ADMINISTRATIVE PROCEEDING
FILE NO. 3-3759

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
DU-TEL INVESTMENT CO., INC.	:
(8-14336)	:
GASTON R. DESAUTELS	:
	:

INITIAL DECISION

Washington, D.C.
February 21, 1975

Warren E. Blair
Chief Administrative Law Judge

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3759

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
DU-TEL INVESTMENT CO., INC.	:	
(8-14336)	:	INITIAL DECISION
GASTON R. DESAUTELS	:	
	:	

APPEARANCES: Michael J. Stewart and Michael K. Wolensky, of the Miami Branch Office of the Commission, for the Division of Enforcement.

Louis Stoskopf, for Du-Tel Investment Co., Inc., and Gaston R. Desautels.

BEFORE: Warren E. Blair, Chief Administrative Law Judge

These public proceedings were instituted by an order of the Commission dated June 14, 1972 ("Order") pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether the respondents wilfully violated and wilfully aided and abetted violations of Sections 7(c), 15(b), 15(c), and 17(a) of the Exchange Act and Rules 15b3-1, 15c2-7, 15c3-1, 15c3-2, 17a-3, and 17a-11 thereunder, and of Regulation T promulgated by the Board of Governors of the Federal Reserve System, and whether remedial action is appropriate in the public interest.

In substance, the Division of Enforcement ("Division") alleged that during various periods between February 11, 1971 and June 14, 1972 Du-Tel Investment Co., Inc. ("registrant"), wilfully aided and abetted by Gaston R. Desautels, wilfully violated Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1 ("Net Capital Rule") 17a-3 ("Bookkeeping Rule") and 17a-11 thereunder (1) by effecting securities transactions while registrant's net capital as computed under the Net Capital Rule was less than required by that rule; (2) by failing to make and keep current certain books and records as required by the Bookkeeping Rule, and (3) by failing to give the Commission telegraphic notice of registrant's net capital deficiency and by failing to file reports required by Rule 17a-11. The Division further alleged that respondents failed to promptly file appropriate amendments to registrant's Form BD as required by Rule 15b3-1, that Rule 15c2-7 was violated in connection with respondents' insertion of fictitious quotations for securities into an inter-dealer-quotation-system, that credit was improperly extended to customers in violation of Regulation T, and that funds arising out of customers' free credit balances were used

in the operation of registrant's business without giving notice to customers in compliance with Rule 15c3-2.

Both respondents appeared through counsel who participated throughout the hearing.[1/] At the conclusion of the hearing successive filings of proposed findings, conclusions, and briefs were specified and the parties directed to file proposals in these proceedings separate from those filed in the companion Business Equity Corp. matter.[2/]

Timely filings of proposed findings, conclusions, and a brief in support were made by the Division but respondents made a late filing in which they combined their proposals with proposals applicable to the other matter and in which they did not clearly indicate the undisputed paragraphs of the Division's proposals. In its reply brief the Division seeks to have respondents' proposals rejected and stricken as not being timely filed and for failing to comply with the Rules of Practice and instructions of the presiding judge. It is concluded that the issues and the record herein

---

1/ Pursuant to stipulation of the parties that both the record in this matter and that in the separate but companion matter of Business Equity Corp. A.P. File No. 3-3683 may be considered in either proceeding (Tr. Sept. 17, 1974, at 6-7, 127), a single hearing was held in the two matters on September 17, 1974. An earlier hearing commenced on June 18, 1973 in this matter and a hearing in Business Equity Corp. that had been scheduled to commence on June 21, 1973 were adjourned in order to give the parties an opportunity to dispose of the issues in both matters by submission of offers of settlement to the Commission.

2/ Tr., Sept. 17, 1974, at 128.

are not of a nature that the Division has been or will be prejudiced by the shortcomings of respondents' proposed findings of fact and conclusions of law. Accordingly, the respondents' filing is accepted as part of the record in these proceedings.

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

Respondents

Registrant, a Florida corporation with its principal place of business in Miami, Florida, has been registered as a broker-dealer under the Exchange Act since January 8, 1969 [3/] and is a member of the National Association of Securities Dealers, Inc.

Desautels is and has been during the period in question president, director, and majority stockholder of registrant. Additionally, Desautels arranged in July, 1971 for the purchase of and thereafter controlled Business Equity Corp., a broker-dealer firm which Desautels transferred from New York City to Miami.

In February, 1972, the Commission instituted an injunctive action against respondents as a result of which registrant on March 13, 1972 was permanently enjoined by the United States District Court for the Suuthern District of Florida from violations of Sections 15(c)(3) and

---

3/ On April 27, 1972 registrant filed a Form BDW-Notice of Withdrawal from Registration as a Broker-Dealer. As provided by Rule 15b6-1 under the Exchange Act, the institution of these proceedings stopped that withdrawal from becoming effective.

17(a) of the Exchange Act and Rules 15c3-1, 17a-5, and 17a-11(a)(1), (a)(2), and (b) thereunder, and Desautels permanently enjoined from aiding and abetting registrant in such violations.[4/] By further order of the Court on March 13, 1972 registrant was directed to pay monies due to all customers, broker-dealers, and all creditors except Desautels, deliver all securities owed to customers and broker-dealers, and, jointly with Desautels, to establish an escrow account of $11,000 in the National Industrial Bank of Miami to provide funds for potential liabilities of Du-Tel to customers, broker-dealers, and creditors.

According to documents in the Commission's Litigation File No.2808 relating to the injunctive action, counsel for respondents filed a Petition of Information with the Court on August 17, 1972. That petition represented that respondents had complied with the Court's orders except for arranging a formal written escrow agreement with the National Industrial Bank, as to which failure respondents' counsel accepted primary responsibility and attributed it to a misunderstanding with the bank. Respondents filed a further petition on August 18, 1972 in response to the Commission's allegations that the Court's Order of March 13, 1972 had not been fully complied with, and following a hearing on August 18, 1972, counsel for respondents was directed to confer with counsel for the Commission and file a joint "Report of Conference." Upon receipt of the conference report, the Court on September 18, 1972

4/ SEC v. Du-Tel Investment Co., Inc., 72-233-Civ.-CA, (S.D. Fla., February 14, 1972).

approved the provisions for creation of an escrow account that respondents had agreed to establish.

Violations

Rule 15b3-1

A broker-dealer registered pursuant to the Exchange Act has a continuing obligation under the provisions of Rule 15b3-1 of that Act to "promptly file an amendment on Form BD correcting" information in its application for registration or any amendment thereto when any of the information in the original application or previous amendment becomes inaccurate. There being no dispute that registrant filed to file necessary amendments to its application, it is concluded that registrant, wilfully aided and abetted by Desautels through whom registrant acted, wilfully violated Section 15(b) of the Exchange Act and Rule 15b3-1 thereunder.

As established by the record, registrant failed to file an amendment with information specified in Schedule A to its Form BD application reflecting that by December 15, 1971 James E. Beard, Stewart H. Archer, Joseph W. Krus, Claire E. Bibeau, J. Roger and Fleurette Charbonneau, Malcolm Johnson, Leon O. Meyer,and Theresa M. Parker had become owners of 1% or more of registrant's authorized stock. It further appears that registrant failed to file an amendment correcting Item 21 of its Form BD application and furnishing information required under Schedule E to Form BD so as to make disclosure that registrant had direct or indirect control of another broker-dealer by reason of Desautels' common control of registrant and Business Equity Corp. after his acquisition of the latter

corporation in July, 1971. A third amendment that registrant should have filed but did not was required to appropriately disclose in Item 16 of Form BD and related Schedule E the entry on March 13, 1972 of the permanent injunction against registrant and Desautels by the United States District Court for the Southern District of Florida.[5/]

Rule 15c2-7

Under Rule 15c2-7 of the Exchange Act a broker or dealer is deemed to have attempted to induce the purchase or sale of a security by making a "fictitious quotation" in contravention of Section 15(c)(2) of the Exchange Act if it furnishes or submits, directly or indirectly, any quotation for a security to an inter-dealer-quotation-system in furtherance of a guaranteed profit arrangement with another broker or dealer unless the inter-dealer-quotation-system is informed of such arrangement and of the identity of the participating broker or dealer.

The evidence is clear, and respondents introduced nothing to the contrary, that registrant, wilfully aided and abetted by Desautels, wilfully violated Section 15(c)(2) of the Exchange Act and Rule 15c2-7 thereunder by placing quotations in the "pink sheets" an inter-dealer-quotation-system published by the National Daily Quotation Bureau, without disclosing its arrangements with Rimson & Co., a New York broker-dealer. Pursuant to the arrangement, Desautels placed quotations on the stock of Penn Metal Fabricators in the "pink sheets" with the understanding that Rimson & Co. would purchase from registrant at an eighth

---

5/ SEC v. Du-Tel Investment Co., Inc., supra.

point mark-up any stock bought as a result of its quotations, and Rimson & Co. agreed to place quotations for registrant on the stocks of Charron-Williams and Amerdyne with a similar understanding that registrant guaranteed a profit of one-eighth point on all Charron-Williams and Amerdyne stock it purchased.

There is no indication in the "pink sheets" that registrant and Rimson & Co. had entered into guaranteed profit arrangements with respect to the three stocks, and in September, 1971 when questioned by a compliance examiner of the Miami Branch Office ("MBO") Desautels offered no reason for being in the sheets for Rimson & Co. other than that Rimson & Co. wanted brokers in the sheets to indicate considerable interest and activity in the stock of Penn Metal Fabricators. Under the circumstances, it is reasonable to infer that Desautels and Rimson & Co. did not advise the National Daily Quotation Bureau of their mutual arrangements and to conclude that their quotations in the three stocks constituted "fictitious quotations" within the meaning of Rule 15c2-7.

Rule 15c3-1

Rule 17a-11

Without objection by respondents, and in certain instances with their stipulation as to accuracy, the Division introduced computations of registrant's net capital made by the MBO in accordance with Rule 15c3-1. Those computations, which evidence that registrant was out of compliance

with the Net Capital Rule on 12 occasions during 1971 and 1972, are summarized as follows:

Date	Adjusted Net Capital (Deficit)	Minimum Net Capital Required	Additional Capital Required
5/31/71	($25,401.18)	$14,561.87	$39,963.05
6/30/71	(38,611.56)	7,561.15	46,172.71
7/31/71	(8,739.59)	5,000.00	13,739.59
8/13/71	(13,606.34)	5,522.65	19,128.99
8/27/71	(25,530.10)	5,000.00	30,530.10
9/30/71	(32,745.78)	5,000.00	37,745.78
10/31/71	(29,260.67)	5,000.00	34,260.67
11/30/71	(12,787.22)	5,000.00	17,787.22
12/31/71	(9,064.54)	5,000.00	14,064.54
1/31/72	(11,331.51)	5,000.00	16,331.51
2/15/72	(8,008.09)	5,000.00	13,008.09
2/16/72	(7,085.00)	5,000.00	12,085.00

The record further reflects that registrant effected transactions on a daily basis on the dates that the MBO computations disclose registrant was out of compliance with the Net Capital Rule. It is therefore concluded that registrant, wilfully aided and abetted by Desautels, wilfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.

Additionally, the Commission's public file relating to registrant's registration as a broker-dealer does not contain the telegraphic notices which registrant should have filed with the Commission pursuant to Rule 17a-11(a)(1) disclosing that registrant's capital was less than required by Rule 15c3-1, nor contain reports of registrant's financial condition as required by Rules 17a-11(a)(2) and 17a-11(b), and the record in these proceedings does not otherwise indicate that the notices and reports were filed with the Commission. It is therefore also concluded that registrant,

wilfully aided and abetted by Desautels, wilfully violated Section 17(a) of the Exchange Act and Rule 17a-11 thereunder.

Rule 17a-3

Rule 17a-3 under the Exchange Act requires every registered broker-dealer to make and keep current certain books and records specified in that rule. As a registered broker-dealer, registrant was subject to and may be held accountable for failure to comply with that rule.

The credible testimony of the MBO compliance examiners is that during their inspection of registrant in 1971 they found a number of shortcomings in registrant's books and records. That testimony, uncontradicted in the record, establishes that during the period of the alleged violations of the Bookkeeping Rule, registrant's books and records were deficient in that (1) the securities purchases and sales blotter and customers ledgers were inaccurate as to the purchase price recorded for one transaction, (2) the securities receipts and deliveries blotter failed to reflect delivery of 565 shares of Renard Manufacturing stock from registrant's box to another broker-dealer, (3) as of September 10, 1971 the position record had not been posted since August 19, 1971 and no entries appeared for long positions in three securities, (4) there were no copies of confirmations for transactions of three customers, (5) trial balances and computations of aggregate indebtedness and net capital pursuant to Rule 15c3-1 were inaccurate for the dates July 31, August 13, September 30, October 31, November 30 and December 31 in 1971 and January 31, February 15, and February 16 in 1972, (6) as of August 13, 1971 no record of a $49,300 bank loan had been entered on the cash receipts blotter or general ledger, (7)

as of December 31, 1971 no record had been made in the cash disbursements blotter or general ledger of the issuance on September 21, 1971 of a $25,000 check, and (8) no ledger reflecting the securities borrowed or loaned was kept at a time that registrant had securities on loan to another broker-dealer.

It is clear from the record that Desautels had full knowledge that registrant had received the $49,300 bank loan and the $25,000 disbursement at the times those transactions took place. It is equally clear that the omission of these transactions in registrant's records caused registrant's net capital positions to appear considerable better than actuality and at times caused registrant to appear ostensibly in compliance with the Net Capital Rule.

In view of the foregoing, it is concluded that registrant, wilfully aided and abetted by Desautels, wilfully violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

Rule 15c3-2

During the course of MBO's inspection of registrant in 1971, the compliance examiners found that registrant's books and records reflected that in the period May, 1971 through August, 1971 registrant, in the operation of its business, had made use of customers' funds arising out of their free credit balances.

No evidence was found by the examiners that each customer for whom registrant carried a free credit balance had been given a written statement disclosing the amount of his free credit balance and informing him

that such funds were payable on demand, not segregated, and might be used in the operation of registrant's business. Since registrant was required by Rule 15c3-2 to send such statements to customers with free credit balances at least once every three months, and since copies of such statements would have been found in registrant's records if the rule had been complied with, it is concluded that registrant, wilfully aided and abetted by Desautels, wilfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-2 thereunder.

Rule 17a-5

Every broker-dealer registered pursuant to Section 15(b) of the Exchange Act is required by Rule 17a-5 to file each calendar year an annual report of its financial condition in the manner and form specified by that rule. Registrant was subject to that rule in 1971.

The Commission files do not disclose, and the record in these proceedings does not otherwise indicate, that registrant filed the requisite annual report pursuant to Rule 17a-5 for the year 1971. It is therefore concluded that registrant, wilfully aided and abetted by Desautels, wilfully violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder.

Regulation T

In the course of the MBO's inspection of registrant's customers accounts in 1971, eleven instances occurring during the period of February through August, 1971 were found where registrant failed to promptly cancel or otherwise liquidate transactions in the special cash accounts of ten customers who did not make full payment within seven business days as required by Regulation T promulgated by the Board of Governors of the

Federal Reserve System pursuant to Section 7(c) of the Exchange Act. Payments in the ten accounts were delinquent for periods of five to 77 days on transactions in nine securities in amounts ranging from $165 to $3,867. No evidence was offered by respondents that extensions of time for payment had been obtained in accordance with the provisions of Regulation T.

It is clear from the record that during the period and as alleged by the Division, registrant wilfully violated and Desautels wilfully aided and abetted registrant's violation of Section 7(c) of the Exchange Act and Regulation T promulgated thereunder.

Public Interest

The numerous and extensive wilful violations of the laws and regulations governing the conduct of a broker-dealer are of such a nature that remedial action against respondents is required in the public interest.

The Division urges that the registration of registrant as a broker-dealer be revoked and Desautels be barred from association with any broker-dealer. In support of that recommendation, it refers to (1) the failure of respondents to introduce substantial evidence to refute the allegations against them, (2) the fictitious quotations entered in the "pink sheets" to give the appearance of interest and activity in certain securities, (3) the numerous and long-continuing violations of rules designed to protect the investing public, and (4) the thwarting of the purposes of the Court's order directing establishment of an escrow account

for protection of registrant's customers. [6/] Additionally, the Division notes that respondents acted as undisclosed principals of Business Equity Corp., against which the companion administrative proceedings are pending. [7/] Respondents do not argue that no sanction should be imposed but ask that in connection with the public interest question consideration be given to respondents' earlier efforts to settle this matter without resort to extended administrative procedures and the passage of substantial time before their offer was rejected. Reference is also made to respondents' introduction of substantial evidence during the trial of the injunctive action and to the fact that Desautels was without funds to duplicate that defense because of his absence from the securities business.

Upon careful consideration of the record and of the arguments and contentions submitted by the parties, it is concluded that registrant's registration as a broker-dealer should be revoked and Desautels barred from association with any broker or dealer. As to Desautels, the record is clear that he is either unwilling or unable to properly conduct a securities business and has shown a tendency to associate himself with others in activities detrimental to the investing public. Whether Desautels should be allowed to reenter the securities business in any capacity in the foreseeable future cannot be here decided, that finding depending upon a showing at a future indeterminate time of the nature of the proposed

---

6/ As to the escrow account, respondents' failure to abide by the Court's order of March 13, 1972 is largely mitigated by their counsel's acceptance of personal responsibility for not establishing the escrow and apparent settlement of undisputed claims against respondents without the escrow. Whether respondents complied with the Court's further order of September 18, 1972 that an escrow account be established in connection with two unsettled claims cannot be determined from this record or the litigation file.

7/ Business Equity Corp., supra.

securities activities and of Desautels' conduct prior and subsequent to the offenses now in question,[8/] a showing not present in this record.[9/]

Accordingly, IT IS ORDERED that the registration of Du-Tel Investment Co., Inc., as a broker-dealer is revoked and that Gaston R. Desautels 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 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 21, 1975

8/ Cf. Ross Securities, Inc., 41 SEC 509, 517, n. 10 (1963); and see Vanasco v. S.E.C., 395 F.2d 349, 353 (2d Cir. 1968).

9/ 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.