ADMINISTRATIVE PROCEEDING
FILE NO. 3-4656

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
C. R. RICHMOND & CO.	
CURTIS R. RICHMOND	

INITIAL DECISION

Washington, D.C.
August 15, 1975

David S. Antrobius
Administrative Law Judge

ADMINISTRATIVE PROCEEDING
FILE NO. 3-4656

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
C. R. RICHMOND & CO.	INITIAL DECISION
CURTIS R. RICHMOND	

APPEARANCES: Charles R. Hartman and James W. Mercer for the Division of Enforcement.

Darrell Johnson for the respondents.

BEFORE: David S. Antrobius, Administrative Law Judge.

THE PROCEEDINGS

This public proceeding was instituted by an order of the Commission ("Order"), dated April 17, 1975, pursuant to Section 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") to show that three permanent injunctions have been entered against the respondents in the United States District Court for the Central District of California ("District Court") and to determine whether the respondents had violated or aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") and Section 206 of the Advisers Act, as well as Rule 206(4) thereunder. Further, the Order requires a determination as to what, if any, remedial action is appropriate in the public interest.

In substance, the Order alleges that from on or about December 1, 1971, to April 6, 1973, C. R. Richmond & Co. ("CRR") and Curtis R. Richmond ("Richmond") willfully violated Sections 5(a) and 5(c) of the Securities Act by the offer, sale and delivery of unregistered securities in the form of options on commodities futures contracts. It also asserts that from about July 24, 1970, CRR willfully violated and Richmond willfully aided and abetted violations of the Advisers Act in that the respondents, singly and in concert, distributed a weekly market letter called the "Richmond Outlook" and published and sold a book entitled The Money Machine without making proper disclosure as required under the law. It is further declared that the respondents, again without proper disclosure of attendant

limitations and difficulties, published, circulated and distributed misleading advertisements which referred to past specific recommendations and the use of a certain formula which might have been profitable to clients and prospective clients.

At the hearing the respondents appeared through counsel. As part of the post-hearing procedures successive filings of proposed findings, conclusions and supporting briefs were submitted. Timely filings were made.

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

FINDINGS OF FACT AND LAW

The Respondents

Richmond is president and sole shareholder of CRR, a California corporation registered with the Commission as a broker-dealer and investment adviser. Richmond has controlled and directed the operations of that company since it was founded in 1967.

The evidence shows that the respondents, by use of the mails between July 1972 and March 1973, offered and sold to the public approximately 125 options on commodities futures contracts. CRR received commissions from Commodities Options International and Double Option Systems for the sales. No registration statement was filed or in effect with respect to the options.

The evidence also reflects that from July 24, 1970, CRR distributed a weekly newsletter called the "Richmond Outlook". This publication was prepared by Richmond and provided free to his clients. It was available to others for charge.

In 1972 Richmond authored and CRR published a book entitled The Money Machine. Throughout the publication Richmond avers to his philosophies on market investment and he specifically describes the use and application of a formula or timing device which he alleges can be profitably used to assist in market analysis and investment.

Richmond has, at times, advertised his theories and services in several large city newspapers. He appeared on West Coast television and he has conducted seminars adjunct to these business activities.

Injunctions Chargeable to Respondents

The evidence reflects, as the Order alleges, that on February 13, 1974, a consent judgment of permanent injunction was entered in the District Court enjoining the respondents from violations of Sections 10(b), 15(c)(2), 15(c)(3) and Section 17(a) of the Exchange Act and Rules 17 CFR 240.10b-16, 15c2-1, 15c3-1, 15c3-2, 17a-3, 17a-11 and 17a-13 thereunder.

On July 27, 1974, after trial, the same court found the respondents guilty of violations of Sections 5(a) and 5(c) of the Securities Act and they were permanently enjoined from future violations of that statute. The respondents filed a notice of appeal on July 26, 1974.

Further, on March 7, 1975, after trial and upon findings of violations of Section 206 of the Advisers Act and Rule 206(4)-1 the District Court permanently enjoined the defendants from further violations of that section of the Act and that rule. On March 13, 1975, the respondents filed a notice of appeal in that matter.

At the time of the hearing the Division of Enforcement ("Division") determined not to offer proof for the purpose of proving substantive violations of the Securities Act of the Advisers Act as alleged in the Order.[1/] Consequently, these charges are dismissed. The Division did offer the records of the contested injunction cases to show the gravity and seriousness of the violations found by the District Court. These records were received in evidence.

Section 15(b)(5)(C) of the Exchange Act[2/] and Section 203(e)(3)[3/]

1/ Sections IID and IIE.

2/ Section 15(b)(5)(C) provides as follows:

"(5) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, suspend for a period not exceeding 12 months, or revoke the registration of, any broker or dealer if it finds that such censure, denial, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

* * *

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."

3/ Section 203(e)(3) provides, in pertinent part:

"(e) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, or suspend for a period not exceeding twelve months, or revoke the registration of, an investment adviser, if it finds that such censure, denial, suspension, or revocation is in the public interest and that such investment adviser or any person associated with such investment adviser, whether prior to or subsequent to becoming such—

* * *

(3) is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;. ..."

of the Advisers Act, respectively, provide for revocation of a broker or dealer or investment adviser's registration or the imposition of lesser sanctions if there exists a described permanent or temporary injunction issued by a court of competent jurisdiction. Richmond was and is a "person associated with an investment adviser", i.e. with CRR, within the meaning of that term as defined in Section 202(a)(17) of the Advisers Act. Section 203(f) of the Advisers Act and Section 15(b)(7) (now Section 15(b)(6) - footnote #4) of the Exchange Act each contains provisions permitting the imposition of sanctions upon Richmond, if found to be in the public interest, on the basis of the permanent injunctions.

Section 15(b)(7) of the Exchange Act has been amended. The words "any person" have now been replaced by the phrase "any person associated, or seeking to become associated, with a broker or dealer."[4/] Respondent Richmond alleges that by letter dated March 9, 1973, to the Commission he attempted to resign CRR from its broker-dealer registration. The respondents now claim immunity from the provisions of the Exchange Act insofar as CRR is no longer registered as a broker-dealer and Richmond, therefore, cannot be associated with that firm. The respondents' position is untenable as the evidence is clear that the respondents did not file a Form BDW which, under Commission Rule 15b6-1,[5/] is necessary to commence the withdrawal proceedings. Accordingly, CRR's registration with the Commission as a broker-dealer continued in effect.

4/ Securities Amendments Act of 1975—Public Law No. 94-29, approved June 4, 1975. Section 11 of the statute repealed former section 15(b)(7) and replaced it by present section 15(b)(6).

5/ 17 C.F.R. 240.15b6-1.

PUBLIC INTEREST

By complaint filed December 29, 1972, in the District Court the Commission accused the respondents of a host of violations of the Exchange Act and the Commission's Rules thereunder, including, the net capital rule, the hypothecation rule, and the bookkeeping rules as well. The respondents did not contest the charges and with their consent an order of permanent injunction was entered on February 13, 1974. No evidence in mitigation was presented at the hearing on June 16, 1975.

On June 27, 1974, the District Court held the options contract as sold by the respondents during the period alleged, to be an "investment contract" and thus, a "security".[6/] Moreover, no registration statement was filed or in effect and the mails and instruments of interstate commerce were used in the offer and sale of these securities. The District Court found that the respondents' actions were verboten and constituted violations of Section 5(a) and 5(c) of the Securities Act.[7/]

6/ In Securities and Exchange Commission v. W. J. Howey Co., 328 U.S. 293 (1945).

7/ Section 5 of the Securities Act, as pertinent, provides:

"Sec. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

* * *

(Footnote continued on page 7)

Richmond, in his publications, embraces a formula or timing device based on a thirty-nine week (Dow Jones) moving average. As he states in the book, "It appeared to me that I might have a million dollar idea here, and I almost felt I had discovered a 'money machine'!" [8/] He thereafter showed no inclination to keep the discovery to himself.

On May 7, 1975, the District Court, collateral to the issuance of the permanent injunction on that date, held the respondents' conduct constituted violations of Section 206 of the Advisers Act [9/] and Rule 206(4)-1 [10/] promulgated thereunder. CRR registered as an investment adviser as of June 19, 1971. That firm published and distributed the "Richmond Outlook" newsletter beginning July 24, 1970 by use of the

---

7/ (Footnote continued from page 6.)
(c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 8."

8/ Exhibit 3, page 17.

9/ Section 206 of the Advisers Act provides in pertinent part:
"It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—
(1) to employ any device, scheme, or artifice to defraud any client or prospective client;
(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;
* * *
(4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. ..."

10/ 17 CFR 275.206(4)-1.

mails and other means and instruments of interstate commerce. Richmond had full auspices at CRR for the preparation and content of the publication and the "Richmond Outlook" has been published at least through May 16, 1975. The newsletter referred to a model portfolio implying strongly that the portfolio was in existence and the trades listed therein actually occurred. This was not the case, as CRR's clients' transactions did not comprise the model portfolio and no client, in fact, experienced the performance as exemplified in the portfolio. The basic purpose of the portfolio was to demonstrate to the public the firm's ability to recommend and deal in securities. In addition, the methods of computation of profits of the model portfolio as compared to that of the Dow Jones Industrial Average differed. This was not disclosed in the "Richmond Outlook". Nor was there disclosure in that publication as to the risks involved by purchasing the securities listed in the model portfolio, as compared to the securities comprising the Dow Jones Industrial Average. The Commission has held that the use of a sample portfolio can be misleading in that the investments selected might not represent actual or recommended transactions but show fictional profits and losses. 11/ It has also been established that the use of hypothetical examples violates the anti-fraud provisions of the Act and fails to comply with the Act in that such use improperly over-emphasizes and overstates the amount and probabilities of gains and understates the risks and speculative elements involved. 12/

11/ Killgore Management, Inc. - Investment Advisers Act of 1940, Release No. 332 (August 25, 1972), CCH Fed. Sec. L. Rep. No. 78,977.

12/ Stanford Investment Management, Inc., 43 S.E.C. at 867 (1968). See also In Dow Theory Forecasts, Inc., 43 S.E.C. 821, 830 (1968).

The record also reveals that CRR published The Money Machine; paid all expenses incidental thereto; and, except for commissions, received the profits from the sale of that book. Approximately 5000 copies of the book have been sold since its publication in early 1972. The District Court made further findings and conclusions indicating, inter alia, that the publication, circulation and distribution of The Money Machine also operated as a fraud and deceit by the utilization of the touted formula or technique to determine when to buy and when to sell securities without properly disclosing: that the results obtained were hypothetical; that there were inherent risks in the formula; and, that the formula might not always work effectively. Advisers Act Rule 206(4)-1(a)(3)[13] requires prominent disclosure of the limitations and difficulties with respect to the use of the formula. Accounts were specifically and misleadingly described without revealing[14] they were hypothetical and the method of financing used to achieve performance was unlawful. The District Court determined The Money Machine contained specific past recommendations of securities transactions[15] and that the book was advertisement within the meaning of Rule 206(4)-1(b)[16]. The respondents also conducted seminars and placed advertisements in newspapers indicating the use of their services

---

13/ 17 CFR 275.206(4)-1(a)(3).

14/ For instance, it is stated on the dust cover of The Money Machine: "Using his investment approach, it was possible for an investor with $10,000 to have turned it into $814,000 in seven years!"

15/ Rule 206(4)-1(a)(2); 17 CFR 275.206(4)-1(a)(2) prohibits advertisements by investment advisers which contain specific past recommendations which were or would have been profitable to clients or prospective clients because they operate as a fraud and deceit.

16/ 17 CFR 275.206(4)-1(b).

would result in iminent profits and clients would be protected from loss by reason of their ability to predict the stock market. The Commission has held that advertisements of these types are calculated to arouse illusory hopes of immediate and substantial profits or protection against loss and have an adverse effect on the public interest.[17/]

In view of the foregoing, the arguments of these respondents that they have acted properly but are being singled out for disciplinary action is belied by the record.

Respondents strongly contend that there were no willful violations on their part and they were acting upon advice of counsel. Such advice would not exonerate them but will be taken into account in mitigation.[18/] However, I cannot believe the respondents have been in a state of somnambulation and it is clear from the record that they have acted in a willful manner under the law. A finding of willfulness does not require an intent to violate the law. It is sufficient that the respondents were charged with duties and knew what they were doing.[19/]

There is little doubt that CRR and Richmond, among other things, unlawfully advertised and touted their services and theories by statements of Bunyanesque proportion, without properly disclosing the

---

17/ Market Lines, Inc., 43 S.E.C. 267 (1967); and Dow Theory Forecasts, Inc. 43 S.E.C. 821 (1968).

18/ Mark E. O'Leary et al., v. S.E.C., 424 F. 2d 908 (C.A.D.C., 1970).

19/ Billings Associates, Inc., 43 S.E.C. 641, 649 (1967); Biesel, Way and Company, 40 S.E.C. 532 (1961).

attendant pitfalls. The Commission's concern in these matters was noted in Spear & Staff, Incorporated 42 S.E.C. 549, 553 (1965):

> "By the securities acts Congress sought to protect 'those who do not know . . . from the overreachings of those who do'. To attain that objective, persons engaged in the securities business must be held to rigorous standards of full and fair disclosure in their dealings with investors. The rendition of investment advice is an integral part of the securities business, and the Act evidences Congressional recognition of that fact and of the need to protect those who seek such advice. In passing upon the propriety of securities selling techniques we have repeatedly held that lax merchandising standards epitomized by such terms as 'puffing' are antithetical to the anti-fraud provisions of the securities statutes. Similarly high standards of truthfulness and disclosure must also govern the propriety and legality of investment advisers' efforts to induce others to purchase their services. They are particularly applicable to advertisements of the type involved here which by their tenor show that they were designed to appeal to people who are anxious to secure quick profits and were not especially sophisticated in security analysis. Many such persons are either unaware of or prone to overlook the limitations and the uncertainties necessarily inherent in any attempt to forecast stock prices. They tend to be unduly influenced by advertisements representing or implying that the advertiser can make profitable forecasts and to subscribe to the advertiser's advisory services in reliance on them."

In light of the greater weight of credible evidence I find the respondents have engaged in a course of self-serving conduct without due regard for public interests and especially those investors that were misadvised and misled. Moreover, I have considered all mitigating factors as ably argued by counsel for the respondents. Taking also into account the gravity of the violations and the entire record as a whole, it is concluded that the sanctions ordered below for deterrent and remedial purposes are necessary, appropriate, and adequate in the public interest.

ORDER

Accordingly, IT IS ORDERED that the registrations of C. R. Richmond & Co. as a broker-dealer and investment adviser are revoked and Curtis R. Richmond is hereby barred from association with a broker or dealer or investment adviser with the proviso that, after a period of one year, he may apply to become associated with a registered broker or dealer or investment adviser is a non-proprietary, non-supervisory capacity upon a satisfactory showing to the Commission that he will be adequately supervised. 20/

This Order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Rules of Practice, 17 CFR Section 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 15 days after service of this intial 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.

David S. Antrobius
Administrative Law Judge

Washington, D.C.
August 15, 1975

20/ 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.