

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-115

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matters of

LAWRENCE SECURITIES COMPANY (8-12017)  
LAWRENCE JAY BROWN d/b/a  
LAWRENCE SECURITIES COMPANY (8-11971)  
LAWRENCE JAY BROWN

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INITIAL DECISION

**FILED**

**OCT 17 1966**

**SECURITIES & EXCHANGE COMMISSION**

Sidney Ullman  
Hearing Examiner

Washington, D. C.  
October 17, 1966

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BEFORE: Sidney Ullman, Hearing Examiner

APPEARANCES: Joseph C. Daley, Chief Enforcement Attorney,  
New York Regional Office, Gerald Goldsholle and  
Richard L. Zorn, Attorneys, New York Regional  
Office, for the Division of Trading and Markets

Feldshuh & Frank, 144 East 44th Street, New York  
City, Attorneys for Respondents

## I: NATURE OF THE PROCEEDINGS

These are public proceedings ordered by the Commission pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") to determine what, if any, remedial action is appropriate in the public interest with respect to the above-named respondents, who are charged herein with violation of several provisions of the Exchange Act and rules thereunder.

In a stipulation between counsel for the Division of Trading and Markets ("Division") and counsel for the respondents, which stipulation is more fully discussed, infra, respondents admit all of the violations for the purpose of these proceedings, and the primary issue for determination is whether the Commission has jurisdiction to institute these proceedings and to impose sanctions. Inasmuch as I conclude herein that the requisite jurisdiction exists, a related question pertains to action to be taken by the Commission on notices filed by respondents for withdrawal of their registrations as brokers and dealers.

In brief, on the jurisdictional issue, respondents assert that at the time these proceedings were instituted respondents were no longer registered with the Commission as brokers or dealers or subject to its sanctions, and that the proceedings are a nullity. They contend that their registrations had been effectively withdrawn at a time sufficiently long in advance of the institution of these proceedings on April 29, 1965, to preclude the Commission from exercising jurisdiction or authority over them. They rely on a time limitation which, as set out in the margin, required Commission proceedings against a broker or dealer to be instituted no later than 30 days after receipt of a notice of his withdrawal from

registration. <sup>1/</sup> The following findings of fact and conclusions of law discuss the more detailed factual situation upon which respondents' contention is predicated, as well as the reasons for my rejection of the contention and my conclusion that jurisdiction exists.

At the brief hearing in this matter, counsel stipulated that the order for proceedings issued by the Commission on April 29, 1965 would be

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1/ The statutory basis for withdrawal from registration of a broker or dealer is contained in Section 15(b)(6) of the Exchange Act, which provides in pertinent part:

"Any registered broker or dealer may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission."

The pertinent regulation promulgated by the Commission, 17 CFR 240.15b-6-1 provided, before amendment effective May 2, 1966:

"If a notice to withdraw from registration is filed by a broker or dealer pursuant to section 15(b), it shall become effective on the 30th day after the filing thereof with the Commission, unless prior to its effective date the Commission institutes a proceeding pursuant to section 15(b) to revoke or suspend the registration of such broker or dealer or to impose terms or conditions upon such withdrawal. If the Commission institutes such a proceeding, or if a notice to withdraw from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to section 15(b) to revoke or suspend the registration of the broker or dealer filing such notice, and during the pendency of such a proceeding, the notice to withdraw shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors."

(Effective May 2, 1966, Securities Exchange Act Release No. 7847, April 1, 1966, designated a new form BDW for withdrawals, and extended the 30 day waiting period between the filing and effective dates to 60 days.)

amended, and that an Amended Order for Proceedings (Order) "shall be deemed to govern the proceedings herein." As indicated above, all of the charges alleged in the Order were admitted for the purpose of these proceedings. The stipulation also provides that the record in these proceedings shall include all papers filed in an action instituted by the Commission against respondents in the United States District Court for the Southern District of New York, styled Securities and Exchange Commission v. Lawrence Securities Company, et al., 65 Civil Action File No. 906.

Proposed findings of fact and conclusions of law were filed by the Division, but none have been filed by counsel for the respondents. The following findings and conclusions are based on the allegations of the Order, on the stipulations of the parties, and on other documents, papers and files comprising the record in the proceeding. They constitute the Hearing Examiner's determination that jurisdiction exists for the institution of these proceedings and for the imposition of sanctions, and they set forth the basis and support for such determination.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Effective June 5, 1964, Lawrence Jay Brown, d/b/a Lawrence Securities Company (the sole proprietorship) became registered with the Commission pursuant to Section 15(b) of the Exchange Act, having filed a Form BD indicating that the firm would conduct its business at 55 Liberty Street, New York City. The effectiveness of this registration was advised by letter of the Commission dated June 5, 1964 to Lawrence Jay Brown, d/b/a Lawrence Securities Company, and the firm was assigned File No. 8-11971.

Thereafter, on June 26, 1964, Lawrence Securities Company, a partnership in which Lawrence Jay Brown was named as general partner and two other persons were named as limited or special partners, filed with the Commission a Form BD for registration as a broker-dealer, indicating on page 2 of the Form that the applicant was taking over the assets and liabilities and continuing the business of Lawrence Jay Brown, d/b/a Lawrence Securities Company. The partnership also indicated on its Form BD that its offices were at 55 Liberty Street, New York City. By letter dated July 15, 1964, this applicant was advised that the registration would become effective on July 26, 1964, and the applicant was assigned File No. 8-12017.

Rule 15b1-3(a), issued under the Exchange Act, provides as follows:

"In the event that a broker or dealer succeeds to and continues the business of another registered broker or dealer, the registration of the predecessor shall be deemed to remain effective as the registration of the successor for a period of 60 days after such succession: Provided, That an application for registration on Form BD is filed by such successor within 30 days after such succession."

The obvious purpose of the Rule is to provide continuing registration for the business of a broker or dealer under the circumstances described. Assuming that the partnership fell within the coverage of the Rule despite the lack of detail, either in its Form BD or elsewhere, indicating that the partnership filing occurred within 30 days from succession to the business of the sole proprietorship, nevertheless it is clear that neither this Rule nor any other statutory or regulatory

provision operates to cancel the registration of the predecessor automatically; and that absent effective affirmative action to withdraw the registration of the sole proprietorship in accordance with Rule 15b-6-1 (fn. 1, page 3, supra) that registration as a broker and dealer remained in effect.

Accordingly, inasmuch as neither the assertion of succession in the partnership Form BD nor the Commission's registration of the partnership as a broker-dealer under a new number served to cancel or to trigger the cancellation of the sole proprietorship's registration, it follows that both firms remained registered with the Commission. Subsequent affirmative efforts of respondents to withdraw the registrations are discussed under that sub-heading, infra.

The record indicates that Commission supervision over the respondents and their broker-dealer activities was frustrated by the inability of investigators to enter the place of business at 55 Liberty Street in order to examine books and records required to be kept under Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder. On March 11, 1965, a telegram was sent to **Brown**, directing that the partnership books and records be made available to Commission representatives on March 15, 1965, at respondents' place of business. This effort and subsequent efforts were unproductive of results. Accordingly, on March 26, 1965, the Commission filed in the United States District Court for the Southern District of New York a complaint against Lawrence J. Brown, d/b/a Lawrence Securities Company, against the partnership, and against Lawrence J. Brown, as an individual, alleging that these respondents

were violating the provisions of the above-mentioned securities law and rules. On that date a temporary restraining order and an order to show cause were issued by the Court. Thereafter, a supplemental order granted the Commission additional time to effect service of said orders, and eventually, on April 9, 1965, respondents were ordered to produce all their books and records by April 12, 1965. On April 15, 1965, respondents denied all alleged violations of law.

Following examination of books and records produced by respondents which revealed serious deficiencies, and respondents' subsequent refusal to permit continued examination by representatives of the Commission, supplemental orders were issued by Judges of the United States District Court for the Southern District of New York, ordering the production at the Commission offices in New York City of the books and records required to be kept by Section 17(a) and the rules thereunder.

The above recital of litigation provides some background for an understanding of the Commission's institution of the instant proceedings to revoke and for an understanding of the efforts of the respondents to withdraw their registrations as brokers and dealers.

#### Affirmative Efforts to Withdraw the Registrations

On March 11, 1965, the Commission received at Washington, D. C., on the letterhead of Lawrence Securities Co., a letter stating: "We hereby request withdrawl [sic] of our broker-dealer registration. Very truly yours, Lawrence Securities Co. by Lawrence J. Brown, General Partner." However, this letter was not signed.

The letter was responded to by a Commission staff letter to



Lawrence J. Brown, d/b/a Lawrence Securities Co., dated March 18, 1965, ". . .returning your unsigned letter since [its] purpose is not clear." This letter also recited the registration of the sole proprietorship under File Number 8-11971 and the partnership registration under File Number 8-12017, and it advised that a request for withdrawal of registration should show the correct name and file number of the registration to be withdrawn and should be manually signed by the sole proprietor of a firm or by a general partner of a partnership, as the case may be.

Thereafter, on March 31, 1965, the Commission received a letter dated March 30, 1965, stating:

"As we previously stated in our letter of March 9, 1965, we request withdrawal of our broker-dealer registrations. Our numbers are respectively

File number 8-11971 Lawrence Securities Company, a sole proprietorship

File number 8-12017 Lawrence Securities Company, a partnership as successor to the sole proprietorship.

Very truly yours, Lawrence J. Brown."

The letter was signed by Brown.

By form letters dated April 6, 1965, both firms were advised that their notices of withdrawal had been received. The form letters recited the pertinent provisions of Rule 240.15b-6 respecting the 30-day period preceding the effective date of a withdrawal,<sup>2/</sup> and called attention to another Rule requiring the preservation of records. Within the 30-day

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<sup>2/</sup> See fn. 1 on page 3, supra.

period, more specifically on April 29, 1965, the Commission instituted these proceedings, and informed respondents by telegram that their notices of withdrawal would not become effective unless by further order of the Commission.

From the above it appears that respondents acquiesced in the determination that a notice or request for withdrawal of a broker-dealer registration should be manually signed, and complied with the requirement approximately 20 days after the earlier unsigned notice had been received by the Commission. This acquiescence, while interesting and perhaps make-weight to the contentions and position of the Division in this proceeding inasmuch as it occurred within the 30 days following the receipt of the unsigned notice, a period during which proceedings to revoke might have been instituted, is certainly not essential to a determination of the jurisdictional issue. It is clear that the requirement for manual signature is a proper, reasonable and entirely appropriate sine qua non to the effectiveness of a withdrawal from registration. To recognize, as effective, a withdrawal without a signature would be a dangerous and ill-advised practice, conducive to the creation of administrative problems and legal complications. The Commission staff did not choose to do so, and its action was consistent with common sense, sound judgment and standard operating procedure. It follows that the effort to withdraw the partnership registration by an unsigned letter was not effective, that no withdrawal had become effective at the time of the institution of these proceedings on April 29, 1965, and that jurisdiction to institute the proceedings and to impose

sanctions exists. Cf. Herbert L. Honohan, 13 S.E.C. 754, 762 (1943).  
The 1964 Amendment to the Exchange Act.

A substantially similar result must be reached by following an entirely different route. One of the amendments to the Exchange Act, approved August 20, 1964 and enacted in order to broaden the Commission's authority over persons dealing in securities, authorizes Commission action under certain circumstances against any person, whether or not he is a broker or dealer. Section 15(b)(7) of the Exchange Act, as so amended, 15 U.S.C. § 780(b)(7), provides, in pertinent part:

"The Commission may, after appropriate notice and opportunity for hearing, by order censure any person or bar or suspend for a period not exceeding twelve months any person from being associated with a broker or dealer, if the Commission finds that such censure, barring, or suspension is in the public interest and that such person has committed or omitted any act or omission enumerated in Clause (A), (D) or (E) of paragraph (5) of this subsection. . ." (Emphasis supplied.)

As pointed out in the Division's brief, jurisdiction against Brown exists under this amendment, even assuming that no respondent remained subject to Commission authority as a broker or dealer when these proceedings were instituted on April 29, 1965, for the reason that the Commission's order of April 29, 1965 alleges (as does the superseding Order in this proceeding) that Brown committed acts or omissions enumerated in clauses (D) and (E) of paragraph (5); and accordingly, after appropriate notice and opportunity for hearing the Commission may find that sanctions are appropriate in the public interest.<sup>3/</sup> Thus, the authority to bar Brown

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<sup>3/</sup> Cf. M. G. Davis & Co., Inc. v. Cohen, et al., S.D.N.Y., 66 Civ. 799, June 24, 1966.

as a person from association with a broker or dealer exists, and this authority would seem to serve, for practical purposes, the same function as revocation of the registrations of the respondents, were that sanction not available to the Commission.

The Public Interest

Under the language of Rule 15b6-1, in effect on March 31, 1965, a withdrawal of registration

"shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary and appropriate in the public interest or for the protection of investors."

The Commission stated in Monroe Marks, 9 S.E.C. 669, 671-672 (1941):

". . . after the institution of revocation proceedings, the withdrawal of registration is not a matter of right but may be permitted only in the discretion of the Commission if it appears to the Commission that such withdrawal will be consistent with the public interest and the protection of investors [citing cases]. . . . We think that the rationale of these cases is equally applicable here and that we must consider, on the basis of the record in this proceeding and in the light of what is appropriate in the public interest and for the protection of investors whether we should permit withdrawal or proceed to a final determination on the question of revocation. 4/

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4/ In this connection, see the dissenting opinion of Mr. Justice Cardozo in Jones v. Securities and Exchange Commission, 298 U.S. 1 at 29, 32 (1936):

"To permit an offending registrant to stifle an inquiry on the eve of his exposure is to give immunity to guilt; to encourage falsehood and evasion; to invite the cunning and unscrupulous to gamble with detection."

Having concluded that jurisdiction inheres in the Commission to institute these proceedings and to determine, as set forth in the Order,

"what, if any, remedial action is appropriate in the public interest pursuant to Section 15(b) of the [Exchange] Act, and

whether the notices of withdrawal filed by Lawrence Securities Company and Lawrence Jay Brown d/b/a Lawrence Securities Company shall become effective and, if so, upon what terms and conditions, if any, "

it is, of course, appropriate to discuss the admitted violations as set forth in the Order and admitted by the stipulation. They are as follows:

A. During the periods from on or about March 11, 1965 to on or about April 8, 1965, and from on or about April 30, 1965 to on or about August 5, 1965, Lawrence Securities Company and Lawrence Jay Brown d/b/a Lawrence Securities Company willfully violated Section 17(a) of the Act and Lawrence Jay Brown willfully aided, abetted and assisted in such willful violations in that said respondents refused to permit examiners or other representatives of the Commission to make a reasonable examination of the accounts, correspondence, memoranda, papers, books, and other records which Lawrence Securities Company and Lawrence Jay Brown d/b/a Lawrence Securities Company were and are required by Section 17(a) of the Act and Rules 17 CFR 240.17a-3 and 17a-4 thereunder to make, keep current and preserve in an easily accessible place, subject at any time to examination by the Commission.

B. During the period from on or about June 5, 1964 to date, Lawrence Securities Company and Lawrence Jay Brown d/b/a Lawrence Securities Company willfully violated Section 17(a) of the Act and Rules 17 CFR 240.17a-3 and 17a-4 thereunder and Lawrence Jay Brown willfully aided, abetted and assisted in such willful violations in that Lawrence Securities Company failed to make, keep current, and preserve certain books and records relating to their business required to be made, kept current and preserved by Section 17(a) of the Act and Rules 17 CFR 240.17a-3 and 17a-4 thereunder.

C. Lawrence Securities Company and Lawrence Jay Brown d/b/a Lawrence Securities Company willfully violated Section 17(a) of the Act and Rule 17 CFR 240.17a-5 thereunder and Lawrence Jay Brown willfully aided, abetted and assisted in such willful violations in that said respondents failed to file with the Commission a report of their financial conditions, as required, as of a date not less than one nor more than five months after the date on which Lawrence Securities Company's and Lawrence Jay Brown d/b/a Lawrence Securities Company's registrations became effective.

D. Lawrence Securities Company willfully made, and Lawrence Jay Brown willfully caused to be made, in a report required to be filed with the Commission, and filed with the Commission as of January 29, 1965, pursuant to Section 17(a) of the Act and Rule 17 CFR 240.17a-5 thereunder, a statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to a material fact.

E. During the period October 31, 1964 to March 30, 1965, Lawrence Securities Company, and Lawrence Jay Brown d/b/a Lawrence Securities Company willfully violated Section 15(c)(3) of the Act and Rule 17 CFR 240.15c3-1 thereunder, and Lawrence Jay Brown willfully aided, abetted and assisted in such willful violation, in that Lawrence Securities Company and Lawrence Jay Brown d/b/a Lawrence Securities Company used the mails or the means and instrumentalities of interstate commerce to effect transactions in and to induce the purchase and sale of securities, otherwise than on a national securities exchange, at a time when registrant's aggregate indebtedness to all other persons exceeded two thousand (2,000) percentum of its net capital as computed in accordance with the provisions of Rule 17 CFR 240.15c3-1.

F. During the period October 31, 1964 to March 30, 1965, Lawrence Securities Company and Lawrence Jay Brown d/b/a Lawrence Securities Company willfully violated, and Lawrence Jay Brown willfully aided, abetted and assisted in willful violation of Sections 10(b) and 15(c)(1) of the Act and Rules 17 CFR 240.10b-5 and 17 CFR 240.15c1-2 thereunder, in that Lawrence Securities Company and Lawrence Jay Brown d/b/a Lawrence Securities Company used the means and instrumentalities of interstate commerce and the mails to induce other brokers and dealers to purchase securities from them, make payment for securities to them, sell securities to them, and make delivery of securities to them, and omitted to disclose to said other brokers and dealers that Lawrence Securities Company and Lawrence Jay Brown d/b/a Lawrence Securities Company were not, or did not know whether or not they were in compliance with the Commission's net capital rule (17 CFR 240.15c3-1) or financially able to deliver securities they had sold or make payment for securities they had bought.

The seriousness of the willful violations set forth above compels the conclusion that the registrations should be revoked in the public interest. The admitted willful failure to make and keep current the required books and records would, of itself, be adequate basis for revocation. Utah Uranium Brokers, 38 S.E.C. 79 (1957). In addition, the refusal to permit Commission representatives to make a reasonable examination of books and records and the absence of mitigating circumstances or explanation for such violations leaves no doubt that revocation is required in the public interest. When there are added to the above the further violations by the partnership and Brown in filing with the Commission a false or misleading statement, the violations of the Commission's net capital rule by all respondents, and the absence of any assurance that future conduct or activities would conform to, rather than continue to defy, Commission standards and requirements, any sanction less than revocation of the broker-dealer registrations and barring Brown from being associated with any broker or dealer would indeed be inconsistent with the public interest. Cf. Fred T. Garner Investments, 39 S.E.C. 626 (1960); Luster Securities & Company, 36 S.E.C. 298 (1955); Cromwell & Co., 38 S.E.C. 913 (1959).

It follows, of course, that the withdrawals of the respective <sup>4/</sup> registrations should be denied by the Commission in the public interest.

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<sup>4/</sup> To the extent that the proposed findings and conclusions submitted to the Hearing Examiner are in accord with the views set forth herein they are accepted, and to the extent they are inconsistent therewith they are expressly rejected.

Accordingly, IT IS ORDERED that the registrations as brokers and dealers of Lawrence Securities Company and Lawrence Jay Brown d/b/a Lawrence Securities Company be and they are hereby revoked, and that Lawrence Jay Brown be and he hereby is barred from association with a broker or dealer.

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

Pursuant to Rule 17(f) of the Commission's Rules of Practice this initial decision shall become the final decision of the Commission as to each of the above-named respondents unless he shall file a petition for review or the Commission determines on its own initiative to review. If any party shall timely file a petition for review or if the Commission takes action to review as to a party, this initial decision shall not become final with respect to such party.

Petition for review of this initial decision may be filed in accordance with Rule 17(b) of the Commission's Rules of Practice within 15 days from service.



Sidney Ullman  
Hearing Examiner

Washington, D.C.  
October 17, 1966