ADMINISTRATIVE PROCEEDING
FILE NO. 3-35

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

OWEN K. TAYLOR, INC. (801-3675)
40 Exchange Place
New York, New York 10005

INITIAL DECISION

Washington, D. C.
December 2, 1965

Sidney Gross
Hearing Examiner

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BEFORE: Sidney Gross, Hearing Examiner

APPEARANCES: Bernard J. Coven, Esq. for Owen K. Taylor, Inc., Isadore J. Aberlin and Lili Aberlin

Nathan M. Fuchs and Richard Bandler, Esqs. for the Division of Trading and Markets.

These proceedings were instituted under Section 203(d) of the Investment Advisers Act of 1940 ("the Act") pursuant to the order of the Securities and Exchange Commission ("Commission") dated March 2, 1965, to determine whether the application of Owen K. Taylor, Inc. ("Taylor" or "applicant") for registration as an investment adviser should be denied.

The order for proceedings alleges that applicant, aided and abetted by Isadore J. Aberlin ("Aberlin"), Lili Aberlin, his wife and Martin Orenzoff ("Orenzoff"), wilfully violated Section 207 of the Act which makes it unlawful to wilfully make any untrue statement of material fact in a registration application filed under Section 203 or wilfully to omit to state in such application any material fact which is required to be stated therein.[1/] It is also alleged that from about August 1960 to December 1960 Aberlin wilfully violated Section 10(b) of the Securities Exchange Act ("Exchange Act") and Rule 10b-5 thereunder. The order provides for service thereof on Aberlin, Lili Aberlin and Orenzoff in addition to applicant,[2/] that applicant file an answer and that any other

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1/ Section 203, in substance, requires that an application for registration as an investment adviser include, inter alia, the business affiliations of its officers and directors for the past 10 years.

2/ On Taylor's consent, the Commission entered its order of May 20, 1965, postponing the effective date of applicant's registration until final determination of the question whether registration should be denied.

person named in the order against whom findings may be made or sanctions imposed file a notice of appearance.

An answer was filed, in effect a general denial, on behalf of Taylor, Aberlin and Lili Aberlin. Orenzoff did not file a notice of appearance or appear at the hearing. Proposed Findings of Fact and Conclusions of Law together with a supporting brief have been filed by the Division of Trading and Markets ("Division"). An application by counsel for respondents Taylor, Aberlin and Lili Aberlin for an extension of time within which to file proposed findings of fact and conclusions of law was granted. Nevertheless, these respondents failed to file such documents or, indeed, any other documents thereafter.

Admittedly, Aberlin is Taylor's sole stockholder and is in sole control of its operations. Taylor filed an application on Form ADV for registration as an investment adviser on February 1, 1965, naming Aberlin as President and Treasurer, Lili Aberlin as Vice-President and Orenzoff as Secretary. All three were designated directors. Orenzoff had been employed by applicant from December 1958 to July 1960.

Item 7 of the Form required the applicant to furnish information as to each business connection and any connection as an employee of each of its officers and directors within the past ten years. The record amply demonstrates that many such connections

of Orenzoff were omitted. In addition to the data revealed by the Form, Orenzoff was employed by Miss Rae's Service, Inc. from October 23, 1957 to August 1, 1958 and assigned to the night comparison division of Decoppet & Doremius ("D&D"), a broker and dealer. From August 4, 1958 to December 19, 1958 Orenzoff was employed to do similar work by D&D directly. He was employed by the Ozalid Division of General Aniline & Film Corporation from March 3, 1958 to August 1, 1958; by Tin Plate Lithographing Company from August 4, 1958 to October 10, 1958; by Smilen Brothers, Inc. in October and November 1958; by Herz Neumark & Warner, ("Herz") a broker and dealer, as a commodities salesman from July 30, 1964 to September 21, 1964.

Aberlin had obtained from Orenzoff a list of the latter's previous employments for the last 10 years for the purpose of preparing the Form ADV. But despite the obvious hiatus in the list for the period February 1958 to December 1958, Aberlin sought no further information from Orenzoff as to his employment during that period. He "didn't think it was important". Moreover, Aberlin not only "believed" Orenzoff had a part-time job with D&D during that period but was also well aware of Orenzoff's employment at Herz between July and September 1964 having visited him regularly at Herz' offices. Under these circumstances the omission from the form of Orenzoff's employment at D&D and Herz are inex-

cusable and must be assumed to have been deliberate.

The Form ADV discloses no former business connections or employments for Lili Aberlin who is a trained dress designer. On August 22, 1960 she entered into a lease covering premises 135 E. 56th St., New York City for one year from September 1, 1960 at a monthly rental of $150. On August 23, 1960, she filed a certificate with the County Clerk, New York County, certifying that she was doing business under the name "Lili of Beverly Hills" at the same address. The agent for that building, whose office was on the same floor as "Lili's" premises, saw her there "practically every day", noted that her premises contained dresses and materials and that the sign "Lili of Beverly Hills" was on the door. The record also discloses that she employed a telephone service from August 1961 to April 1965, maintained a listing in the Manhattan telephone directory under the name "Lili of Beverly Hills, Dsgnr." from November 19, 1962 until about the date of the hearing and on three occasions between November 1964 and February 1965 received orders for clothing for dogs from Lord & Taylor totalling about $600. Moreover, a newspaper article appearing in The New York Herald Tribune on January 31, 1965, received in evidence under a stipulation that all information contained therein was obtained from Lili Aberlin, leaves no doubt that she was in the business of creating fashions for the well dressed canine.

It is significant that although the omissions from item 7 of the Form ADV were called to Aberlin's attention during the course of his investigatory examination by the Commission on February 16, 1965, he made no attempt to amend the application to set forth the facts and thus comply with the requirement that the application contain a true and correct statement of all information required to be furnished.[3/] Nor is this Taylor's first such experience. On July 9, 1965 the Commission revoked an earlier registration of Taylor as an investment adviser for violation of Section 207 of the Act upon a finding of failure to amend its application to disclose a change of address of its place of business and the resignation of two directors named in the application despite advice by members of the Commission's staff of the necessity for the filing of an appropriate amendment.[4/]

The Commission has pointed out on numerous occasions that the application for registration is basic and vital to its administration of the Act and that the protection of investors and the public interest render it essential that the information required by the application be furnished completely and accurately.[5/] The

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3/ Irving Grubman, 40 S.E.C. 671 (1961); Kelly Rubenstein, Inc. 38 S.E.C. 582 (1958).

4/ Investment Advisers Act Release No. 129.

5/ S.A.E. Corporation, Securities Exchange Act Release No. 6956 (November 28, 1962).

application form obligates the applicant to verify that all statements contained therein are true, correct and complete to the best knowledge and belief of the person executing the form.[6/] Not only did Aberlin fail to include facts obviously within his own knowledge but further, in the light of his previous revocation, must be held to have exhibited a total disregard and disdain for the requirements of the statute.

Orenzoff testified before the Commission on February 15, 1965[7/] that both he and Aberlin prepared the application. Orenzoff acknowledged his employment at all of the firms set forth above and stated that he read the application before it was filed. Moreover, his failure to file a notice of appearance or to appear at the hearing constituted his default and the proceeding may be determined against him upon consideration of the order for proceeding, the allegations of which may be deemed to be true.[8/]

The record is devoid of any evidence that Lili Aberlin was aware of the contents of the Form ADV. She had no real interest in the applicant having been named as a dummy director merely because three directors were required.[9/] Nor is there any indication

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6/ Justin Federman Stone, Investment Advisers Act Release No. 153 (November 26, 1963).

7/ This testimony is considered as against Orenzoff only.

8/ Rule 6(e) of the Commission's Rules of Practice.

9/ Cf. S.A.E. Corporation, supra.

that she furnished Aberlin incorrect information regarding her business activities.

Accordingly, it is concluded that applicant, aided and abetted by Aberlin and Orenzoff, wilfully[10] violated Section 207 of the Act.

Between August 30, 1960 and September 8, 1960, Aberlin engaged in the purchase of securities totalling about $168,000 through accounts he maintained at three broker-dealers and an account maintained by him in the name of Lillian Stanford.[11] In November 1960 Aberlin engaged in a short sale of securities amounting to over $74,000 through a fourth broker and dealer.[12] These dealers were compelled to sell Aberlin out or buy in on his short sale, as the case required, and suffered losses totalling in excess of $15,000 for which, taking into account one payment of $800, Aberlin confessed Judgment. In purported repayment of part of

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10/ It is well settled that a finding of willfulness does not require a finding of intention to violate the law. It is sufficient that applicant knew what it was doing. Hughes v. S.E.C., 147 F. 2d 969, 977 (D.A.D.C., 1949); Shuck v. S.E.C., 264 F. 2d, 358, 363, n. 18 (C.A.D.C., 1958); Thompson Ross Securities Co., 6 S.E.C. 1111, 1112 (1940); Henry P. Rosenfeld, 32 S.E.C., 731, 739, 740 (1951).

11/ Lili Aberlin's name prior to her marriage to Aberlin.

12/ It is stipulated that these were purchases and short sales of listed securities and were effected by the use of the means and instrumentalities of interstate commerce and the mails through the facilities of a national securities exchange.

these various obligations, Aberlin issued checks between October and December 1960 in the sums of $1500, $10,000, $1000 all of which were returned for insufficient funds. Except for certain relatively small credits, the losses sustained by the broker-dealers have not been repaid. Moreover, at the time he entered into the aforesaid transactions, Aberlin was already indebted to a fifth broker and dealer in the sum of $9000 and his check in partial payment thereof in the amount of $3000, dated September 28, 1960, was also returned.

All these checks were drawn on The Commercial Bank of North America. The bank's statements of Aberlin's account reflect that during the period September 1, 1960 through December 28, 1961 his balance did not exceed the sum of $450.10. Further, during the period commencing December 29, 1959, Aberlin was constantly in arrears in the payment of rent for the apartment he occupied and was dispossessed for non-payment of rent on December 2, 1960.

Section 203(d) of the Act authorizes the Commission to deny registration to an investment adviser if it finds that any controlling person has wilfully violated any provision of the Exchange Act. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder make unlawful as to "any person" the use of the mails or any means or instrumentality of interstate commerce, or the facility of any national securities exchange in connection with purchase or sale of any security by use of a device or scheme to defraud.

Manifestly, Aberlin engaged in the aforesaid purchases and short sales of securities when he was not in a position to nor could he have intended to meet the obligations he incurred through these transactions, thereby causing the dealers through whom the transactions were consummated to suffer losses. It is well settled that a person who obtains credit by concealing his insolvency and intent not to pay is guilty of fraud.[13/] Moreover, Aberlin's affairs "had reached such a pass that ordinarily honest persons would no longer buy, if they had no greater chance to pay. . . ."[14/] Aberlin's conduct constitutes fraud and a wilfull violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[15/]

Public Interest

In addition to the foregoing, Aberlin testified that directly prior and subsequent to the revocation of applicant's registration as an investment adviser on July 9, 1962, applicant received 50 to 75 letters from subscribers including a number of checks for future subscriptions. Aberlin asserts he cashed 2 or 3 such checks

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13/ Donaldson v. Farwell, 93 U.S. 631 (1876).

14/ California Conserving Co. v. D'Avanzo, 62 F. 2d 528 (C.A. 2, 1933).

15/ Wendell Elmer Kindley 38 S.E.C. 30 (1957). Although Kindley involved the activities of a registered broker and dealer, the section and the rule are applicable to "all persons".

because he felt he had earned the fee prior to receiving them. However, he admits receiving 10 additional checks, specifically identified in his testimony of February 19, 1965, which he neither cashed nor returned. Nor did he attempt to respond to virtually any of the letters. Moreover, as a result of inquiries and complaints made by various subscribers, the Commission wrote to applicant on six occasions between October 1962 and April 1963, requesting applicant to report its version of the facts and its intentions regarding refund.[16/] Applicant neglected to answer any of the Commission's letters.

Aberlin's illness during late 1962 and early 1963 hardly excuses his neglect to take any action in respect of the checks and letters in the following years up to the time of the hearing. Further, having been registered as an investment adviser, Taylor retained a responsibility, despite the revocation of its registration, to respond to the Commission's letters regarding matters resulting from its pre-revocation activities as an investment adviser. Applicant's disregard of those letters indicates a lack of respect

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16/ Respondents' motion to strike exhibits 9C through 10 on the grounds that the checks and letters from subscribers and the Commission are not admissions against interest and are outside the scope of the order for proceedings is denied. Aberlin had admitted he received letters from subscribers and the Commission and the letters themselves are admissible not for the truth of their contents but merely to demonstrate the nature of the inquiries to which he admittedly failed to respond. Aberlin also had previously identified each of the checks, which were described in detail, and admitted receiving them. As to the scope of the order, the documents are admissible as matters pertaining to the public interest.

for governmental authority and its own responsibility which hardly recommends favorable action on its present application.

In the light of the foregoing, applicant's purposeful flaunting of the Commission's requirements in the filing of its application and the fraudulent conduct of applicant's sole stockholder and sole controller in the purchase of securities, Taylor's application for registration as an investment adviser should be denied. Further, Aberlin should be held to have wilfully violated the provisions of the Exchange Act and Aberlin and Orenzoff should each be held to have aided and abetted applicant's violation of Section 207 of the Act. 17/

Sidney Gross
Hearing Examiner

Washington, D.C.
December 2, 1965

17/ 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.