

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of
RAPHAEL BLOOM**

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INITIAL DECISION

**Washington, D.C.
February 24, 1993**

**Warren E. Blair
Chief Administrative Law Judge**

**ADMINISTRATIVE PROCEEDING
FILE NO. 3-7661**

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In the Matter of

RAPHAEL BLOOM

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INITIAL DECISION

APPEARANCES: Jane E. Jarcho and David S. Kempers, of the Chicago Regional Office of the Commission, for the Division of Enforcement.

Lewis Mitchell Klee, for Raphael Bloom.

BEFORE: Warren E. Blair, Chief Administrative Law Judge.

These public proceedings were instituted pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act") by order of the Commission dated February 14, 1992 ("Order"). The Order directed that a determination be made whether allegations made by the Division of Enforcement ("Division") against Raphael Bloom ("Bloom" or "respondent") were true and what, if any, remedial action would be appropriate in the public interest. 1/

In substance, the Division alleged that Bloom was convicted in April, 1987 of one count of perjury before a grand jury and that Bloom was convicted on November 8, 1989 of securities fraud and conspiracy to commit securities and mail fraud, and that on February 27, 1990 Bloom was sentenced to four years in prison with five years probation to begin upon completion of his sentence.

At the outset of the hearing held October 27, 1992, Bloom was advised of his right to counsel and of his other rights if he chose to represent himself at the hearing. Bloom then chose to proceed without counsel.

As part of the post-hearing procedures, successive filings of proposed findings, conclusions and supporting briefs were specified. Following the hearing Bloom retained counsel to represent him in these proceedings. Timely filings of proposed findings, conclusions, and supporting briefs were made by the parties.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and observation of Bloom, who elected to testify

1/ The Order also named Alan Scop ("Scop") as a respondent in these proceedings, and he made an offer of settlement which the Commission accepted. On May 27, 1992 the Commission issued an Order Making Findings and Imposing Remedial Sanctions Against Scop, Securities Exchange Act Release No. 30739, 51 SEC DKT 1165. Findings herein are binding only on Bloom.

on his own behalf.

RESPONDENT

From in or about January, 1968 to in or about January, 1984, Bloom was either a registered representative, trader, or general partner of J.W. Kaufmann ("Kaufmann"), a broker-dealer registered with the Commission.

CRIMINAL CONVICTIONS

As reflected in the record and as conceded by Bloom, he has been convicted of offenses enumerated in Sections 15(b)(4)(B)(i) and 15(b)(4)(B)(iv) of the Exchange Act within ten years of the commencement of this proceeding. 2/ Respondent was found guilty on February 27, 1990 in the United States Court for the Northern District of Illinois, Eastern Division, on six counts of mail fraud, one count of conspiracy, six counts of securities fraud, and one count of False Statements to the Grand Jury, and sentenced to prison for a term of four years. Bloom was also placed on probation for a term of five years to commence upon completion of his prison sentence and ordered to make restitution in the amount of \$223,586.48 to be paid jointly and severally by him and his co-defendants Jack Ringer and Alan Scop. 3/

Underlying the felony convictions was a conspiracy in which Bloom and others participated to defraud investors through manipulation of the price of the common stock

2/ Respondent's Brief in Support of Proposed Findings of Fact and Conclusions of Law.

3/ United States v. Raphael Bloom. 86 CR 541-4 (N.D. Ill. February 27, 1990). Division Exhibit 1.

of European Auto classics Ltd., a company organized and incorporated as a part of the conspiracy. The perjury occurred during Bloom's testimony as a witness before a Grand Jury and related to his participation in the scheme to manipulate the price of European Auto common stock. 4/ As indicated by the Court's order for restitution of \$223,586.48 as a condition of probation 5/ and as noted in the Government's Sentencing Memorandum, 6/ public investors incurred significant financial losses as a result of the predations of Bloom and his fellow conspirators.

PUBLIC INTEREST

Having found that Bloom had been convicted in 1990 for felonies involving mail fraud, securities fraud, and other federal criminal felonies, it is necessary to consider the remedial action appropriate in the public interest.

The Division argues for the imposition of a bar against Bloom being associated with any broker or dealer as appropriate in the public interest. In support of its position the Division points to the egregiousness of Bloom's misconduct which resulted in the noted criminal convictions and imposition of prison sentences and a term of probation. The Division also refers to Bloom's unwillingness to accept his guilt and to his continuing assertions of innocence in the face of the jury's findings that he participated in a scheme

4/ Division Exhibit 3.

5/ Division Exhibit 1, at 3.

6/ Division Exhibit 4, at 1.

and conspiracy to defraud by means of stock manipulation. 7/

In further support of its position, the Division calls attention to the multiple actions taken against Bloom by the Commission and the National Association of Securities Dealers ("NASD") since 1969 and the fact that in 1986 Kaufmann was liquidated by the Securities Investor Protection Corporation (SIPC). One of the actions cited by the Division resulted in a United States District Court enjoining Bloom in June, 1969 from violation of the registration provisions of the Securities Act of 1933 with respect to the securities of a company named General Electronics, Inc. 8/ In Commission administrative proceedings instituted against Bloom in 1983, he was suspended from association with any broker-dealer for 60 days for wilfully aiding and abetting Kaufmann's wilful violations of the

7/ Bloom's answer to the allegations of the Division set forth in the Order included the following statement:

I have denied, and I continue to deny the facts underlying the conspiracy trial to which I was convicted of felony charges. The jury chose to believe a twice convicted, felon who, for personal gain, became a government witness. This convicted felon tied me to a conspiracy in which I contend that I had no connection. It is on this basis, an[d] others, that I seek a dismissal of this administrative complaint.

Again, at the hearing, while making a statement under oath, Bloom in referring to to the indictment stated:

I proclaimed my innocence and I continue to. There was never another violation or an allegation with respect to manipulation or something of the like that was the subject of the indictment. [Tr., at 29].

8/ SEC v. General Electronics, Inc., 67 Civil 2404, (D.C. S.D.N.Y. June 27, 1969). Bloom disputes the propriety of considering the injunction in assessing the sanction to be imposed because of the terms of the consent, but it is concluded that it is unnecessary to resolve that issue in view of the nature of his criminal convictions and the history of other regulatory disciplinary actions against him. Accordingly, the injunction is not being considered in connection with a determination of the appropriate sanction in the public interest.

Exchange Act and the recordkeeping, reporting, credit extension, and fingerprinting rules thereunder. 9/

In 1984 the Commission again had occasion to institute administrative proceedings against Bloom which resulted in his consenting to the entry of an order in which the Commission found that Bloom wilfully aided and abetted Kaufmann's violations of net capital, bookkeeping, and notification rules promulgated under Sections 15(c), 17(a), and 17(e) of the Exchange Act and that Bloom wilfully violated Section 15(b)(6) of the Exchange Act by becoming associated with a broker-dealer during a 60-day suspension from becoming associated with any broker-dealer or dealer without the consent of the Commission. In view of those findings, the Commission concluded that it was in the public interest to bar Bloom from association with any broker, dealer, investment adviser, or municipal securities dealer, with the right to reapply after two years to become associated with one of those entities in a non-proprietary and non-supervisory capacity. 10/

Between 1972 and 1986 Bloom also received four separate censures, suspensions, or fines from the NASD for violations of various NASD rules, including circumvention of rules in order to sell shares in a "hot" new issue stock offering to his father without the knowledge of his securities firm employer. 11/

As to the SIPC liquidation of Kaufmann, the Division emphasizes that the Consent

9/ Raphael David Bloom, 47 S.E.C. 929 (1983), 28 SEC Dkt 748.

10/ Raphael David Bloom, Securities Exchange Act Release No. 22627 (November 14, 1985), 34 SEC DKT 891.

11/ Division Exhibit 5.

Judgment 12/ entered against Bloom in the action by the Trustee for Liquidation of Kaufmann states that during its insolvency Kaufmann made fraudulent transfers to or on behalf of Bloom in the total amount of \$559,000.

Although Bloom consents to being barred from acting in any supervisory capacity or as a principal of any broker or dealer, he requests that he be allowed to continue, under appropriate supervision of his probation, as an associated person in the capacity of a registered representative of a broker-dealer. 13/ Bloom takes the position that there is little likelihood of a repetition of his past conduct, pointing out that all of the prior regulatory violations as well as the criminal convictions were related to his role either as a principal or trader. He objects to the Division's characterization of his criminal convictions as involving "extremely egregious conduct" and calls attention to the fact that the restitution order was imposed "jointly and severally" on all defendants. Bloom also contends that the great majority of the regulatory violations were "of a record-keeping nature" and maintains that contrary to the statement in the Kaufmann's bankruptcy consent order, the Trustee in his summation to the bankruptcy court stated that the transfers were not fraudulent.

Bloom was unable to produce the summation at the time of the hearing, and now argues, "the ALJ could have issued a subpoena duces tecum to the counsel for the trustee, who presumably had copies of the record in its files. In any event this avenue was not

12/ Division Exhibit 5; Irving H. Picard, Trustee v. Raphael D. Bloom, Adversary Proceeding No. 85-6738A (United States Bankruptcy Court, S.D.N.Y., May 21, 1986).

13/ Respondent's Proposed Findings of Fact and Conclusions of Law (February 4, 1993) and Respondent's Brief in Support of Proposed Findings of Fact and Conclusions of Law (February 4, 1993).

explored nor was the right to compulsory production explained to respondent." 14/

Upon careful consideration of the record and the arguments and contentions of the parties, it is concluded that in the public interest Bloom should be barred from association with any broker or dealer.

Respondent has not only failed to show any remorse for the conduct that led to his felony convictions but continues to "proclaim" his innocence, 15/ thereby raising questions regarding his rehabilitation and the probability that if Bloom were allowed to remain in the securities business as a registered representative he would adhere to the high standard of conduct expected and required of those engaged in any phase of the securities business.

This conclusion is strengthened by the fact that Bloom brushes aside his earlier disciplinary actions by the Commission and the NASD by saying that many of the prior sanctions were of a bookkeeping or procedural nature. He offers no explanation for nor mitigation of other offenses that were covered in those same actions. Further, the cavalier attitude Bloom takes with respect to his bookkeeping and procedural shortcomings clearly evidences his lack of appreciation for the need to comply with the rules and regulations governing the conduct of persons who are engaged in the securities business and belies his statement that "there is little likelihood of a repetition of respondent's past conduct." 16/

The record also refutes respondent's claim that the record was not adequately developed with respect to the summation of the bankruptcy trustee and that respondent was not aware of the availability of a subpoena to require production of that document.

14/ Respondent's Brief (February 4, 1993).

15/ Tr., at 29.

16/ Respondent's Brief (February 4, 1993).

As the Division notes, the hearing was twice recessed, once in the morning and again in the afternoon, to give respondent time to obtain a copy of the summation, and upon his inability to do so, he was given ten days from the close of the hearing to obtain the document and move its admission into the record. Pursuant to the ruling, respondent obtained and moved the admission of a copy of the bankruptcy trustee's complaint and of a consent order of the bankruptcy court which were admitted December 1, 1992 respectively as Respondent's Exhibits A and B. In his motion for admission of Exhibits A and B, notarized November 5, 1992 before his now counsel, respondent stated he was continuing his efforts to secure a copy of the summation. With respect to Bloom's complaint that the "right to compulsory production of the document was not explained" to him, respondent chooses to ignore a letter dated March 24, 1992 which the then designated presiding judge addressed to him, and which Bloom admitted receiving. 17/ That letter advising respondent of his rights if he chose to represent himself included the following advice:

(5) You will be entitled to present evidence on your own behalf through testimony by yourself or by other witnesses including another respondent and through documentary material. If you desire to compel any person to appear to testify in your behalf or to produce documents you wish to introduce in evidence, you may request me to issue an appropriate subpoena to such person.

However, it will be your responsibility to serve the subpoena and to tender any pay such person the same witness and mileage fees as are paid to witnesses in the federal courts.

Bloom also neglects to mention that at the outset of the hearing on October 27, 1992 when he stated that he could not recall the explanations in the letter, his rights were again stated on the record and he was advised that:

17/ Tr. at 4.

If you wish to compel anybody to be present and to testify, a subpoena would be required. 18/

At no time before or during the hearing did respondent invoke his right to have a subpoena issued to compel production of the summation in question. In view of the advice given to Bloom in connection with his election to represent himself, it is concluded that he has been accorded a fair hearing and that no basis exists for granting his request to reopen the hearing for additional evidence. 19/

O R D E R

Accordingly, IT IS ORDERED that Raphael D. Bloom is barred from association with any broker or dealer.

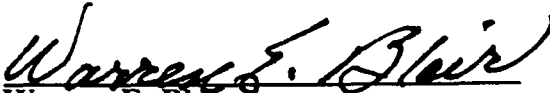
This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Rules of Practice.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for

18/ Tr., at 5.

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

review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.


Warren E. Blair
Chief Administrative Law Judge

Washington, D.C.
February 24, 1993