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UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
G. H. MUSEKAMP & CO. 41 EAST FOURTH STREET CINCINNATI, OHIO	:	PRIVATE PROCEEDINGS
File No. 8-8635	:	

RECOMMENDED DECISION

Warren E. Blair
Hearing Examiner

Washington, D.C.
March 17, 1965

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G. H. MUSEKAMP & CO. 41 EAST FOURTH STREET CINCINNATI, OHIO	PRIVATE PROCEEDINGS RECOMMENDED DECISION
File No. 8-8635	

BEFORE: Warren E. Blair, Hearing Examiner

APPEARANCES: Thomas B. Hart, Esq., Chicago Regional Office, and John W. Vogel, Esq. and Robert H. Jackson, Esq., Cleveland Branch Office of the Commission, for the Division of Trading and Markets.

Charles H. Tobias, Jr., Esq. of Steer, Straus & Adair, 2215 Union Central Building, Cincinnati, Ohio for G. H. Musekamp & Co. and George H. Musekamp, III.

These private proceedings were instituted by an order of the Commission dated July 7, 1964 pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether G. H. Musekamp & Co. ("registrant") and George H. Musekamp, III ("Musekamp") wilfully violated and aided and abetted wilful violations of the Securities Act of 1933 ("Securities Act") and the Exchange Act as alleged by the Division of Trading and Markets ("Division"); whether remedial action pursuant to Sections 15(b) and 15A is appropriate; and whether, pursuant to Section 15A(b)(4) of the Exchange Act, Musekamp should be found a cause of any remedial action ordered herein.

The Division alleged, in substance, that registrant and Musekamp wilfully violated Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder by accepting money and securities from customers under false representations of registrant's ability to effect their orders and to promptly discharge its liabilities to them; by engaging in business at times when registrant's aggregate indebtedness exceeded 2,000 per centum of its net capital; and by failing to make and keep current certain books and records relating to registrant's business, including the making of false entries therein. Additionally, the Division alleged that such violations occurred in consequence of the registrant's and Musekamp's hypothecating and commingling customers' securities with the securities of persons other than customers under liens for loans made to registrant, and by reason of their hypothecating customers' securities without giving the appropriate written notice

to the pledgee that the pledging did not contravene any provision of Rule 17 CFR 240.15c2-1 under the Exchange Act. The Division further charged that in carrying out the acts alleged, registrant and Musekamp wilfully violated and aided and abetted wilful violations of Sections 15(c)(2), 15(c)(3), and 17(a) of the Exchange Act and Rules 15c2-1, 15c3-1 and 17a-3 thereunder. The order for proceedings further sets forth that the Commission's public files disclose that on March 5, 1964 the United States District Court for the Southern District of Ohio issued a decree permanently enjoining registrant and Musekamp from violations of certain provisions of the Securities Act and Exchange Act and rules thereunder. 1/

An answer was filed by registrant and Musekamp as of August 10, 1964 which contained a general denial of most of the Division's allegations, but admitted engaging in business while registrant's aggregate indebtedness exceeded the permissible limit, failing to make and keep current registrant's books and records, and using the jurisdictional

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1/ The Division also alleged that registrant and Musekamp wilfully violated Section 15(b) of the Exchange Act and Rule 15b-2 thereunder by failing to file an amendment to registrant's Form BD application for registration so as to disclose the existence of this permanent injunction. However, on February 10, 1965, the Division filed a motion to amend the Order for Private Proceedings by striking that particular charge. The motion having been referred to the Hearing Examiner for disposition and good cause having been shown for the granting thereof, it is ordered that the Order for Private Proceedings in this matter be, and it hereby is, amended by striking Paragraph B of Section II thereof, together with the references to Paragraph B and to Section 15(b) and Rule 15b-2 contained in the next following Paragraph C.

means while engaged in the acts alleged. Respondents denied, however, that their admitted delinquencies were wilful or that Musekamp was the cause of those failures.

A hearing on the issues was held on November 9 and 10, 1964 in which registrant and Musekamp appeared and participated through counsel. A major part of the record developed at the hearing consists of stipulations of the relevant facts. 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 Division and by Musekamp, but none were submitted on behalf of registrant.

The following findings, conclusions and recommendations are made upon the basis of the record herein and observation of the various witnesses, including Musekamp:

Background of Registrant

1. Registrant, an Ohio corporation, has been registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act since June 16, 1960 and is a member of the National Association of Securities Dealers, Inc. ("NASD"). Musekamp, president, treasurer and a director of registrant as well as owner of over 93% of its outstanding stock, controlled and dominated registrant until a liquidator for registrant was appointed on February 11, 1964 pursuant to a resolution of registrant's shareholders.

2. Registrant, while a member of the Cincinnati Stock Exchange, had its membership therein temporarily suspended on October 23, 1963

for violation of that Exchange's net capital rule. The membership was subsequently reinstated but eventually revoked on November 14, 1963 because of registrant's violation of the Exchange's net capital requirements.

3. Registrant had also been a member of the Midwest Stock Exchange but that membership was sold in January, 1964 by the Exchange. Registrant was suspended from membership in August, 1962 for violation of the Midwest Stock Exchange capital rules, and, after reinstatement, was again suspended for the same reason on November 18, 1963.

Acts and Practices of Registrant and Musekamp

4. During the period from March 1, 1963 through December 10, 1963 registrant continuously effected securities transactions on the over-the-counter market by use of the mails and the means and instrumentalities of interstate commerce.

5. As indicated by registrant's difficulties with the Cincinnati Stock Exchange and the Midwest Stock Exchange, and as otherwise shown by the record, registrant had serious financial problems during that same period. The Division and the respondents agree that registrant's books and records reflected the financial position of registrant as computed under Rule 15c3-1 ("Net Capital Rule") of the Exchange Act to be a net capital deficit of $35,721.28 as of September 30, 1963 and $34,634.43 as of November 30, 1963. The parties are also in accord that registrant needed at least an additional $69,503.80 on September 30, 1963 and $49,596.76 on November 30, 1963 to meet the

minimum capital requirement of the Net Capital Rule.

6. The Division further contends that registrant's books were not accurate on those dates and that correcting adjustments would increase the net capital deficits to $171,884.81 as of September 30, 1963 and $205,133.63 as of November 30, 1963, and the respective net capital deficiencies to $205,667.33 and $220,095.96.

7. One of the adjustments in question relates to the treatment to be accorded $30,000 face amount of bonds which registrant claimed were subordinated securities. It appears that these bonds were originally purchased by registrant on January 11, 1963 for the account of a customer, Max Abrams. Shortly thereafter an arrangement was entered into between Abrams and registrant whereby registrant agreed to pay an additional 3% interest on the bonds for the privilege of retaining the bonds in its own account. When the agreement dated January 24, 1963 was signed by Abrams, the signature of "George M. Musekamp, individually," also appeared thereon, but apparently was added only to provide "double safety" for Abrams and not to change the tenor of the agreement with registrant. No subordination agreement was entered into by Abrams and he assumed that the securities would be returned in the ordinary course of registrant's business.

8. It further appears that on January 23, 1963 Musekamp entered into a subordination agreement with registrant in which he purported to make a subordinated loan of the same $30,000 of bonds to registrant. Registrant, without the knowledge or consent of its

customer, pledged the bonds with a bank to obtain a loan, and entered the securities on its records as subordinated capital.

9. It is clear from the evidence that registrant was not entitled to treat the Abrams bonds as subordinated capital. The agreement with Abrams required registrant to retain the bonds in its own account and, upon termination of the agreement, to deliver the bonds to Abrams. The addition of Musekamp's signature to the Abrams agreement did not change registrant's obligation to Abrams, nor, of course, did Musekamp's subordinated loan agreement with registrant affect Abrams' status as a general creditor. It follows that registrant's books should be adjusted, as contended by the Division, to reflect an unsubordinated liability for those securities owing to Abrams.

10. The second adjustment to registrant's books urged by the Division involves 912 shares of the stock of Provident Bank Corporation which had been purchased and held by registrant for the account of its customer, Carl Lindner. Registrant had used this stock as part of the collateral for a bank loan, but on May 15, 1963 Musekamp withdrew the 912 shares from the firm's collateral and pledged them to secure a personal loan from the bank. Using the money obtained from his borrowing, Musekamp made a subordinated loan to registrant which was entered on registrant's books as subordinated capital. However, respondents admit that registrant failed to place entries on its records to show that the Provident stock was no longer being held on deposit at the bank for the Lindner account.

11. Not only does it appear from the record that registrant's books required adjustment to reflect that the Lindner account was not long the 912 shares of Provident stock, but it also appears that Musekamp was not authorized to pledge the stock for his personal use and benefit. Musekamp's asserted basis for using the Provident stock was a letter dated August 22, 1962 addressed to him by Lindner as follows:

> This letter is to advise you that I, Carl H. Lindner, would like to make a loan, collaterilized (sic) by 912 shares of the Provident Bank Corporation's common stock. This stock is in a street name.

According to Lindner's testimony, the letter was sent to Musekamp as a follow-up to a conversation taking place several weeks before in which Musekamp was told by Lindner that the Provident stock would not be loaned to registrant as requested by Musekamp because, among other reasons, he, Lindner, might be needing money himself. Because Lindner found other sources of funds, he dropped his attempt to borrow on the Provident stock without further discussion or communication with Musekamp on the subject. It further appears that Musekamp did not seek clarification of the letter of August 22, 1962 prior to diverting the Provident stock to his own use in March or April, 1963, seven or eight months later.

12. Under all the circumstances, the Examiner finds that Lindner did not agree to lend the 912 shares of Provident stock to Musekamp, and that the Lindner letter in question was not intended

to and did not authorize Musekamp to make personal use of that stock. Musekamp's contention to the contrary is not acceptable when Lindner's letter is read in the light of his testimony, which Musekamp did not contradict, that a loan of the stock to registrant had been explicitly refused prior to Musekamp's receipt of the letter. The fact that Musekamp made no attempt whatsoever to verify in March or April, 1963 what at very most could be considered an ambiguous authorization given in August, 1962 also tends to establish that Musekamp did not himself believe that Lindner had agreed to lend the Provident stock to registrant or to Musekamp.

13. Registrant's books also carried 25,142 shares of common stock of Manchester Insurance Management and Investment Corporation ("Manchester") in a subordinated securities account. The Division ascribed no value to these 25,142 shares for the purposes of computation under the Net Capital Rule because the stock had been loaned to registrant by officers of Manchester and was restricted as to sale by an undertaking made in a registration statement filed under the Securities Act. The Division's view that securities, restricted as the 25,142 shares were, are without value under the Net Capital Rule, is ordinarily correct because such securities are not assets "readily convertible into cash."[2/] But here it appears that in June, 1963 registrant, after borrowing the securities, was able to obtain a bank

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2/ Cf. Whitney-Phoenix Company, Inc., 39 S.E.C. 245, 249 n. 14 (1959).

loan of $100,000, which was still outstanding on December 3, 1963, by depositing that Manchester stock and agreeing to deposit an additional 25,000 shares of Manchester stock as collateral. In so doing, registrant in effect converted the subordinated Manchester stock to cash and therefore, in the Examiner's opinion, should have the value of the 25,142 shares included as an asset in computing its net capital. However, should this stock be considered an illiquid asset, there is still reason for not making the adjustment. The Net Capital Rule provides, in pertinent part, that

> (c) . . .
>
> (2) . . . "net capital" shall be . . ., adjusted by
>
> (B) deducting fixed assets and assets which cannot be readily converted into cash (less any indebtedness secured thereby) . . . .

Since the value of the 25,142 shares of Manchester stock is approximately the same as the pro rata amount of the "indebtedness secured thereby," any adjustment resulting from the stock being regarded as not "readily convertible into cash" would be negligible.

14. The Division further contends that registrant's books as of November 30, 1963 also require adjustment to effect a reversal of a purported sale of 30,000 shares of Manchester stock made on November 19, 1963 out of registrant's "Firm Investment Account" to Musekamp, as Trustee. Musekamp testified that the sale was made for the purpose of reducing registrant's heavy inventory in that stock,

and that funds for payment were to become available through a prospective bank loan. As it happened, according to Musekamp, he was unable to negotiate a bank loan for that purpose and eventually reversed the transaction on registrant's books on December 12, 1963. If the reversal had been entered so as to be taken into account as of November 30, 1963, registrant's net capital deficit would have been $18,000 greater by reason of the 30% deduction or "haircut" that the Net Capital Rule requires on the value of common stocks held in the proprietary account of a broker-dealer. Musekamp argues that the reversal should not have been made any earlier than the date he used because his continuous intentions and expectations until December 12 were that the money for payment of the 30,000 shares would be forthcoming to permit consummation of the sale. Accepting Musekamp's version of the transaction, since there is insufficient evidence to support the Division's argument that no sale was intended, it nonetheless appears that an adjustment is necessary. Payment for securities sold by a broker-dealer to a customer is governed by Regulation T promulgated by the Federal Reserve Board, and Section 4(c)(2) thereof, which appears controlling here, requires a broker-dealer to cancel or otherwise liquidate a transaction within 7 days after the trade date if the customer does not pay for the purchased security. The 30,000 shares of Manchester stock having been sold on November 19, 1963, the transaction should have been reversed on registrant's books before November 30, 1963 in order to comply with Regulation T. The

Examiner is of the opinion that the transaction in question should be regarded as canceled as of November 30, 1963, in order to give effect to the law and to preclude the benefit of an improved capital position from accruing to registrant as the fruit of its violation of Regulation T. Accordingly, the Examiner finds that registrant's books should be adjusted so as to have the 30,000 shares of Manchester stock returned to the "Firm Inventory Account" as of November 30, 1963.

15. An adjustment as of November 30, 1963 is also found to be necessary to remove $18,000 from the "George H. Musekamp-Subordinated Account" and to treat that amount as an additional liability because that portion of the $55,000 appearing in the account was not covered by a satisfactory subordination agreement.[3/]

16. Recasting the adjusted computations introduced by the Division[4/] so as to eliminate the adjustment based upon the Division's refusal to attribute value to the subordinated 25,142 shares of Manchester stock -- $37,398.73 as of September 30, 1963 and $35,198.80 as of November 30, 1963 -- registrant's net capital deficit as of September 30, 1963 is found to be $134,486.08 and $169,934.83 as of November 30, 1963 and the respective net capital deficiencies to be $168,268.60 and $184,897.16.

3/ A subordination agreement covering this $18,000 does not appear to have been entered into between registrant and Musekamp until December 9, 1963.

4/ DXA, p. 11; DXA Ex. 1; DXA Ex. 2.

17. The financial plight of registrant is further illustrated by the insolvency indicated as of November 30, 1963 when registrant's books reflected unsubordinated liabilities of $510,887 as against $492,489 in assets without taking into consideration the unrecorded short position resulting from Musekamp's withdrawal of Lindner's 912 shares of Provident stock.[5/] When the $54,720 liability arising from the obligation to replace those shares is charged, as it must be, to the registrant, the excess of registrant's unsubordinated liabilities over its assets becomes more than $73,000.

18. It appears from the record that registrant failed to properly keep, maintain and preserve its books and records in that ledger accounts of customers and broker-dealers were not properly maintained or posted; that the customer account of Carl Lindner and the position ledger erroneously showed the account to be long 912 shares of Provident Bank stock; that certain entries reflecting subordinated loans to registrant were false; that the position ledger was not posted to correctly effect a balance of a number of securities; and that at November 30, 1963 registrant's accounts with two other broker-dealers were out of balance and could not be reconciled with the records of those other broker-dealers.

19. Respondents have also admitted that as of November 30, 1963 registrant carried eleven bank loans under pledge agreements

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5/ See DX-F. Although not affecting the result except in terms of the extent by which liabilities exceeded assets, the Division's proposed figures are not accepted because they include deductions of non-liquid assets and adjustments of capital and subordinated securities.

which subjected each of said loans to cross-liens of the bank in connection with other loans carried with the same bank on which securities belonging to registrant or appearing to belong to registrant were hypothecated, and that registrant failed to give written notice to the bank at or prior to each hypothecation of a customer's securities (which collateralized $22,525 of registrant's loans) that such securities were carried by the registrant for the account of a customer and that such hypothecation did not contravene any provisions of Rule 15c2-1 6/ under the Exchange Act. In view of the evidence that the customary routine of the bank would have been to use the mails in connection with these loans and the absence of proof that the routine was not followed, the Hearing Examiner finds that the mails were so used.

Fraud Violations

20. The principle has been long established that a broker-dealer by engaging in business makes an implied representation to its customers that it is solvent and in a position to meet its obligations as they come due. 7/ While it is true that the record does not contain

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6/ This rule defines the term "fraudulent, deceptive, or manipulative act or practice" as used in Section 15(c)(2) of the Exchange Act to include hypothecation under certain specified circumstances of any securities carried by a broker or dealer for the account of any customer.

7/ Wakefield, Carder & Holt, Inc., 40 S.E.C. 675, 676 (1961); Ferris & Co., 39 S.E.C. 116, 119 (1959); Batkin & Co., 38 S.E.C. 436 446 (1958).

a single instance of a failure by the registrant while in business to pay an obligation upon demand or maturity, the Division has shown that registrant was insolvent as of November 30, 1963 and that such condition apparently continued during the course of its business in December, 1963. It is not necessary for the Division to prove insolvency by evidence that registrant had not paid certain debts upon maturity. The falsity of registrant's implied representation is established in this matter by the Division's showing, as it did, that on November 30, 1963 registrant's liabilities exceeded its assets and that registrant, out of its own assets, could not be reasonably expected to meet obligations as they fell due.[8/] But were more required, the respondents would be in no better position, since the obtaining of funds through an unauthorized conversion of Lindner's securities can well be considered under the circumstances as an admission of registrant's inability to meet its current obligations in the ordinary course of business during the period in question. Accordingly, the Hearing Examiner concludes that registrant, aided and abetted by Musekamp, made a false representation to registrant's customers regarding registrant's solvency and ability to meet its current obligations, and that the making of such false representation constituted a fraudulent practice and course of business which would operate as a fraud and deceit upon registrant's customers.

8/ Cf. Batkin & Co., supra, p. 444; Gill, Pope Co., 37 S.E.C. 232 (1956); Loss, Securities Regulation, 2d Ed. (1961), p. 1508.

21. It is also evident that respondents subjected registrant's customers to undue and unknown risks during the months when registrant, though perhaps not insolvent, had net capital deficits as computed under the Net Capital Rule ranging upward of $100,000. The Commission and the courts have consistently held that continuation of business by a broker-dealer in violation of the Net Capital Rule is a practice which subjects its customers to undue financial risks.[9/] In the light of those expressions, the Hearing Examiner is of the opinion, particularly under the circumstances of this case, that respondents engaged in a fraudulent practice and course of business by subjecting registrant's customers to undue risks of financial loss which were not contemplated by those customers at the time they were solicited and induced to effect transactions with registrant.[10/] The absence of any loss by

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9/ Quintin Securities, Inc., 38 S.E.C. 220, 221 (1958); Blaise D'Antoni & Associates, Inc. v. Securities and Exchange Commission, 289 F. 2d 276, 277 (C.A. 5, 1961).

10/ The fact that registrant was not subject to the Net Capital Rule during a part of the period referred to by reason of an exemption afforded to members of the Midwest Stock Exchange does not affect this conclusion because that exemption is premised upon the Exchange's practices being deemed to impose more comprehensive requirements than those of the Net Capital Rule.

registrant's customers is immaterial, as is whatever intention Musekamp may have had of becoming personally responsible for any debts registrant could not pay. As was observed in the Blaise D'Antoni case, supra, where a similar defense was attempted, "The question is not whether actual injuries or losses were suffered by anyone."[11/]

22. By engaging in the noted fraudulent practices and courses of business, respondents wilfully violated and Musekamp aided and abetted wilful violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder. The argument that wilfulness has not been shown in view of Musekamp's personal intent to protect customers against loss, the adequacy of his resources and those of his family to carry out that intent, the actual payment of almost all of registrant's obligations, and the absence of intent to make any misrepresentations as to registrant's financial condition, cannot be accepted. All of those factors may well be considered in mitigation of the violations committed, but have no impact upon the question of wilfulness. Under the long established views of the Commission, affirmed by the courts, an intent to violate is not required before a finding of wilfulness can be made -- an intent to do the act which constitutes a violation suffices.[12/] Here, it is manifest that Musekamp was well aware of

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11/ See also Midas Management Corporation, 40 S.E.C. 707, 709 (1961).

12/ Hughes v. Securities and Exchange Commission, 174 F. 2d 969, 977 (C.A.D.C., 1949); Churchill Securities Corp., 38 S.E.C. 856, 859 (1959), and cases therein cited.

registrant's persisting financial difficulties and nevertheless allowed the continuation of registrant's operations to the peril of those doing business with it.

23. The Hearing Examiner also concludes from the fact that eleven of registrant's bank loans outstanding on November 30, 1963 had been collateralized by commingling by customers' securities with registrant's securities, and from his finding that the mails were used in connection with the hypothecation of those securities, that registrant, aided and abetted by Musekamp, wilfully violated Section 15(c)(2) and Rule 15c2-1 of the Exchange Act. It is further found that the failure of registrant to give written notification to the bank as required by Rule 15c2-1(f) was a further wilful violation of Section 15(c)(2) and of the rule. Again, the contention that the violation was not wilful is rejected. Although Musekamp may not have been aware of the exact nature and existence of the eleven loans nor of the absence of the notification required by the rule, he was in control of registrant. In that position, he, together with registrant, is held accountable for the violations committed by persons under his supervision.[13/]

Net Capital and Bookkeeping Violations

24. Respondents have admitted that registrant was in violation of the Net Capital Rule on November 30, 1963 to the extent

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13/ Reynolds & Co., 39 S.E.C. 902, 917 (1960).

that a deficiency of $49,596 existed. Whether the admitted figure or the far greater amount of $184,897 found by the Hearing Examiner to be the actual deficiency is used, the conclusion can only be that an aggravated wilful violation of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder was committed by the registrant in which Musekamp was an aider and abettor. Although a number of mitigating circumstances are alluded to in Musekamp's proposals and brief on this issue, the defense raised appears to be essentially that wilfulness was not shown. That defense cannot be sustained in the light of the expedients resorted to by Musekamp in his search for funds to keep registrant in business and his presumed knowledge of registrant's affairs on and after November 30, 1963.

25. In view of respondents' admission that registrant's books and records were not kept and maintained in accordance with the requirements of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, the Hearing Examiner finds that registrant, aided and abetted by Musekamp, wilfully violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. Wilfulness of the violation is established through Musekamp's failure to properly supervise as well as by the fact that in those instances where he did not actually know of the existence of the alleged deficiencies, he should have known, especially since he recognized the shortcomings of registrant's employees. The facts in this case are readily distinguishable from those in Associated Securities Corporation, 40 S.E.C. 10 (1960),

which is relied upon by Musekamp. In the Associated matter, the Commission concluded that a control person did not aid and abet bookkeeping violations where reliance was placed on an experienced accountant who had been in the firm's employ prior to his assuming control, and where the control person was not aware of the bookkeeping errors. Here, on the other hand, registrant not only commenced its business without qualified bookkeeping personnel but Musekamp caused it to continue in business even after he became fully conscious of the shortcomings of its bookkeeping personnel and of the need to call upon outside public accountants from time to time to straighten out its records. Although the Examiner agrees with the Division that the bookkeeping violations involved were not merely "technical", the record does not support the Division's contention that Musekamp deliberately caused false or inaccurate entries to be included in registrant's ledgers. Perhaps such errors as were present redounded to the benefit of respondents by delaying and making more difficult the detection of all of the various violations, but despite those errors, registrant's financial straits were clearly evident. In the opinion of the Hearing Examiner, if there had been a design to conceal rather than negligence, respondents could have readily caused the registrant's books and records to reflect a false picture designed to divert any suspicion of possible violations.

Public Interest

26. In addition to the wilful violations, respondents, as they admit and as the Commission's public files disclose, were permanently

enjoined on March 5, 1964 by the United States District Court for the Southern District of Ohio from violations of certain of the anti-fraud provisions of the Securities Act and Exchange Act.

27. Because of the injunction and the wilful violations which have been found herein, it is necessary to consider whether the public interest requires the imposition of remedial action. It is the conclusion of the Hearing Examiner in view of the necessity for obtaining an injunction against the respondents and the serious nature and number of the long continued wilful violations, that the public interest requires revocation of the registrant's registration as a broker-dealer, expulsion of registrant from membership in the NASD, and a finding that Musekamp is a cause of such revocation and expulsion.

28. The Hearing Examiner is not unmindful of the fact that Musekamp has lost a considerable investment in this venture nor of the fact that when registrant went into liquidation, its obligations were taken care of by Musekamp's advance of $97,500 to the liquidator of registrant. However, the risk of loss of the entire investment was one assumed by Musekamp when he decided to launch registrant in the securities business, and undoubtedly the preservation of Musekamp's credit and reputation after the registrant went into liquidation in large part dictated the need for full payment of registrant's obligations. Nevertheless, some credit must be allowed Musekamp for taking care of registrant's obligations and should be given to his background of seven unblemished years as a salesman with an established securities firm.

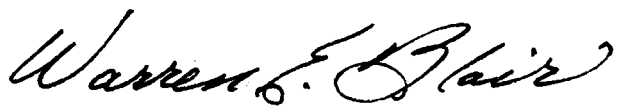
Recommendations

29. The Hearing Examiner recommends on the basis of the foregoing that the Commission enter an order finding that it is in the public interest to revoke the registration of registrant as a broker-dealer and to expel it from membership in the NASD.

30. It is further recommended that Musekamp be found a cause within the meaning of Section 15A(b)(4) of the Exchange Act of any order of revocation, expulsion or suspension entered herein against registrant.

31. Since Musekamp is seeking to return to the securities business in his former capacity as a salesman with one of several well-known securities firms, the Hearing Examiner also recommends that the Commission allow Musekamp to be employed in such position upon a satisfactory showing that he will receive adequate supervision and that he will not be given discretionary authority over nor be permitted to handle or have access to customers' funds or securities.

Respectfully submitted,[14/]



Warren E. Blair
Hearing Examiner

Washington, D. C.
March 17, 1965

14/ To the extent that the proposed findings and conclusions submitted by the parties are in accord with the views set forth herein, they are sustained, and to the extent that they are inconsistent therewith, they are expressly overruled.