

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

FILED

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SECURITIES & EXCHANGE COMMISSION

In the Matter of :
:
ASSOCIATED MOBILE SCHOOLS AND :
MODERN TRAINING CENTERS, INC. :
:
(24B-1706) :
:

INITIAL DECISION

August 10, 1972
Washington, D.C.

Ralph Hunter Tracy
Hearing Examiner

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APPEARANCES: Willis H. Riccio and Alan Campbell for the Division
of Corporation Finance of the Commission.

Roy L. Weiss for Associated Mobile Schools and
Modern Training Centers, Inc.

Robert W. Taylor for First New York Equities Co.

BEFORE: Ralph Hunter Tracy, Hearing Examiner

By order of the Commission dated December 3, 1971 ("Order"), the exemption of Associated Mobile Schools and Modern Training Centers, Inc. ("Associated") from the registration requirement of the Securities Act of 1933 ("Securities Act") provided under Regulation A of that Act was temporarily suspended. The Order charged that Associated's notification and offering circular contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made not misleading. In substance, the Order alleged that the offering circular failed to disclose that Associated was not prepared to open and operate a speed reading training school in the Boston area; that Associated was entirely dependent upon the services of its president Harold Walcott and that his absence would have a serious effect upon the intended business of the company; that the underwriter, First New York Equities Co. ("First"), did not intend to make a bona fide public offering; and that Associated failed to cooperate with the Commission in violation of Rule 261(a)(7) under the Securities Act of 1933.

The issuer filed an answer denying the allegations generally and requesting a hearing to determine whether to vacate the Order or to enter an order permanently suspending the exemption.

A hearing was held at Boston, Massachusetts on February 8, 1972 at which the underwriter, because of failure to receive notice, did not appear. On February 24, 1972 the hearing was reconvened at New York, New York at which time the underwriter participated. The issuer was represented by counsel at both hearings and the underwriter by counsel at New York. Proposed findings of fact and conclusions of law and briefs were filed by all parties.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

ISSUER

Associated was incorporated on November 3, 1969 in Delaware. It was organized by Stanley Peltz and Nathan Hager, partners in Transport Distributors, Inc., a trucking business in Brooklyn, New York. In 1969, in response to an ad in the Wall Street Journal, Peltz had met Dr. Oguz R. Turkkan of Learning Materials Publishing Company ("Learning Materials") which had placed the ad for investors who might be interested in participating in the educational field or franchising educational operations, including mobile schools, speed reading and other fields of learning. Associated was organized to act as the area distributor in Massachusetts and Connecticut for Learning Materials and to open and operate a Learning Materials franchise for a mobile training school and a speed reading training school in the Boston metropolitan area.

Dr. Turkkan recommended Harold Walcott, who had two years experience in the educational franchise business, to run the Boston franchise for Associated. Walcott was made president of Associated and an office was opened at 60 State Street, Boston, Massachusetts early in 1970. Learning Materials advertised for franchise leads and Walcott would follow them up. Expenses were paid by Peltz and Hager the principal stockholders of Associated.

Early in 1970, John H. Clymer, a Boston attorney, in response to a Wall Street Journal ad, was contacted by Dr. Turkkan who advised

him that Associated had been organized to handle franchises for Learning Materials in the Boston area. Clymer first called Walcott and then Peltz and Hager, who sold him 5,000 shares of Associated at \$.50 a share. Clymer testified that he met Walcott once or twice but never met Peltz or Hager. However, Roy L. Weiss, counsel for Associated informed Clymer sometime in 1970 that he had been elected a director of Associated. Clymer assisted in filing the offering circular with the Boston Regional Office. Clymer testified that he did not learn that First was the underwriter for the offering until September or October 1971.

On February 28, 1970, Associated filed a notification and offering circular pursuant to Regulation A under the Securities Act for the purpose of obtaining an exemption from the registration requirements of that Act for a proposed offering of 100,000 shares of its \$.01 par value common stock at \$3 per share. The shares were to be offered by Associated's officers and directors. Subsequent amendments reduced the selling price to \$1 per share, or a total of \$100,000. The offering commenced on March 17, 1971 and a post-effective amendment filed on April 1, 1971 named First New York Equities Co. ("First") 132 Nassau Street, New York, New York as underwriter on a best efforts one-half all or none basis for the period ending June 15, 1971 with a commission of \$.10 per share.

A 2-A report dated June 25, 1971 and received on July 2, 1971, indicated all 100,000 shares were sold by June 14, 1971 with unexpended proceeds to the issuer of \$83,088.04. A second 2-A report dated November 1, 1971 and received on November 22, 1971 indicated unexpended proceeds on hand of \$79,317.17 and that the issuer had not yet

commenced any business activities.

Misleading Statements in Offering Circular

Harold Walcott was employed as president and sole operating officer of Associated because of his background and experience in the field of educational franchising. He in turn was to receive instructions and materials from Dr. Turkkan and Learning Materials. Dr. Turkkan was, also, a director of Associated. Walcott was to receive a salary of \$20,000 per year on a full-time basis, however, he was an active employee for only about 6 months during which time he received \$500 a month. Learning Materials went out of business early in 1970 and Walcott stopped working for Associated about May or June 1970 and never resumed. After that the office at 60 State Street, Boston was closed and Walcott's home was used as a mailing address.

Following the failure of Learning Materials it was decided that Associated would proceed on its own as a franchisor rather than a franchisee. However, pending the proposed offering all operations ceased and Walcott found other employment. The offering circular had been amended to state that Walcott, Peltz and Hager would perform services for Associated on a part-time basis and that Walcott would be paid a salary of \$10,000 a year.

Sometime in June 1971 Walcott advised Peltz that he felt business conditions did not warrant opening a school and that he could not afford to resume his position with Associated. Without the services

of Walcott, Associated was unable to commence business and although attempts were made to find someone with the necessary qualifications to operate the business they were unsuccessful and, as a result, Associated has never engaged in any of the activities stated in the offering circular.

It is argued, on behalf of the issuer, that as long as it had the intent to carry out its announced plans the fact that it did not do so should not be construed as making the offering circular misleading, thereby destroying the exemption. However, it is admitted that Associated did not open and operate a speed reading school or a mobile training school in metropolitan Boston and did not begin to develop a franchise system because of the changed business conditions and the resignation of Walcott.

It is concluded that Associated's offering circular was materially false and misleading in failing to disclose that Associated was entirely dependent upon the services of Walcott and that without him the company could not begin any of its stated operations regardless of the success of the offering.

The Order alleges further, that the offering circular was misleading in that it failed to state that the underwriter, First, did not intend to make a bona fide public offering of the 100,000 shares and would dominate and control the market for shares of Associated.

The report on Form 2-A filed on July 2, 1971 shows that the offering was completed on June 14, 1971. Between July 8 and 29, 1971, 42,100 shares were purportedly repurchased at \$1.25 a share, as follows:

First Trading Account	13,900
M. Neustein - customer	13,200
Israel J. Weisberger <u>1/</u> subordinate lender of \$70,000	<u>15,000</u>
Total shares repurchased -	42,100

There is no indication in the underwriter's records of payment being received for these shares which were purportedly purchased on cross trades from customers who had purchased in the initial offering at \$1 a share.

The record reflects the sale at \$1 a share during the original offering which was completed by June 14, 1971. Between July 8 and 29, 1971, as shown above, shares were repurchased from original customers at \$1.25 a share. After that there was an increase in price until on August 9, 1971 Associated was quoted at \$3 bid, \$4 ask.

The Division contends that the original sales were made pursuant to an agreement to buy back at a $\frac{1}{4}$ point profit and then, after the offering circular requirement had been fulfilled, a public market would be commenced at prices entirely disproportionate to the value of Associated's shares. The Division urges, in support of this position, that it is significant that the buy-backs were placed for the most part in the underwriter's trading account or in accounts of individuals related to or close to the underwriter.

The evidence does not support the contention that there was an agreement to repurchase shares at a $\frac{1}{4}$ point profit. Neither does it support the allegation that the **underwriter** dominated and controlled the market for Associated stock. An examination of the National Daily Quotation Sheets ("Pink Sheets") 2/ for the period of June 22 to

1/ Father of Samuel Weisberger, sole owner of First.

2/ Official notice is taken of this.

September 9, 1971, shows three other brokers in the sheets at times and one other broker continuously with First, at prices which do not indicate that any domination or control was effected by First.

However, the record does support a finding that the repurchase of 42% of Associated's shares by the underwriter and associates shortly after the offering was purportedly completed was part of a method of distribution which was not disclosed.

A distribution of securities comprises "the entire process by which in the course of a public offering a block of securities is dispersed and ultimately comes to rest in the hands of the investing public. It is a process without finite boundaries and often includes one or more 'redistributions' by which portions of the issue are repurchased from speculative buyers, or so-called 'weak-hands,' with a view to replacement with permanent investors."^{3/}

An investor has a right to expect that the price at which he is purchasing a security is one determined in a free and independent market. The representation that the market is free and independent is implied in the conduct of the business.^{4/}

It is concluded that Associated's offering circular was materially false and misleading in failing to disclose that the underwriter did not intend to make a bona fide public offering of the 100,000 shares of Associated.

^{3/} Oklahoma-Texas Trust, 2 SEC 764, 769 (1937) aff'd 100 F.2d 888 (C.A. 10, 1939). Also, see In the Matter of Shearson, Hammill & Co., Sec. Ex. Act Rel. No. 7743 (11-12-65).

^{4/} Advanced Research Associates, Inc., et al., 41 SEC 579, 600 (1963); Norris & Hirshberg, Inc., et al., 21 SEC 865, 874 (1946).

The Order alleges that Associated failed to cooperate with the Commission in violation of Rule 261(a)(7) under the Securities Act, ^{5/} by ignoring and refusing to respond to inquiries from the Commission's staff during the period October 13 through October 20, 1971.

In late September or early October 1971 a member of the staff of the Boston Regional Office received a call from the New York Regional Office concerning quotations of Associated in the pink sheets at 3 $\frac{1}{4}$ - 4 $\frac{1}{4}$. He called Walcott who told him he had resigned and Clymer who was not aware of any after-market in the stock. Clymer gave the staff member a telephone number for Peltz and Hager at RMH Management Company, 132 Nassau Street, New York, New York. ^{6/} The staff member testified that he or a secretary called the New York number approximately seven times during a 5 to 10 day period, leaving messages to call back but neither Peltz nor Hager ever returned the calls. About a week later (apparently after the last call) Mr. Weiss called and stated that while he did not then represent the issuer he had filed the Regulation A offering circular and was interested in what the SEC inquiry was about. He was informed as to the SEC's concern and was asked what information he had concerning the after-market but he either didn't have any or didn't furnish any at that time. This was the extent of the inquiry.

The Division argues that Associated and its principals failed to communicate with the Commission's staff at a time when questions pertinent to this proceeding were pending and that the term "failed

^{5/} Rule 261(a)(7) provides that the Commission may suspend if:
"The issuer or any promoter, officer, director or underwriter has failed to cooperate, or has obstructed or refused to permit the making of an investigation by the Commission in connection with any offering made or proposed to be made hereunder."

^{6/} RMH Management Company is another trucking concern organized by Peltz and Hager in 1970.

to cooperate" relates to situations where the issuer, or its principals, placed itself out of communication with the staff. [Citing Salesology, Inc., 38 SEC 812 (1959)].

Although several telephone calls were made and messages left it is apparent that they were of the perfunctory "have Mr. Peltz call this number type" and were not informative as to the identity of the caller or the reason for the call. Many of the calls were placed by secretaries to secretaries and, accordingly, were not too communicative. No attempt was made by mail or other means to inform officers of Associated of the nature of the inquiry. Within a week, Weiss did call the Boston Regional Office.

Upon consideration of all the circumstances it does not appear that the issuer or its principals failed to cooperate within the meaning of Rule 261(a)(7) or the standards in Salesology, Inc., supra.

The brief on behalf of First argues, inter alia, that Weisberger was denied due process as required by the 5th and 14th Amendments to the Constitution. This is a spurious argument and calls for no consideration here, except to point out that upon learning that First had failed to receive notice of this proceeding the undersigned issued an order providing opportunity for hearing to First. It is concluded that First has not been denied due process.

The exemption under Regulation A is conditional and its availability dependent upon compliance with the specific requirements and standards laid down by the provisions of that regulation. The one claiming an exemption has the burden of proving its applicability.^{7/} In view of the

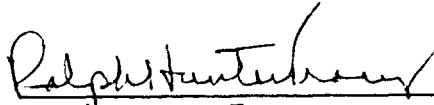
7/ SEC v. Ralston Purina Co., 346 U.S. 119 (1953).

findings that Associated's offering circular was false and misleading and that the terms and conditions of Regulation A were not complied with it is concluded that the exemption of Regulation A should be permanently suspended.

IT IS ORDERED, pursuant to Rule 261 of Regulation A under the Securities Act of 1933, that the exemption of Associated Mobile Schools and Modern Training Centers, Inc., under Regulation A is permanently suspended.

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

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. ^{8/}


Ralph Hunter Tracy
Hearing Examiner

August 10, 1972
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^{8/} 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.