum dated August 26, 1968, (Exhibit 93) in which he reported to Shapiro, among other things, the discussions Petillon had had with Smith concerning the finder's fee Smith should receive in the event Kleiner-Bell were to underwrite a public offering of Omega Oceanographics Inc. shares.

who participated in the private placement through Kleiner-Bell, and that such contact was minimal; and that he had no contact with the customers of Kleiner-Bell who purchased Omega stock in the over-the-counter market on the recommendation of Askin and other registered representatives at Kleiner-Bell.[76/] In brief, Petillon urges that Shapiro's decision to go ahead with the Omega private placement was predicated upon Bank's prior "track record" with TIC, the fact that Omega stock was active in the market and the subject of favorable publicity, and by the opportunity to buy the stock at very substantial discount with the hope for shortly making a "killing" in the stock after it became registered. With these motivations in operation, Petillon urges, his alleged failure to have made an adequate investigation of Omega and its acquisitions was essentially irrelevant.

While these arguments are relevant as to the degree and extent of Petillon's participation, they do not serve to exonerate him of his responsibility for having aided and abetted the violations by Kleiner-Bell, on the basis of the facts found above.

While it is true that Shapiro never told Petillon how detailed an investigation of Omega he should make,[77/] and while Shapiro was well

---

76/ The Division also urges that by failing to warn Askin about the Omega situation Petillon was also responsible for other Omega sales through various other brokerage houses who became interested in Omega through Askin. It is concluded that Petillon cannot reasonably be held responsible for such alleged violations because the record shows that Petillon's connection was too remote and that there were too many "intervening causes."

77/ In this connection it should be noted that Petillon wasn't instructed either on the depth or type of investigations he was to make on the 300-400 start-up situations that engaged most of his attention while he was at Kleiner-Bell. It was assumed by Shapiro that in light of his background Petillon knew how to go about making an appropriate investigation.

aware when he gave the go-ahead on the private placement that Petillon had not in fact made a detailed investigation, this does not excuse Petillon from some responsibility for having failed to inquire more deeply, or, in the alternative, from having raised an objection to going through with the private placement once he learned it was proposed to do so 78/ without obtaining even the financial data on Omega and its subsidiaries that were contemplated in the July 20, 1968 letter of intent. Without one murmur of protest or the faintest demurrer, Petillon went ahead and lent himself to the getting of investment letters from 7 of the 10 participating customers without telling them what they had a right to be told. It is not enough to say that Petillon was acting on Shapiro's instructions or at his direction. Petillon was well aware of the facts whose disclosure was called for and his position was one of sufficient responsibility to have called for him to have raised the proper warning flags, whether he was in the position of making ultimate decisions or not. He was not a neophyte — both his experience before coming to Kleiner-Bell and his work at Kleiner-Bell were such as should have given him a sound appreciation of the importance of reliable financial and other pertinent data to an investor. Additionally, his status as a lawyer precludes his pleading ignorance of his own responsibilities in the matter.

Petillon's silence and inaction, under circumstances which called on him to speak out, would alone be sufficient to sustain the charge

---

78/ See footnotes 64 and 73 above respecting the date on which Petillon learned Kleiner-Bell had agreed to participate in the private placement.

that he aided and abetted, even apart from such affirmative acts by him as are found herein. 79/

The fact is that Petillon did not "wash his hands" of the Omega participation by Kleiner-Bell after July 20, 1968, and "go back to his regular work". The record shows, as found above, that he not only participated in the final, necessary step to consummate the purchases of the participating Kleiner-Bell customers, but that he continued to have contacts with Bank respecting Omega, both in person and through correspondence.

Likewise, as respects the customers who purchased Omega stock over-the-counter through Kleiner-Bell, which Petillon had reason to know was happening as a result of his conversations with Askin, Petillon never raised with anyone at Kleiner-Bell any question as to whether such purchasers were being properly advised of the relevant facts. While in this area Petillon had less responsibility than he did with respect to the private-placement purchasers, nevertheless it cannot be concluded that he was utterly without responsibility as to the over-the-counter purchasers in view of the degree of his knowledge of the Omega situation.

Conclusions

In general summary of the foregoing, the following conclusions of law are reached:

(1) During the period from approximately June 1968 to September 1968 Respondent Petillon wilfully aided and abetted violations of the registration provisions of Sections 5(a) and (c) of the Securities Act

---

79/ Brennan v. Midwestern Life Ins. Co., 259 F. Supp. 673, 681-2, (N.D. Ind. 1966), 286 F. Supp. 702 (N.D. Ind., 1968), aff'd 417 F.2d 147 (C.A. 7, 1969), cert. den. 397 U.S. 989 (1970).

of 1933 by aiding Kleiner-Bell to act as an underwriter in connection with the distribution of unregistered securities of Omega, as more particularly found above.

(2) During the period from approximately June 1968 to December 1968 Petillon wilfully aided and abetted violations by Kleiner-Bell of the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with Kleiner-Bell's acting as underwriter in the private placement of Omega shares and in connection with Omega's recommendations to its customers that they purchase Omega shares in the over-the-counter retail market at the then-current market price without making disclosure of necessary facts, as more particularly found above.

PUBLIC INTEREST

The registration and antifraud provisions of the securities laws found here to have been violated are fundamental components of the statutes under which the securities industry is regulated, and the application of appropriate sanctions for violations is indispensable to the protection of the public interest.

The Division urges that the Respondent be barred for at least a year with the proviso that after such time he might become reemployed in the securities industry in a non-supervisory capacity.

The respondent, maintaining as he does that he committed no violation, urges that no sanctions are warranted.

So far as appears, Respondent has never before been the subject of any disciplinary action.

His aiding and abetting of the violations found was more the result of sins of omission then of commission. He failed to raise caution or warning flags when information he had as well as his relationship to unfolding events, clearly dictated that he should have spoken up. His status as a lawyer should, if anything, have made him more keenly aware of the need to sound an alarm within the Kleiner-Bell firm.

Nevertheless, it is also true that Respondent Petillon's role was a secondary one as contrasted with Shapiro's and even perhaps Goldfeld's. Both Shapiro and Goldfeld are also lawyers and each was more experienced in the kinds of transactions here involved.

From the record there is no positive assurance that Kleiner-Bell would have withdrawn from its projected participation in the Omega private placement or made the necessary disclosures if Petillon had expressed the called-for warnings. Shapiro was actively following developments and was as aware as Petillon, if not more so, of what should have been done. Yet this cannot excuse Respondent Petillon, for the issue is whether he aided and abetted and not whether others may have been more culpable.

Under all the circumstances, it is concluded that a suspension of the Respondent for 45 days is appropriate and sufficient in the public interest.[80/]

80/ By way of dictum it is desired to express the view that additional proceedings against Respondent Petillon in his capacity as an attorney under 17 CFR 201.2(e)(3) would not be warranted in light of the entire record in this proceeding and observation of the Respondent and of the witnesses who testified at the hearing.

ORDER

Accordingly, IT IS ORDERED that Lee Petillon is hereby suspended from being associated with any broker or dealer for 45 days.

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice, 17 CFR 201.17(f).

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c) determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party. 81/

David J. Markun
Administrative Law Judge

Washington, D.C.
November 30, 1972

81/ To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the issues presented.