

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-4743

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :  
ROBERT N. CAMPBELL :  
Rule 2(e) - Rules of Practice :  
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**FILED**  
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SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

Washington, D.C.  
November 18, 1976  
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Irving Sommer  
Administrative Law Judge

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APPEARANCES: Thomas E. Boyle, Esq., for the Office  
of the Chief Accountant.

Frederick E. Saefke, Jr., Esq., for  
Robert N. Campbell.

BEFORE: Irving Sommer, Administrative Law Judge

By order dated October 7, 1975 ("Order") issued pursuant to Rule 2(e)(3) of the Rules of Practice, the Commission temporarily suspended Robert N. Campbell, a certified public accountant, from appearing or practicing before the Commission. The Order charged that Campbell was permanently enjoined by final judgment of the United States District Court for the District of North Dakota, Southwestern Division, dated July 8, 1975 from further violating Section 17(a) of the Securities Act of 1933, as amended.

A petition of Campbell to lift the temporary suspension was denied by the Commission on December 17, 1975, at which time the Commission further ordered that a hearing be held on January 6, 1976 pursuant to Rule 2(e)(3)(iii) of the Commission's Rules of Practice. By consent of both parties, the commencement of the hearing was postponed until January 23, 1976.

During the hearing, Campbell was represented by counsel. As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings thereof were made by the parties.

Respondent

Robert N. Campbell, 45 years of age, is a certified public

accountant. Since May or June 1975 he has been employed by various oil companies, checking titles and other related services. He is not practicing accounting.

He attended the University of North Dakota and received a degree in Business Administration. Accreditation as a certified public accountant was granted by the State of North Dakota in 1962.

Upon completion of his formal education, Campbell became employed as an assistant auditor with the State of North Dakota Board of Auditors. After one year he left and became employed as comptroller of the North American Royalties, Inc., where he had responsibility for all accounting functions. In 1959 he left this company and was engaged in the practice of accounting as a single proprietor doing general accounting and auditing until 1969, when he became employed as an administrative assistant with the First American Bank and Trust Company (FAB). He was given increasingly more responsible duties and responsibilities and rose to the position of vice-president-finance, in which position he was in charge of the accounting operations. In 1971, Campbell became a director of the corporation. He has received no compensation from FAB since 1972.

Disqualification of Respondent

It is concluded on the basis of the record that respondent should be permanently disqualified from appearing or practicing before the Commission. As stated in the order, this matter arises out of the entry on July 8, 1975 of a consent judgment of permanent injunction against the respondent in an action brought by the Commission.<sup>1/</sup>

FAB has been engaged in business as a trust company and banking institution in the City of Bismark, North Dakota since 1963. It appears from the record in the injunctive action that Campbell, a certified public accountant was vice-president in charge of accounting operations, as well as a director and trust officer. He was responsible for the day to day accounting operations. As part of its business, the company engaged in the leasing of personal property.

During 1970 and 1971, Campbell, in his capacity as the officer in charge of accounting operations materially overstated earnings of FAB through the improper recognition of revenues and realization of profits with respect to the leasing of personal property. FAB recorded the total gross income to be

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1/ S.E.C. v. First American Bank and Trust Company, et al.,  
Civil Action No. 1088 (D. N.D. S.W. Div. 1975).

received from a lease immediately after the contract was executed, when in fact this revenue was allocable over a period of years, i.e., the life of the lease. As a result, current earnings were materially overstated. This treatment of lease income was not in conformity with generally accepted accounting principles. Campbell acknowledged there was no accounting support for his position, alleging that such "constructive receipt" was valid for internal revenue purposes. His accounting treatment of advanced lease income, and his discourse on what he considered to be the cash method of accounting, revealed a woeful lack of knowledge on his part of generally accepted accounting principles.

In the same vein, when dealing with lease assets, Campbell completely disregarded generally accepted accounting principles, and entered upon the records not only the cost of the personal property, but capitalized the lease contract. In effect, a \$1000 asset when leased over a period of years for \$1500 became a \$2500 asset. As the Court stated to Campbell, "Just a minute. Now, if I follow this, you have a \$2500 (sic) improvement on a thousand dollar investment." His response was, "that's correct. As of the day of the lease, that's correct.

They increased their income by a full \$1500 right on that day."

By this sleight of hand, Campbell was able to inflate the assets of FAB, under a highly improper method. Mr. Howdestad, a certified public accountant, who had been one of the auditors in the May 1971 and November 1971 examination of FAB undertaken by the State Examiner of North Dakota was of the opinion the company was insolvent, its assets being less than liabilities. Campbell, however, felt otherwise meeting this allegation by inflating asset values resulting in records which did not reflect the sorry state of FAB's financial position.

The effect of the foregoing improper entries was to conceal from the public and the state banking authorities the poor financial condition of the company. This duplicity on the part of FAB is vividly seen in their issuance of a press release early in 1972 reporting a net profit of \$250,000 for 1971. Campbell's testimony on this point was contradictory and unbelievable. At first he testified he did not know the 1971 profit, not having made the computations; at another point in the testimony he estimated a \$2700 profit for approximately

six months of 1971 with no full knowledge of the complete year, and finally that the \$250,000 figure was correct. Campbell knew that this press release was in error and that there was no such profit. He further knew that the profit was based on his highly improper treatment of lease income. It should be noted that lease income was credited to current operations, although not received.

In spite of his knowledge that the company's financial position was falsely presented in the press release, Campbell admittedly took no action to apprise the general public of its actual financial status.

The record further shows that in order to inflate the company's capital position, \$219,500 of capital notes were included therein, although Campbell knew that the State Examiner had refused to permit same, since there was a serious question whether the notes were valid.

As an officer, director and management employee in charge of day to day operations, Campbell approved and participated in the sale of company securities (capital notes and guaranteed notes of interest). He was aware of a decision



by the Supreme Court of North Dakota <sup>2/</sup> holding that the company had improperly issued the securities since it was not registered as a broker under state law, and may be subject to penalties. The status and validity of these securities were of concern to investors, yet Campbell admitted that FAB took no steps either to inform the investors or make any offers to rescind the sale. His line of reasoning for failure to act was, "at the time the report came out, the news media reported it generally throughout the area -- the state -- and we didn't do anything further."

Additionally, an advertising brochure used to spur sales of these securities was misleading in stating among others, that "First American is bonded and insured by major insurance companies," when in fact FAB and Campbell knew there was no Federal Deposit Insurance Corporation coverage nor any other insurance covering deposits in effect.

While Campbell was fully aware both prior to and after the sale of the company's securities of its precarious

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2/ State ex rel. Holloway v. First American Bank and Trust Company, et al., Supreme Court of North Dakota, Civ. No. 8693, March 31, 1971, prehearing denied May 21, 1971.

financial position, of the findings of the state examiner (whether acquiesced in or not), the various court decisions and cases pending relevant to the company's financial status, he at no time felt obligated to inform the owners of its securities, and the public at large, who continued to invest in the company, of these material facts.

A showing having been made that respondent has been permanently enjoined as noted above, respondent has the burden to show cause why he should not be permanently disqualified from appearing or practicing before the Commission.<sup>3/</sup> Respondent has not carried that burden. The sole argument advanced at the administrative hearing was that he had signed the consent order after reaching an understanding with S.E.C. counsel that the signing of the consent to be enjoined "would be the end of it." The attorneys for the S.E.C. denied any such representation. Following the close of the administrative hearing, Campbell instituted an action in the U.S. District Court<sup>4/</sup> to vacate the consent judgment on the

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<sup>3/</sup> 17 C.F.R. 201.2(e)(3)(iv).

<sup>4/</sup> S.E.C. v. First American Bank and Trust Company, et al.  
Civil Action No. 1088 (D. N.D., S.W. Div.), June 17,  
1976.

ground that the SEC "used fraud and misrepresentation in inducing him to enter into the consent judgment." The Court denied the motion stating that the facts are insufficient to establish any "fraud, misrepresentation, or other misconduct" by the attorneys for the S.E.C.

Counsel asserts, among other things, that Campbell has violated no ~~canons~~ of the accounting profession and that he never intended to mislead or deceive any one. He urges that there be no more than a temporary injunction imposed with consideration given to time the consent judgment has been in effect. I do not find these arguments persuasive.

The record clearly reflects that Campbell, a certified public accountant, and chief financial officer of a banking institution and trust company maintained the books and records and prepared financial statements which seriously understated and distorted the financial position and operations of FAB. His accounting treatment of lease assets, lease income, capital account valuation, accrual methods, were not in conformity with generally accepted accounting principles. He participated actively in the company management. He knew that the public was investing and depositing its funds in this banking institution

and trust company, and that the integrity of its financial structure must be maintained. His actions prevented both the public investors and the banking authorities from being fully cognizant of the realities of the company's financial standing.

Moreover, Campbell as an officer and director was an active participant in the sale of the Company's securities. He knew of the misrepresentations concerning the alleged insured status of deposits, and that FAB was not a dealer in securities and could not validly issue any. He admittedly failed to communicate this to any of the purchasers.

The public and investor trust demands that accountants carry out their usual duties in a manner consistent with their responsibilities. The accounting profession has conceived a body of generally accepted accounting principles which used appropriately results in financial reporting that is not misleading.

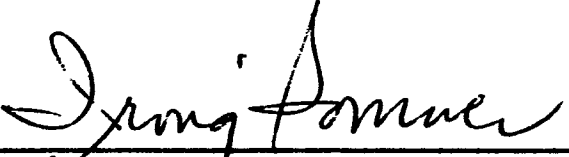
In my opinion, his conduct constitutes a serious breach of the standards of his profession, and his professional responsibilities to the investing public.

Accordingly, IT IS ORDERED, pursuant to Rule 2(e)(3)(iii) of the Rules of Practice, that Robert N. Campbell be, and he

hereby is, permanently disqualified from appearing or practicing before the Commission.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Rules of Practice.

Pursuant to Rule 17(f) of the Rules of Practice, 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.<sup>5/</sup>

  
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Irving Sommer  
Administrative Law Judge

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5/ All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision they are accepted.