ADMINISTRATIVE PROCEEDING
FILE NO. 3-4473

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

INTERNATIONAL SHAREHOLDERS SERVICES CORPORATION
(8-16150)

HOWARD M. JENKINS

INITIAL DECISION

Washington, D.C.

APR 10 1975

Irving Sommer
Administrative Law Judge

ADMINISTRATIVE PROCEEDING
FILE NO. 3-4473

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
INTERNATIONAL SHAREHOLDERS SERVICES CORPORATION (8-16150)	INITIAL DECISION
HOWARD M. JENKINS	

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

Charles J. Hecht for International Shareholders Services Corporation and Howard M. Jenkins.

BEFORE: Irving Sommer, Administrative Law Judge

THE PROCEEDING

These proceedings were instituted by an order of the Commission dated April 10, 1974 pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act"), to determine whether International Shareholders Service Corporation ("Registrant") wilfully violated and Howard M. Jenkins ("Jenkins") wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder, whether Registrant and Jenkins, singly and in concert, wilfully violated and wilfully aided and abetted in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), and whether remedial action is appropriate.

In substance, the Division of Enforcement ("Division") alleged that the Registrant wilfully violated and Jenkins wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-5, charging that the Registrant failed to file financial reports as required, covering the first period after the registration became effective, and for the calendar years 1972 and 1973. Additionally, the Division alleged that during the period from about November 1971 to about January 1973 Registrant and Jenkins wilfully violated and wilfully aided and abetted violations of Section 5(a) and 5(c) of the Securities Act in connection with the sale and distribution of certain promissory notes and/or Investment Contracts of Continental Land Management Corporation and Continental Land Development One, Inc. (both hereinafter referred to as "Continental").

Respondents appeared through counsel who participated throughout the hearing. Timely filings of proposed findings, conclusions and briefs were made by the parties. Counsel for the respondents filed a supplemental

brief, to which the Division responded. All briefs were considered.

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 office in Jacksonville, Florida was formed on September 22, 1970 and has been registered as a broker-dealer under the Exchange Act since November 16, 1970.

Jenkins is and has been president, a director, principal executive and majority stockholder of registrant since its organization.

Violations of Section 5 of the Securities Act

The order alleges that during the period from about November, 1971 to about January, 1973 Registrant and Jenkins, singly and in concert, wilfully violated and wilfully aided and abetted in violations of Sections 5(a) and 5(c) of the Securities Act in that they, directly and indirectly, made use of the means and instrumentalities of transportation and communication in interstate commerce and of the mails to offer to sell, sell and deliver after sale corporate promissory notes and/or investment contracts of Continental when no registration statement was filed or was in effect as to said securities pursuant to the Securities Act.

The record reveals that Continental was the owner of approximately 350 acres in Citrus County, Florida which were broken up into lots and sold to individual buyers on a cash or installment basis, with the deed to be delivered on full payment. Continental retained title and possession until the contract was paid in full.

After selling the lots, Continental raised additional funds by issuing and selling promissory notes collateralized by the real property contracts, both directly and through other brokers. During the period from about November 1971 to about January 1973 Registrant and Jenkins in the regular course of business sold corporate promissory notes of Continental in an amount totaling $214,750, comprising 32 customer sales.

The record further establishes that the facilities of the mails and interstate commerce were utilized in connection with sales of promissory notes and that no registration statement has ever been filed with respect to these notes.

The respondent asserts two grounds for dismissal of the charge of Section 5 violations:

(a) The promissory notes sold do not constitute securities under Section 2(1) of the Securities Act; and

(b) The respondents made no sales in contravention of the Section 3(a)(11) exemption, and, accordingly, did not wilfully violate or wilfully aid and abet violations of Section 5 of the Securities Act.

The court decisions supporting the position that promissory notes are securities is legion. See Llanos v. United States, 206 F. 2d 852 (9th Cir. 1953); Farrell v. United States, 321 F. 2d 409 (1963); Movielab, Inc. v. Berkey Photo, Inc., 452 F. 2d 662 (2d Cir. 1971); Sanders v. John Nureen & Co., Inc., 463 F. 2d 1075, 7th Cir., cert. den., 409 U.S. 1009 (1972); Zeller v. Bogue Electric Mfg. Corp., 476 F. 2d 795, 2d Cir., cert. den., 414 U.S. 908.

Continental issued these promissory notes collateralized by the assigned contracts with a high interest rate to prospective purchasers

as an investment. The moneys received necessarily entered the capital structure of their business for use in furthering other business projects. The respondents unquestionably knew the nature of the promissory notes they sold; that they were not for any limited commercial transaction, but investment grade. The accompanying brochure, describing the notes specifically stated, "First Mortgage Investments", and refers continuously to the notes as an "investment".

The definition of security as applicable to this case is identical in both the Securities Act of 1933 and the Exchange Act of 1934. They both state the term "security" means (among others) "any note . . . ."

Based on these principles, the Congressional intent in promulgating the 1933 Act and the Court rulings thereon, it is concluded that the notes herein are securities within the meaning of the securities acts. Of course, not all notes require registration under the exemptions provided by the securities acts.[1/]

Respondents further argue that they did not make sales of investment contracts under the Act. However, this is unnecessary to decide in view of the fact that it is determined that they fall within the definition of "note".

Respondents' contention that they did not violate the Section 3(a)(11) exemption of the Securities Act is untenable.

1/ Section 3 of the Securities Act states:

(a) Except as hereinafter expressly provided the provisions of this title shall not apply to any of the following classes of securities:

(11) "Any security which is a part of an issue offered and sold only to persons resident within a single State . . . ."

"The Securities Act is a remedial statute, and the terms of an exemption must be strictly construed against one seeking to rely on it." Securities Act Release No. 4434, (December 6, 1961); United States v. Custer Channel Wing Corp., 376 F. 2d 675, 678, (4th Cir. 1967).

The burden of proof as to entitlement to an exemption rests upon the party claiming it. Securities and Exchange Commission v. Ralston Purina Co., 346 U.S. 119, 126 (1954); Securities and Exchange Commission v. Culpepper, 270 F. 2d 241, 246 (2d Cir. 1959).

The respondents have not only failed to show the availability of an intrastate exemption, but the record clearly reflects that the notes were sold and distributed in interstate commerce.

Respondent Jenkins further contends that any violation of Section 5 he may have committed was not wilful, since he made no interstate sales, nor did he have any knowledge that Continental had engaged in such sales. Similar arguments have been repeatedly rejected by the courts. "It has been uniformly held that 'wilfully' in this context means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the rules or acts" Tager v. Securities and Exchange Commission, 344 F. 2d 5, 8 (2d Cir. 1965); NEES v. Securities and Exchange Commission, 414 F. 2d 211, 221 (9th Cir. 1969). Unquestionably respondents' conduct and actions fall within this ambit.

The protection of the investor in the myriad mysteries of the securities market is a public trust of which the broker-dealer must be ever cognizant. He can not recklessly or negligently recommend and sell securities to the investing public.

While Jenkins alleges that he did not know of the interstate sales by Continental, that he believed the notes were not securities, that all of his sales were intrastate, the record does not establish that Jenkins requested or received any adequate assurance from Continental that its sales would be exclusively intrastate. Of further serious import is that Jenkins entered into these transactions with very little knowledge of the finances, and the general business of the issuer. His knowledge of the collateral was vague, and he did not adequately investigate this either. Here was a situation which required extreme caution, acute business acumen, and careful investigation before selling these notes to unwary investors.

The Commission requires thorough investigation by broker-dealers in their public offerings, else they be found lacking. In Gilligan, Will & Co., 38 S.E.C. 388, 393 (1958) the Commission stated, A seller, and particularly a registered broker-dealer, may not safely rely on a claim of a private offering exemption when he does not have knowledge of the identity and number of the original offerees and purchasers and whether such purchasers intend in turn to offer and sell to others."

Accordingly, it is concluded that Registrant and Jenkins, singly and in concert, wilfully violated and wilfully aided and abetted in violation of Sections 5(a) and 5(c) of the Securities Act. Motion by the counsel for the respondents to dismiss allegation IIB of the Order for Proceedings is denied.

Violations of Rule 17a-5

Under Rule 17a-5 of the Exchange Act, the Registrant's first report of financial condition is due not less than one nor more than five months after the effective date of its registration, and the report must be filed not more than 45 days after the date of which the report speaks.

By letter dated April 13, 1971 the Atlanta Regional Office of the Commission advised Registrant of the requirements of Rule 17a-5, and stated the time limitations therein. Despite this information and reminder, the first financial report of the Registrant was filed on June 24, 1971, 24 days after the expiration of the filing period.

The record further shows that the Registrant's financial report for the year 1972 which was due no later than 60 days after December 31, 1972 was finally filed in proper form and accepted by the Commission's Atlanta Regional Office on July 2, 1974, 488 days after the required filing date.

Similarly, the Registrant's 1973 financial report which was due no later than March 1, 1974 was finally filed in proper form and accepted for filing by the Commission's Atlanta Regional Office on June 28, 1974, 119 days after the expiration of the time for filing said report.

It is not necessary to detail the various frivolous excuses proffered for the inordinate and inexcusable time lapses which include, among others, fault of the accountant and inability to obtain figures from the bank.

The Commission's rules which require prompt reporting of financial status are essential to assist in administration of the securities acts. The adequate protection of investors requires no less than total compliance

with the periodic reporting requirements. This was considered of vital importance by the Congress in promulgating the Exchange Act.[2/]

In view of the foregoing, it is concluded that the Registrant wilfully violated and Jenkins through whom Registrant acted wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder as alleged.

Alleged Improprieties of Division Counsel

Counsel for the respondents raises now for the first time alleged improper conduct of the Division counsel arising from the following:

(A) Failure to produce two witnesses who were supposed to testify for the Division;

(B) Failure of Division counsel to review certain mortgage documents which respondents counsel possessed, and the offer and receipt in evidence of testimony concerning said mortgage transactions.

The record does not support such allegation of unfairness. The Division was under no compulsion to call any witnesses. Counsel for the respondents could have subpoened them if he so desired. His failure to offer any other documents at the hearing, which he now deems relevant and pertinent was his own determination, and he cannot at this late date attempt to re-open the record. There was no unfairness by Division counsel in not reviewing documents which counsel could have proffered.

2/ H.R. Rep. No. 1383, 73rd Cong., 2nd Sess., 11-13 (1934). See also S. Rep. No. 1455, 73rd Cong., 2nd Sess., 68, 74 (1934).

PUBLIC INTEREST

Respondents' wilful violations require consideration of the sanctions which are necessary in the public interest. The Division recommends the revocation of the Registrant's registration and a bar against Jenkins' association with any broker-dealer. On the other hand, the respondents believe that the only sanction should be censure. In that connection the mitigating circumstances alluded to by respondents, their backgrounds and history of previous dealings in the financial area have been carefully considered.

Respondents strongly urge that they made no out of state sales, know of no such sales by Continental herein, and reliance upon advice of counsel as to the nature of the promissory notes herein. However, the record does not reflect the sum of the material furnished to the said attorney upon which his advice was solicited. Actually considering the substantiality of the evidence definitively demonstrating that these notes were for investment purposes and were in fact securities, some question must be raised as to whether counsel was fully apprised of the facts found herein in connection with the opinion sought concerning the application of the securities laws for the notes being offered.

Nevertheless some mitigation of sanction applies considering the respondents' approach to later counsel for advice, and more important their cessation of sales of these notes when their present counsel cautioned they may be securities.

The pattern of late filings of financial reports is serious. These reports are important in assisting the Commission to carry out its

responsibility under the law. As a mitigating factor, it is noted that the Registrant has hired a well known accounting firm, and that all reports are now current. Additionally there is no evidence of any capital violations or other serious financial shortcomings. The record does not disclose any previous disciplinary action against respondents.

Under all the existing facts and circumstances herein, and on the basis of all mitigating factors urged and based on the entire record and my observation of Jenkins on the stand, it is concluded that the public interest requires that the registration of International Shareholders Services Corporation as a broker-dealer should be suspended for a period of six months and that Howard M. Jenkins be suspended from being associated with any broker-dealer for six months.

Accordingly, IT IS ORDERED that the registration of International Shareholders Services Corporation, as a broker-dealer is suspended for a period of six months; that Howard M. Jenkins is suspended from being associated with a broker-dealer for a period of six months.

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 as to that party.[3/]

Irving Sommer
Administrative Law Judge

Washington, D.C.
APR 10 1975

3/ 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.