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UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

FILED**OCT 28 1960**

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SECURITIES & EXCHANGE COMMISSION

In the Matter of
HOWELL, KRAFT & CUMMINGS, INC.
80 Wall Street
New York 5, New York
File No. 8-7274

RECOMMENDED DECISION

IRVING SCHILLER
Hearing Examiner

Washington, D. C.
October 28, 1960

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In the Matter of :
HOWELL, KRAFT & CUMMINGS, INC. :
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APPEARANCES:

Frank Kavalier, Esq., of the New York Regional Office
for the Division of Trading and Exchanges.

No appearance for respondent.

BEFORE: IRVING SCHILLER, HEARING EXAMINER

I. THE PROCEEDING

These are private proceedings to determine whether, pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("the Act") the registration as a broker-dealer of Howell, Kraft & Cummings, Inc. ("the registrant") should be revoked and whether, under Section 15A(b)(4) of that Act Theodore B. Howell is a cause of any order of revocation which may be entered. 1/

The order for proceeding alleges that registrant, aided and abetted by Howell, failed to file an amendment to its application for registration as a broker and dealer under the Act to correct statements which had become inaccurate therein in willful violation of Section 15(b) of the Act and Rule 15b-2 (17 CFR 240.15b-2 thereunder). 2/

1/ Section 15(b) of the Act, as pertinent here, provides that the Commission shall revoke the registration of a broker or dealer if it finds that such action is in the public interest and that such broker or dealer or officer or director of such broker or dealer has willfully violated any provision of the Act or of any Rule thereunder.

Under Section 15A(b)(4), in the absence of Commission approval or direction, no broker or dealer may be admitted to or continued in membership in a registered securities association if the broker or dealer or any partner, officer, director or controlling or controlled person of such broker or dealer was a cause of an order of revocation which is in effect.

2/ Section 15(b) of the Act, as pertinent here, provides that an application for registration as a broker or dealer shall contain such information as the Commission may require by rules and regulations, and Rule 15b-2 thereunder provides that if the information in the application is or becomes inaccurate, the broker or dealer shall promptly file an amendment correcting such information.

It is further alleged that registrant, aided and abetted by Howell, (1) failed to file a report of its financial condition in willful violation of Section 17(a) of the Act and Rule 17a-5 (17 CFR 240.17a-5) and (2) failed to make and keep current its books and records in willful violation of Section 17(a) of the Act and Rule 17a-3(17 CFR 240.17a-3). ^{3/} Service of the order for private proceedings and notice of hearing was made by registered mail on registrant addressed to registrant's business address to which registrant consented to have notices sent in its application for registration. However, the Commission's order setting the date and place of the hearing addressed to registrant at the same business address was returned by the Post Office Department with the notation that the addressee was not at the address given. No amendment was filed by registrant to indicate any new address.

The Hearing Examiner finds that registrant received an appropriate notice of the hearing. ^{4/}

^{3/} Section 17(a) of the Act, as applicable here, requires registered brokers and dealers to make such reports as the Commission may prescribe and Rule 17a-5 requires every broker or dealer to file a report of financial condition for each calendar year. Such reports, the Commission has held, must be true and correct. Joseph Ernest Murray, Securities Exchange Act Releas No. 5715 (June 13, 1958).

Rule 17a-3 under Section 17 of the Act specifies the books and records required to be made and kept current.

^{4/} See Valley State Brokerage, Inc., Securities and Exchange Act Release No. 6130 (December 9, 1959) where the Commission held that notice of proceedings sent by registered mail to registrant at the address shown in its registration constituted adequate notice in revocation proceedings notwithstanding such notice was returned undelivered by the Post Office Department.

Pursuant to the order of the Commission dated August 5, 1960 a private hearing was held in this matter on August 24, 1960 at which registrant did not appear. Proposed findings and conclusions were filed by the Division of Trading and Exchanges. It is on the basis of the record in these proceedings that this Recommended Decision is predicated.

II. FINDINGS OF FACT

1. Registrant became registered with this Commission as a broker and dealer in March, 1959. An amendment to registrant's application discloses that Theodore B. Howell was president, director and owner of 60% of the company's outstanding no par value common stock; that Theodore Kraft was vice-president, treasurer and director and owner of 20% of the outstanding common stock; and that Albert John Cummings was vice-president, secretary and director and owner of the remaining 20% of registrant's outstanding common stock.

2. The record shows that registrant moved its offices from the address stated in its registration application as the address to which registrant consented to have notices sent of any proceedings in connection with the application or with registration thereunder. The record further discloses that registrant changed its name to Theodore B. Howell, Inc. When an investigator of the staff of the Commission went to the address listed in registrant's registration he was informed by the building agent that registrant had moved from that address. The investigator, upon receipt of information that registrant had established a new address, proceeded to the new address where he was informed by the building manager that a Theodore B. Howell, Inc. was a tenant, but that its offices were closed

and the firm was to be dispossessed for nonpayment of rent. The investigator thereafter interviewed a former employee of the registrant, who posted its books, who stated registrant has moved from the address listed in its application for registration and had changed its name.^{5/} The employee who still had possession of registrant's books produced them for inspection. Registrant failed to amend its application for registration to disclose its change of address and its change of corporate name as required by the Commission's Rules. The Hearing Examiner finds that such failure constituted a willful violation of Rule 15b-2 prescribed under Section 15(b) of the Act.^{6/}

3. Registrant failed to file its financial report for the period ending August 27, 1959. The record shows that this financial report was the first report required to be filed by registrant following the effectiveness of its registration application. Registrant was specifically notified of the requirements of the aforesaid rule at the time it was advised that its registration had become effective. Reminders of the reporting requirement were sent to registrant, which, the record indicates, were received by registrant. Notwithstanding the foregoing, no such financial report has ever been filed by registrant. The Hearing Examiner finds

^{5/} In fact the same employee signed one of the Post Office receipts acknowledging delivery of the order for proceedings and notice of hearing in the name of Theodore B. Howell, Inc.

^{6/} Rule 15b-2 (17 CFR 240.15b-2) under Section 15(b) of the Act provides that if information in the registration application becomes inaccurate the broker or dealer shall promptly file an amendment correcting such information. See Sills and Company, Securities Exchange Act Release No. 5919 (March 27, 1959); Joseph J. Wilensky & Co., Securities Exchange Act Release No. 6032 (July 31, 1959).

that the failure to file the required financial report constituted a willful violation of Section 17(a) of the Act and Rule 17a-5 (17 CFR 240.17a-5).^{7/}

4. In addition, registrant also failed to maintain its ledgers or other records on a current basis. An inspection of the registrant's books by an investigator of the Commission indicated that they were not posted subsequent to August 28, 1959. The Hearing Examiner finds that registrant's failure to maintain current records was in willful violation of Section 17(a) of the Act and Rule 17(a) of the Act and Rule 17a-3 thereunder.^{8/}

5. The Hearing Examiner finds that Howell, as president, director and controlling stockholder of registrant and in control of registrant, aided and abetted in the willful violations of the Act and the rules specified above.

6. In view of the willful violations noted above, particularly the fact that registrant ignored the notice and reminders to comply with the reporting requirements of the Act and the rules promulgated thereunder, it is the Hearing Examiner's opinion that registrant shows a complete disregard of the disclosure, reporting and record keeping requirements basic to the statutory scheme of broker-dealer regulation. It is the Hearing

^{7/} Section 17(a) of the Act requires every registered broker or dealer to make such reports as the Commission's rules may prescribe as necessary or appropriate in the public interest and protection of investors. Rule 17a-5 provides that every registered broker or dealer must file a report of financial condition for each calendar year.

^{8/} Section 17(a) of the Act as pertinent here, requires registered brokers or dealers to keep records as may be prescribed by the Commission's rules and regulations. Rule 17a-3 specifies the books and records which must be kept current.

Examiner's conclusion, and he so recommends, that the Commission finds it is in the public interest to revoke registrant's registration as a broker and dealer.^{9/}

7. The remaining question is whether Howell shall be named as a cause of the order of revocation entered herein.^{10/} The record discloses that the Commission's order for private proceedings and notice of hearing herein, dated April 4, 1960 was sent by registered mail to Howell addressed to the address stated in registrant's registration application as the place to which registrant consented to have notices sent. In addition, a letter dated April 4, 1960 was sent by registered mail to Howell at the same address, informing him that the Commission's order of the same date involved, among other things, a question as to whether Howell is to be named a cause of any order which may be entered and that the findings of the Commission may be binding on Howell in the instant proceedings or any future proceedings under the Act and the Securities Act of 1933. The letter also set forth the provisions of Rule 15b-9 (17 CFR 240.15b-9) informing Howell that he was entitled to participate as a party and requested Howell to communicate promptly with the Commission's New York Regional Administrator. The record discloses that both the order and the letter were delivered and were receipted for on Howell's behalf by the above-mentioned employee who

^{9/} The Commission has held that the mere failure to file a report of financial condition was a sufficient ground for revocation of a broker-dealer. See Theodore B. Stackpole, 36 S.E.C. 18 (1954); Max Krumholz, 36 S.E.C. 370 (1955).

^{10/} The order for proceedings herein requests that a determination be made whether it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant. Counsel for the Division of Trading and Exchanges in its proposed findings of fact and conclusions of law states that such finding is not necessary since registrant is no longer continuing business. Under the circumstances and in light of the recommendation that registrant's registration be revoked, the Hearing Examiner agrees that it is unnecessary to suspend registrant's registration.

who posted the registrant's books and records. The record further discloses that the Commission's order dated August 5, 1960 setting the date and place of hearing was sent by registered mail to the same address to which the order for proceedings was sent, but such order was returned by the Post Office Department with the notification that the addressee was not at the address given.

8. The Commission has held that appropriate notice and opportunity for hearing was given to a broker and dealer whose registration was sought to be revoked where the order for proceedings and notice of hearing was sent to such registrant addressed to the place which registrant consented to have notice sent in its application for registration notwithstanding that such notice was not delivered to registrant.^{11/} The Hearing Examiner believes that similarly adequate notice and opportunity for hearing was given to an officer sought to be named a cause for any order of revocation which may be entered, in a case where (1) the cause sought to be named is the president, director and the controlling stockholder of the broker-dealer; (2) the cause is the president and director who signed the application for registration and furnished only the address of the firm as the address to which communications concerning the application or registration may be sent; (3) the president and director received a copy of the order for the proceedings and notice of hearing together with a letter addressed to him at the address of registrant, which informed him that a hearing would be held to determine among other things whether he was a cause of

^{11/} See Valley State Brokerage, Inc., supra; Stratford Securities Co., Inc. Securities Exchange Act Release No. 6229, (April 11, 1960).

any order which may be entered and which requested him to communicate with the staff of the Commission and (4) the person sought to be named a cause aided and abetted the registrant in willful violations of the Act and rules promulgated thereunder.

9. In light of the foregoing, it is the Hearing Examiner's opinion that Howell received appropriate notice and opportunity for hearing and should be named as a cause of any order which may be entered herein.

III. CONCLUSIONS

In view of registrant's willful violations of the Act and the rules promulgated, the Hearing Examiner recommends that the Commission adopt and publish an order finding it is in the public interest to revoke the registration of Howell, Kraft and Cummings, Inc. as a broker and dealer. It is also recommended that the Commission find that, under the circumstances of the case, the registrant's violations were willful, that Theodore B. Howell aided and abetted such violations and that Theodore B. Howell be found to be a cause of the order of revocation.

Respectfully submitted,

Irving Schiller
Hearing Examiner

Washington, D. C.
October 28, 1960