

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :  
LEO GLASSMAN :  
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INITIAL DECISION

Washington, D.C.  
March 25, 1975

Edward B. Wagner  
Administrative Law Judge

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INITIAL DECISION

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APPEARANCES: Martin Siegel, Peter Schaeffer and Edward Shapiro of  
the New York Regional Office for the Division of  
Enforcement

Arthur H. Christy of Christy, Frey & Christy,  
New York, N.Y. for respondent Leo Glassman

BEFORE: Edward B. Wagner, Administrative Law Judge

## THE PROCEEDING

This public proceeding was instituted by an order of the Commission, dated June 7, 1972 pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act) against respondent Leo Glassman (Glassman).

The Division charged that Glassman

- (1) violated the antifraud provisions of the Exchange Act and the Securities Act of 1933 by opening, at various broker-dealers, accounts in the maiden names of his mother and his wife in which accounts he had a beneficial interest and through which he obtained shares in new issues; 1/
- (2) aided and abetted violations of the book-keeping provisions of the Exchange Act by establishing such accounts; 2/ and
- (3) caused violations of the bookkeeping provisions by removing and destroying customer ledgers relating to such accounts 3/ at the broker-dealer by whom he was employed.

It was alleged that Glassman's conduct was wilful and a hearing was ordered to determine whether the charges were true and what, if any, remedial action would be appropriate.

A hearing was held in May, 1974 in New York City at which Glassman was represented by counsel.

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1/ Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5, 17 CFR 240.10b-5, thereunder.

2/ Section 17(a) of the Exchange Act and Rule 17a-3, 17 CFR 240.17a-3, thereunder.

3/ Section 17(a) of the Exchange Act and Rule 17a-4, 17 CFR 240.17a-4 thereunder.

The Division and Glassman filed Proposed Findings, Conclusions and Briefs. The Division elected not to file a reply.

The findings and conclusions herein are based upon the evidence as determined from the record and upon observation of the witnesses. Preponderance of the evidence is the standard of proof applied.

### Background

Glassman has been in the securities business for almost 19 years. From about February 1967 to January 1972, covering the period during which the violations are charged herein, he was a registered representative at Dewey, Johnson & George, Inc. (Dewey), a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

He currently is employed as a registered representative with Brooks, Hamburger Securities, another registered broker-dealer.

Transcripts of Glassman's investigative testimony were admitted into evidence pursuant to stipulation by the parties. In testimony given in November 1970 and March 1971 Glassman generally denied the charges made against him. At the second session Glassman was advised off the record by the Division that it had reservations concerning the credibility of his testimony and that he might be in serious trouble if false statements remained on the record. Glassman then consulted

his present counsel. He thereafter asked for and received an opportunity to recant his prior testimony, and to give a corrected version of the facts.

He did so in May and June of 1971. In this later testimony Glassman generally confessed to the charges made against him.

Accordingly, the underlying facts set forth herein are undisputed, although proper characterization of certain facts is in issue.

#### Bookkeeping and Antifraud Violations

Glassman's wife's maiden name was Barbara Sherry, and his mother's maiden name was Minnie Ganz. During his employment at Dewey, Glassman opened or arranged for the opening of accounts in the names of Barbara Sherry and Minnie Ganz at his own firm and three other firms. He also arranged for the opening of an account in the name of Barbara Sherry at a fifth brokerage firm and one in the name of Minnie Ganz at a sixth firm. All of these firms, including Dewey, were members of the National Association of Securities Dealers (NASD). With the exception of Dewey, all of these firms were active in "hot issue" underwritings.

The records of the above firms reflected that Sherry and Ganz were respectively the beneficial owners of the accounts established in their names. This was not the case.

Glassman concedes that he was the beneficial owner of the Sherry accounts. He testified that they shared in the profits as they shared in any of his income (Tr. 43). I conclude that he was the beneficial <sup>4/</sup> owner.

Glassman disputes the conclusion that he had the beneficial interest in his mother's account. The Division points out that Glassman placed the orders and made the general investment decisions for Ganz without prior consultation despite the fact that he had no discretionary authority over her accounts, that he paid for the purchases with his own funds and that checks representing the proceeds of sales of securities were cashed by his wife <sup>5/</sup> with the amount of the purchase price being returned to Glassman and any profit realized placed in Ganz's savings account-- <sup>6/</sup> dispersals from which account were controlled by Glassman. Ganz was not to share in the losses from these accounts, except that profits realized on earlier transactions would have been used to offset later losses. I conclude from the foregoing, particularly from the facts that Glassman

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<sup>4/</sup> See Beneficial Ownership of Securities Held by Family Members, SEA Rel. No. 7793, p. 3 (January 19, 1966).

<sup>5/</sup> It may be inferred from the record that Glassman's wife represented herself to be Minnie Ganz in cashing these checks.

<sup>6/</sup> Minnie Ganz was 78 years old in 1968, was a widow and had no independent source of income. Glassman made weekly payments to her from the savings account in her name. She died in 1973.

in every instance received the purchase price back and had dominion over the Ganz savings account containing profits from the stock transactions, that he had the beneficial interest in her brokerage accounts.

The accounts were established by Glassman for the purpose of purchasing new "hot issue" securities being distributed by the various broker-dealers, and use of the maiden names, rather than the real names, of his wife and mother had the effect of facilitating evasion of NASD rules concerning the public distribution of such issues. <sup>7/</sup>

There were transactions in over 25 stocks executed in 1968-69 in the name of Sherry at the firms where the accounts had been established. Transactions in a similar number of stocks were also effected during the same period in the Ganz accounts. With minor exceptions all of these transactions were in new "hot issues." Generally, purchases were made at the other firms, and sales of stock thus purchased were made at Dewey. Glassman made substantially all investment decisions without prior consultation with Ganz or Sherry.

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<sup>7/</sup> See The Free-Riding and Withholding Interpretation of the Board of Governors of the NASD as in effect in 1968-69. This interpretation stated generally that in a "hot issue" underwriting it was a violation of Article III, Section I of the Association's Rules of Fair Practice for a member or a person associated with a member to sell such securities to persons associated with any other broker-dealer or to members of the immediate family of such persons.

For the current interpretation, See CCH NASD Manual ¶2151.06.

Profits of in excess of \$19,000 were realized in the Ganz accounts and in excess of \$10,000 in the Sherry accounts. The sales from which the profits arose were made generally in accordance with the wishes of the broker-dealers effecting the distributions. Thus Glassman testified, "They wouldn't allow me to sell them, many many times" and, "There were no instructions, but they said; If we give you something, do us a favor; don't hit us with it in the face." (Div. Ex. 1, p. 89<sup>8/</sup>).

Registered representatives of the other brokerage firms knew for the most part that Glassman had a beneficial interest in the Barbara Sherry account. The Ganz and Sherry accounts were arranged for by Glassman. The records at the other firms were false in that they reflected Ganz and Sherry as the beneficial owners. Under these circumstances and those recounted above, I conclude that Glassman wilfully aided and abetted the violation by the other firms of Section 17(a) and Rule 17a-3 in maintaining false records.<sup>9/</sup>

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<sup>8/</sup> Glassman also testified concerning his decisions to sell, "Yes-- well, you see, I have to preface that too, by saying I made the decision only after I had spoken to a broker that I had bought it from, and I said, 'Look, I'd like to sell it'. And many times they wouldn't allow you to sell it" (Tr. 54-55).

<sup>9/</sup> The requirement that such records be made and kept embodies the requirement that they be true and correct. Lowell Niebuhr & Co., Inc. 18 S.E.C. 471, 475 (1945).



The nominee accounts employed by Glassman enabled him and the persons effecting sales of "hot issues" to him to conceal transactions which were in violation of NASD rules. Glassman had insider status, and his accounts were controlled by those making the distribution. Not only did these persons initially withhold from the public the portions of the issues allocated to Glassman, but they were able to control the supply in the after-market through his agreement not to offer his stock without their approval. It is obvious that Glassman continued to receive these issues because of his status as an insider and controlled person who could be counted upon.

The result of such conduct is that the public investor is deceived and defrauded in that he is led to believe that public demand is greater than it really is and is induced to buy the security at premium prices while the insiders profit.

The schemes which were involved here were in violation of the antifraud provisions of the Federal Securities Laws. See Preliminary Report on Distribution of "Hot Issues", SEA Rel. No. 6097 (October 23, 1959); R.A. Holman & Co., Inc., 42 S.E.C. 866 (1965), aff'd 366 F. 2d 446 (2d Cir. 1966); Lewisohn Copper Corp., 38 S.E.C. 226 (1958); Atlantic Equities Company, 43 S.E.C. 354 (1967).

Glassman was a participant in these illegal schemes, and I conclude that he was in wilful violation of the antifraud provisions of the Federal Securities Laws as charged.

### Destruction of Records

After Dewey had received an inquiry concerning the Ganz and Sherry accounts at the firm from the Division during the course of the investigation of this matter, Glassman in late 1970 removed and destroyed the Ganz and Sherry ledger accounts at Dewey.

I conclude that Glassman by removing and destroying these records wilfully aided and abetted the violation by Dewey of Section 17(a) of the Exchange Act and Rule 17a-<sup>10/</sup>4 thereunder. See Luster Securities & Company, 36 S.E.C. 298, 302-3 (1955).

### Injunction

Subsequent to the facts giving rise to this proceeding and while settlement negotiations were going on, Glassman consented in March 1974 to the entry of a permanent injunction in the matter of the common stock of Abatronix, Inc. from <sup>11/</sup>further violations of the registration provisions of the Securities Act. The decree was entered in the Federal District Court in New York City.

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<sup>10/</sup> Rule 17a-4 requires that the records involved here be preserved for a period of 6 years.

<sup>11/</sup> The Division did not seek either before or during this proceeding to amend the order formally to charge the injunction as a basis for disciplinary action, and it was admitted solely on the public interest question. It was, of course, received only as evidence of the fact of such decree and not to show that the violations charged had occurred.

In consenting to the injunction Glassman neither admitted nor denied the allegations in the Commission's complaint. He testified that his counsel had advised him to consent only because of the pendency of settlement negotiations in this matter and that his counsel had told him that, if the situation were otherwise, he should oppose the court action.

### Public Interest

Glassman concedes that a sanction is appropriate and had offered to accept a nine-month bar prior to the hearing. The Division contends that the bar should be permanent.

The antifraud and other violations involved here are of a very serious nature. They were initially made even more serious by Glassman's attempt to obstruct the Division's inquiry by covering up his wrongdoing.

Glassman states that his reasons for lying to the staff and destroying records were not solely based upon self-interest. He testified that he wished to protect his wife and aged mother. Relations with his wife of some 19 years were at the time quite strained, and he feared that involving her in a Commission investigation would be the final blow to his marriage. <sup>12/</sup> Although he concedes his wrongdoing, he states that he "just jump[ed] on the bandwagon in a very hot new-issue era where everybody on the street was doing it" (Tr. 102). That conduct of the type involved here was widespread is, of course, no defense.

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12/ He also testified that all of his funds were in bank accounts in her name and that, as a result of their divorce, she took "every nickel" and moved to Florida with their four minor children.

It is true, however, that Glassman's conduct, which occurred some years ago, was on a minor scale. The record indicates that he has cooperated with the Division in reconstructing the Dewey records, has assisted them in obtaining the facts and has told the full truth. He appears genuinely contrite.


Under all the circumstances I conclude that a bar from association with any broker-dealer for a period of fifteen months with a right thereafter to re-apply for a position in a nonproprietary and supervised capacity would best serve the public interest.

Accordingly, IT IS ORDERED that Leo Glassman is barred from association with any broker or dealer, except that after fifteen months from the effective date of this order he may apply to the Commission for permission to become associated with a broker-dealer in a nonproprietary and nonsupervisory position in which his activities would receive adequate supervision.

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 (15) 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.<sup>13/</sup>

  
Edward B. Wagner  
Administrative Law Judge

Washington, D.C.  
March 25, 1975

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13/ 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.