ADMINISTRATIVE PROCEEDING
FILE NO. 3-3989

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

THE GEIER LETTER, INC.
(801-4391)

MICHAEL S. GEIER

U. S. SECURITIES & EXCHANGE COMMISSION
RECEIVED
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INITIAL DECISION

January 27, 1975
Washington, D.C.

David J. Markun
Administrative Law Judge

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APPEARANCES: Phil Gross, Special Trial Counsel, Washington, D.C., and Lawrence J. Toscano and Philip M. Mandel, attorneys, New York Regional Office, for the Division of Enforcement.

Stanley M. Meyer, of Preminger, Meyer & Light, Brooklyn, New York, for Respondents.

BEFORE: David J. Markun, Administrative Law Judge

THE PROCEEDING

This public proceeding was instituted by an order ("Order") of the Commission dated November 1, 1972, pursuant to Section 203(e) and (f) of the Investment Advisers Act of 1940 ("Advisers Act"), Section 9(b) of the Investment Company Act of 1940 ("ICA"), and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), to determine whether, as alleged in the Order, Respondent Geier was convicted in 1971 of violations of Section 9(a)(2) of the Exchange Act and Section 17 of the Securities Act of 1933 ("Securities Act") in connection with an alleged stock manipulation, and the remedial action, if any, that might be appropriate in the public interest against either or both Respondents pursuant to the sections of the securities laws under which the proceeding was brought.

A pre-hearing conference was held on May 16, 1974, pursuant to 17 CFR 201.8(d) of the Commission's Rules of Practice in New York, New York, and the hearing herein was commenced and concluded on May 29, 1974,[1/] in New York, New York. Proposed findings of fact, conclusions of law, and a supporting brief were filed by the Division of Enforcement ("Division"). Counsel for Respondents advised by letter of September 19, 1974, that Respondents would not file counter proposed findings, conclusions, and supporting briefs but would instead rest upon counsel's

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1/ Oral argument, primarily on the question of sanctions, was heard at the hearing. Paragraph A of Section II of the Order was amended in one minor particular during the pre-hearing conference (Tr. pp. 4-5) and, as respects the allegations in paragraphs B, C, and D of Section II of the Order, counsel for Respondents advised at the hearing, as found below, that Geier's sentence of imprisonment had been served (5 mos.) and that certiorari had been denied.

arguments, made at the time of the hearing, respecting the matter of sanctions, the basic facts being undisputed following the filing of Respondents' amended answer on May 22, 1974.

The findings and conclusions herein are based upon the record, which includes certain stipulations of fact between counsel for the parties. No witness testified; the Division introduced 3 exhibits (numbered) and the Respondents introduced one exhibit (lettered). As already noted, the facts are not in dispute and the argument centers upon the sanctions, if any, that should be imposed in the public interest.

FINDINGS OF FACT AND LAW

The Respondents

Respondent Michael S. Geier ("Geier"), 34, became a registered representative in 1961, after which he worked for a number of broker-dealers for varying period of time. He was first employed by E.F. Hutton for seven months, then, successively, for approximately 1 year periods, by: Sutro Brothers; Golkin, Bomback; Charles Plohn; and Brand, Grumet & Siegel. Thereafter he was employed as a registered representative by Hertz, Neumark & Warner ("Hertz, Neumark") for four years.

In June 1967, while continuing to be employed at Hertz, Neumark, Geier went into business for himself as an investment adviser through the corporate entity The Geier Letter, Inc., which he organized to publish the Geier Letter. The last issue of the Geier Letter was published approximately December 15, 1972.

At the time of the hearing Geier was employed as a placement counselor for an employment agency and had been so employed since August 6, 1973.

Prior to the hearing herein Geier had filed a personal petition in bankruptcy in the Eastern Division of New York. The first meeting of creditors was held May 22, 1974, and the total of his debts appeared to exceed $100,000.

Respondent The Geier Letter, Inc. ("Geier Inc."), incorporated by Geier in New York State on May 25, 1967, has been registered as an investment adviser pursuant to Section 203(c)[2/] of the Advisers Act since July 7, 1967, and is now so registered. Geier was at the time of the hearing and at all times relevant to this proceeding president and sole stockholder of Geier Inc. According to its amended Form ADV, filed January 3, 1969, Geier Inc.'s business, when active, included publication of "periodic publications relating to securities on a subscription basis" ("Geier Letter") as well as the furnishing of investment advisory services to individual clients on the basis of the individual needs of the client at an annual charge of 2% of net asset value.[3/] As already noted, the Geier Letter ceased publication about December, 1972, and it does not appear from the record that Geier Inc. is otherwise presently actively engaged in business.

2/ 15 U.S.C. §80b-3(c).

3/ The record does not establish to what extent, if any, investment advice may have been furnished to individual clients other than through publication of the Geier Letter.

Basis For Imposition of Sanctions on Respondents

The record establishes, as the Order charges and Respondents concede, that Geier on September 17, 1971, was adjudged guilty[4/] after jury trial in the United States District Court for the Southern District of New York of having violated the anti-manipulative provisions of Section 9(a)(2) of the Exchange Act and the antifraud provisions of Section 17(a) of the Securities Act.[5/] The violations were committed in the course of Geier's participating in and conspiring with 15 other

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4/ Exhibits 2, 3.

5/ 15 USC §78i(a)(2); 15 USC §77q. Cited Sections 9(a)(2) and 17(a) respectively provide as follows:

PROHIBITION AGAINST MANIPULATION OF SECURITY PRICES

Sec. 9. (a) It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange —

* * *

(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

FRAUDULENT INTERSTATE TRANSACTIONS

Sec. 17. (a) It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly —

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

The penalties provided by Section 24 of the Securities Act, 15 U.S.C. §77x, and by Section 32(a) of the Exchange Act, 15 U.S.C. §78ff, make wilful violations of Section 9(a)(2) and 17(a) felonies under the definitions contained in 18 U.S.C. §1.

defendants and other named but uncharged co-conspirators in a concerted effort to raise by manipulation the price of Hercules Galion Corporation ("Hercules") stock, listed on the American Stock Exchange, and by committing fraud in the offer and sale of such securities.[6/]

Geier was and is a "person associated with an investment adviser", i.e. with Geier Inc., within the meaning of that term as defined in Section 202(a)(17) of the Advisers Act.[7/]

Section 203(f) of the Advisers Act, Section 9(b) of the ICA, and Section 15(b)(7) of the Exchange Act[8/] each contains provisions permitting the imposition of sanctions upon Geier, if found to be in the public interest, on the basis of the convictions, found above, of violations of Section 17(a) of the Securities Act and Section 9(a)(2) of the Exchange Act.

In addition, Section 203(e)[9/] of the Advisers Act authorizes the imposition of sanctions against Geier Inc., an investment adviser, on the basis of the convictions of Geier in view of Geier's status as an associated person of Geier Inc.

PUBLIC INTEREST

Counsel for Respondents urges that Respondent Geier's criminal convictions were in no way related to his publication of the Geier Letter

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6/ Geier's conviction was affirmed — U.S. v. Projansky, et al., 465 F. 2d 123 (C.A. 2d, 1972) — and his petition for certiorari was denied on November 13, 1972. 409 U.S. 1006.

7/ 15 U.S.C. §80b-2(a)(17).

8/ 15 U.S.C. §80b-3(f); 15 U.S.C. §80a-9(b); 15 U.S.C. §78o(b)(7).

9/ 15 U.S.C. §80b-3(e).

and that accordingly no sanctions need be imposed in the public interest against either Respondent. Respondents urge in the alternative that if any sanctions are found warranted or required in the public interest they should be limited to temporary suspensions rather than the permanent or indefinite revocations or bars urged by the Division.

As part of this argument counsel for Respondents makes the point that in imposing sentences on Geier, on some of which he was placed on probation subject to the condition ". . . that he refrain from engaging in the business of advising persons with regard to the sale or purchase of or dealing in securities . . ."[10/] the District Judge, after being asked by Geier's counsel for clarification of the effect of such condition on continued publication of the Geier Letter, in view of the fact that Geier would no longer be advising customers as a registered representative of a broker-dealer, expressed the following view: "If it is merely informative and objective in tone, I have no objection to it whatsoever."[11/]

10/ Exhibit A, p. 35.

11/ The pertinent colloquy between Court and Counsel, at pp. 35 (lines 20-25) and 36 (lines 2-10) of Exhibit A, was as follows:

> Mr. Meyer: In addition to that, Judge, you mentioned a condition — I just want to clarify one thing.
> The Court: I think it needs to be clarified or may need to be clarified.
> Mr. Meyer: Of course, at the time of this occurrence, he was advising people, which was part of his job, to purchase or sell stocks as a broker, or what is commonly called a customer's man. He doesn't do that any more.
> The Court: If he doesn't do it, he won't be running afoul of this term of the probation.
> Mr. Meyer: As your Honor knows, he publishes a letter —
> The Court: If it is merely informative and objective in tone, I have no objection to it whatsoever.
> Mr. Meyer: Thank you.

This argument respecting sanctions by Respondents, predicated upon lack of connection between the Geier Letter and the securities-law felonies committed by Geier, lacks validity for a number of reasons. Firstly, the statutory provisions under which this proceeding was brought and which authorize the imposition of sanctions on both Respondents, as found above, are clear in their express language that no connection need be shown between the conduct that was the subject of the criminal conviction and the activity that would be proscribed by the imposition of an appropriate sanction. Respondents cite no authority in support of their contrary argument.

Secondly, there may be some doubt as to whether the nature of the Geier Letter (such letters generally carry "buy", "sell", or "hold" implications — that is, in essence, their purpose) was sufficiently explained to the Court [12/] but, in any event, it is clear that the District Judge's comment was made only in the context of his establishment of conditions on Geier's probation and did not purport to control or influence action that another cognizant agency, such as the Commission, might take under relevant statutes on the basis of the felony convictions.

In considering the sanctions to be imposed in the public interest it is highly significant that an investment adviser bears a fiduciary relationship and responsibility to his clients. [13/] The securities felonies

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12/ The question of whether Geier Inc. could advise customers for a fee, which, as noted above, was one of its objectives, was apparently not raised at the sentencing of Geier.

13/ SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 at 194 (1963); Kidder, Peabody & Co., Inc., 43 S.E.C. 911, 915 (1968); Dow Theory Forecasters, Inc., 43 S.E.C. 821, 831 (1968); Roman S. Gorski, 43 S.E.C. 618, 620 (1967); Edward J. Moschetti, 41 S.E.C. 942, 943 (1964); 2 Loss, Securities Regulation, 2d Ed., 1412.

committed by Geier at the expense of his broker-dealer customers create very serious doubt that Geier should continue to be entrusted with a fiduciary responsibility so heavy as that borne by an investment adviser or even by a registered representative of a broker-dealer, who, in certain situations, also owes a fiduciary obligation to his clients.

The felony violations of the securities laws committed by Geier are particularly serious, involving as they do such a corrosive and destructive effect upon the securities markets and upon the public's faith and trust in their integrity.

That the sentencing District Judge regarded the violations as extremely grave is evident from the fact that, after much soul-searching and agonizing over the matters, he imposed a six month jail sentence, to be served,[14/] even though Geier had had no prior violations and had other mitigating circumstances in his favor. The Court spoke in pertinent part as follows in imposing sentence on Geier (Exhibit A, p. 33 (line 5) to p. 35 (line 14)).

> THE COURT: Mr. Geier, will you remain standing.
> You have heard everything I have had to say in the case of Mr. Projansky and Mr. Brainin, and there is no need for me to repeat those things. It would apply in your case, also.
>
> In your particularly [sic] case, you stand convicted of many more counts, I guess more than anybody, but in my opinion that is not the basis for the determination of what ought to be done in this case. If it were, the maximum penalties here would be something over forty years and $55,000 of fines.
>
> Mr. Geier, I have already described my reaction to the seriousness of the offenses which have been determined by the jury here. I would not be truthful if I didn't say

14/ The Record indicates that 5 months of the 6 months sentence was actually served, presumably with time off for good behavior.

that I believe the jury was generally correct in finding you guilty of having participated in this proposition. You were youngish but not that young. You were rash, and in my opinion you were deliberate in persuading your customers to make purchases of Hercules Galion. As a matter of fact, you did buy, yourself, and had good reason to think so.

The law is formulated to prevent this very thing, and the ironic thing is that when people get together to run up the price of stock, there is always somebody who sells and brings it down.

There is pretty nasty evidence against you that you accepted money in regard to this proposition, which, although it comes from people who are not necessarily the most reliable in the world — but I guess it is so.

Against you there are those things. There are many favorable things in your case. You have had no prior offense. you have, obviously, a very good family relationship. I was deeply impressed by the letter I got from this young lady, who wrote to me in her own handwriting, directly to me, which is always refreshing. I want to mention Christine Winter — Is that her name?

DEFENDANT GEIER: Yes.

THE COURT: —how much I was impressed by her letter, and if I could have done what you did for her, made her feel as she felt towards you — This is something I want to and have to take into consideration.

You have also done admirable things in religious and charitable causes, which your associates in those causes have told me about. I have taken all these things into mind.

Accordingly, having been convicted on Counts 1, 4 and 5 through 13, with the exception of 7 and 11, of the indictment for violating the securities laws, it is adjudged that on Count 1 the defendant be committed to the custody of the Attorney General or his authorized representative for a period of six months. On Count 4 and the remaining seven counts on which he has been convicted, the defendant is placed on probation for a period of two years, subject to the standing probation order of the Court, on the condition that he refrain from engaging in the business of advising persons with regard to the sale or purchase of or dealing in securities.

The sentences on all counts other than Count 1 are to run concurrently with each other but consecutively to Count 1.

As respects sanctions, the record further discloses that Geier Inc. and Geier failed to comply with or cause compliance with Section 204 of the Advisers Act [15/] or Rule 204-1(b) thereunder, [16/] which require that an amendment be filed on Form ADV promptly if any information filed in any application for registration, or amendment thereto, on Form ADV becomes inaccurate. Question 16(b) of Form ADV inquires whether, among other things, any person listed in Schedule A of the Form ADV "has been convicted within 10 years of any felony or misdemeanor (1) involving the purchase or sale of any security ; [or] (2) arising out of the conduct of the business of a broker-dealer , . . ." Geier is listed in the Schedule A of the Form ADV most recently filed by Geier Inc. and question 16(b) is answered in the negative.

In Edward J. Moschetti, supra, footnote 13, involving an application for registration as an investment adviser by one who had pleaded guilty to violations under the mail-fraud statute and had incurred a $500 fine and a five-year period of probation, the Commission concluded as follows, at p. 943:

> An investment adviser is a fiduciary in whom clients must be able to put their trust [footnote omitted]. The conviction and applicant's failure to disclose it show a lack of the qualifications necessary for one who acts in that capacity. We conclude that the public interest requires that Moschetti's application for registration be denied.

15/ 15 U.S.C. §80b-4.

16/ 17 CFR 275.204-1(b).

At the time Geier committed the felony securities violations here involved he had had some five to six years of experience in the securities industry and should have known better than to participate in the blatant and extensive criminal fraud found by the jury.

Notwithstanding the mitigative factors mentioned above and all others urged by the Respondents, it is concluded that the public interest requires the imposition of the maximum sanctions urged by the Division[17/] in order to protect the public against further violations by Geier and to serve as a deterrent to others in the securities business who might be tempted to commit similar violations. This conclusion is reached in light of the egregious nature of the offense committed, the absence of any restitution to defrauded investors, the absence of any substantial, affirmative evidence showing rehabilitation, and upon the entire record.

ORDER

Accordingly, IT IS ORDERED as follows:

(1) Respondent Michael S. Geier is hereby:

(a) prohibited permanently from serving or acting as an employee, officer, director, member of an investment advisory board, investment adviser of, or principal underwriter for a registered investment company or from being an affiliated person of such investment adviser, depositor or principal underwriter within the meaning of the ICA, pursuant to Section 9(b) of the ICA;

17/ It should be noted that a bar order does not preclude the person barred from making such application to the Commission in the future as may be warranted by the then-existing facts. Fink v. S.E.C., 417 F.2d 1058, 1060, (C.A. 2, 1969); Vanasco v. S.E.C., 395 F.2d 349, 353, (C.A. 2d, 1968).

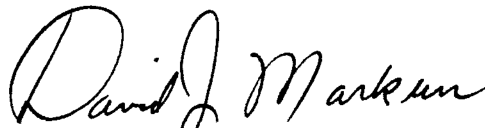
(b) barred from being associated with an investment adviser, pursuant to Section 203(f) of the Advisers Act; and

(c) barred from being associated with a broker or dealer, pursuant to Section 15(b)(7) of the Exchange Act.

(2) The registration of Respondent The Geier Letter, Inc. is hereby revoked, pursuant to Section 203(e) of the Advisers Act.

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice, 17 CFR 201.17(f).

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. 18/



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18/ 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. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the issues presented.