ADMINISTRATIVE PROCEEDING
FILE NO. 3-4620

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
AMNON DE-NUR	:
Rule 2(e) - Rules of Practice	:
	:

INITIAL DECISION

(Private Proceeding)

Washington, D.C.
September 12, 1975

Irving Sommer
Administrative Law Judge

ADMINISTRATIVE PROCEEDING
FILE NO. 3-4620

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
AMNON DE-NUR	INITIAL DECISION
Rule 2(e) - Rules of Practice	

APPEARANCES: James R. Miller, Esq., for the Office of the Chief Accountant.

Dean Carlton, Esq. for Amnon-De Nur.

BEFORE: Irving Sommer, Administrative Law Judge

By letter dated July 21, 1972 issued pursuant to Rule 2(e)(2) of the Rules of Practice, the Commission automatically suspended Amnon De-Nur, a certified public accountant from appearing and practicing before the Commission. The letter charged the respondent was "sentenced in the United States District Court for the Southern District of Florida following your plea of guilty to the charge of violating the federal securities laws."

A letter of De-Nur requesting lifting of the suspension was denied by the Commission on February 11, 1975, at which time the Commission further ordered that a hearing be held on March 13, 1975 pursuant to Rule 2(e)(4)(ii) of the Commission's Rules of Practice.

During the hearing De-Nur was represented by counsel. As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings thereof were made by the parties.

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

Respondent

Amnon De-Nur, 48 years of age, is a certified public accountant who is presently commencing a public practice of accounting. He maintains a residence in Dallas, Texas. He attended undergraduate school at the University of Houston and Baylor University Medical School, and undergraduate and graduate school at New York University receiving a graduate degree in Public Administration in 1952.

He resided in Miami, Florida between 1958 and 1968 during which time he had various jobs including managing of hotels and shopping centers. During this time he continued his C.P.A. schooling by correspondence course, and accreditation as a certified public accountant was granted by the State of Florida in 1967. Under the reciprocity provisions, he was admitted to practice in the State of Texas.

Commencing approximately December 1967 and through June 20 or 21, 1968, he served as vice-president and director of the State Fire and Casualty Company of Miami, Florida. He resigned from his positions at State Fire and Casualty Company on either June 20 or June 21, 1968, and shortly thereafter moved to Dallas, Texas.

Disqualification of Respondent

It is concluded on the basis of the record that the automatic suspension of Amnon De-Nur from appearing or practicing before the Commission should continue. As stated in the letter dated July 21, 1972 from the Commission to De-Nur, his right to practice before the Commission as an accountant was automatically suspended because of his conviction in the United States District Court for the Southern District of Florida of violating the federal securities laws. 1/

On October 12, 1971, a federal grand jury in Miami, Florida returned a nineteen-count indictment against De-Nur and four other individuals charging each of them with violations of the mail fraud and wire fraud statutes

---

1/ United States v. Amnon De-Nur, et al., S.D. Fla., No. 71-606 Cr-PF.

and the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and conspiracy to violate these statutes. Count 18 of the indictment related solely to the criminal acts of De-Nur. The charges therein were as follows:

1. The Grand Jury repeates and realleges the allegations contained in paragraph 1 of Count I of this indictment.

2. On or about July 9, 1968, in the Southern District of Florida,

AMNON DE-NUR

The defendant herein, unlawfully, wilfully and knowingly, directly and indirectly, by the use of and causing the use of a means and instrumentality of interstate commerce and the mails, to wit, the clearance by mails by the Mercantile National Bank of Miami Beach, Miami Beach, Florida, with the Chase Manhattan Bank of New York, New York of a certain $100,000 check No. 653, issued by Dormal of Louisiana, Inc., drawn on the Whitney National Bank of New Orleans, Louisiana, by Malcolm Woldenberg, and payable to "A. De-Nur, agent," used and employed in connection with the purchase and sale of a security, to wit, the purchase from State Fire of 5,000 shares of Mercantile Bank common stock, a manipulative and deceptive device and contrivance in contravention of the rules and regulations prescribed by the Securities and Exchange Commission as necessary and appropriate in the public interest and for the protection of investors, to wit, Rule 10b-5 (17 CFR Section 240.10b-5), in that defendant De-Nur (a) misrepresented to and concealed from certain other officers and directors of State Fire the actual price which would be and was paid for the said 5,000 shares of Mercantile Bank common stock owned by State Fire and (b) failed to account for and disclose to State Fire and its representatives that (1) on July 9, 1968 said 5,000 shares of Mercantile Bank common stock had been sold to another person through defendant DE-NUR, acting on behalf of State Fire, for $20 per share, and (2) that defendant DE-NUR would and did receive and keep for himself $5,000 of the proceeds from the sale of the said shares of Mercantile Bank common stock as a secret commission for himself and would and did remit only $19 per share to State Fire, and thereby defendant DE-NUR in connection with the purchase and sale of a security, employed, a device, scheme and artifice to defraud, made untrue statements of material facts, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading,

> and engaged in acts, practices, and a course of business which would and did operate as a fraud and deceit upon certain person, including State Fire, its public minority stockholders, its policy holders, claimants, and agents; in violation of Title 15, United States Code, Section 78j(b) and 78ff(a); and Title 17, Federal Regulations, Section 240.10b-5.

It appears from the record that De-Nur was an officer and director of the State Fire and Casualty Company from about December 1967 until June 20 or 21, 1968 when he states he officially tendered his resignation. This was formally accepted by the company a few weeks later. During this interim period he engaged in the sale of 5,000 shares of Mercantile Bank stock owned by State Fire. His version of this transaction varies. On March 25, 1970, under questioning during the course of the SEC investigation De-Nur stated that early in July 1968, he received a call from Mr. Dobson, president of State Fire asking if he knew anybody who wanted to buy Mercantile stock. His reply was, "I think I would know", and he thereupon contacted a Mr. Woldenberg, whom he had met before. He additionally stated that he might have been directed to Woldenberg by Mort (Zimmerman). In any event, Mr. Woldenberg was asked how much he could pay, and the response was $20; thereupon De-Nur asked Dobson the price he wanted and was told $19. Dobson was not told of the price being paid by Woldenberg. Mr. De-Nur made a profit of $5,000 on the sale stating, "I didn't tell Dobson anything. I said, how much will you take for the stock? I didn't tell him what I was selling it for at that time, because at that time I was out of State Fire and in between jobs, being employed by Intercontinental Industries, and I was in the process at the time of moving and so I thought that I could use the bonus for moving expenses and that I could make a few bucks on it, and I didn't

think that there was anything wrong with it." (See Gov't Exh. 12 -- Transcript pp. 290-291). When he testified at a disciplinary hearing before the Florida State Board of Accountancy, he stated that when Dobson called with reference to the possible sale of Mercantile stock he inquired of De-Nur, "Do you know if Mort can buy it"? (Mort is Mr. Zimmerman).

His testimony thereafter is that Mr. Zimmerman was the moving factor in arranging the purchase and sale, and that he merely was the telephone conduit. He said it was Zimmerman who contacted Woldenberg and established the $20 price and De-Nur contacted Dobson, and received the $19 price. In this testimony, De-Nur states that he thinks Dobson knew about the price differential. Additionally, at this time De-Nur testified that he held the money as agent for Zimmerman, and didn't know he was going to retain it until Zimmerman told him to "use the money for your relocation expenses."

Subsequent to the indictment, plea bargaining discussions were held between De-Nur and the government, (representatives of the Commission, United States Attorney, and Office of the United States Postal Inspector) culminating in an agreement that De-Nur would plead guilty to Count 18, and the remaining counts would be dismissed. De-Nur would be permitted to file an affidavit with the Court to the effect that he had no knowledge of Rule 10b-5 of the Exchange Act, and the government would thereupon recommend that the sentence only be a fine of $1,000.

On January 3, 1972, De-Nur pleaded guilty to Count 18 of the indictment, and on January 26, 1972, upon his guilty plea was adjudged convicted of the offense of "unlawfully, wilfully and knowingly using the mails

fraudulently in violation of Title 15, United States Code, Section 78j(b), and 78ff(a); and Title 17 Federal Regulations, Section 240.10b-5." The sentence of the court was a fine of $1,000.

Based on his conviction De-Nur automatically was suspended from the right to practice before the Commission under the provisions of Rule 2(e)(2) of the Rules of Practice.[2/]

Having come under automatic suspension based on his conviction, respondent has the burden of proving that he should be reinstated by the Commission either because of "a reversal of the conviction . . ." or for "good cause shown."[3/] Respondent has not carried that burden.

The respondent's plea of guilty to Count 18 of the indictment was an admission that he had "unlawfully, wilfully and knowingly . . ." violated the federal securities laws.

15 U.S.C. 78j(b) provides:

> It shall be unlawful for any person,directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange --
>
> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange

---

2/ Rules of Practice, Rule 2(e)(2), 17 CFR 201.2(e)(2) states

> (2) Any attorney who has been suspended or disbarred by a court of the United States or in any State, Territory, District, Commonwealth, or Possession, or any person whose license to practice as an accountant, engineer or other expert has been revoked, or suspended in any State, Territory, District, Commonwealth or Possession, or any person who has been convicted of a felony, or of a misdemeanor involving moral turpitude, shall be forthwith suspended from appearing or practicing before the Commission. A disbarment, suspension, revocation or conviction within the meaning of this rule shall be deemed to have occurred when the disbarring, suspending, revoking or convicting agency or tribunal enters its judgments or order, regardless of whether appeal is pending or could be taken, and includes a judgment or order on a plea of nolo contendere

3/ Rules of Practice, Rule 2(e)(4)(ii), 17 CFR 201.2(e)(4)(ii).

or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5, 17 CFR 240.10b-5 provides as follows:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

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

(2) to make any untrue statement of a material fact or to omit 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 act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

The penalty provisions of Section 32(a) of the Securities Exchange Act of 1934, provides that:

Any person who wilfully violates any provision of this title, or any rule, or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this title, or any person who wilfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this title or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of Section 15 of this title, which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $10,000, or imprisoned not more than two years, or both, except that when such person is an exchange, a fine not exceeding $500,000 may be imposed; <u>but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation</u>. (emphasis added).

The respondent contends that pursuant to a plea bargain in open court, and the court's acceptance of his affidavit under the "no knowledge" clause of §32(a), he was not convicted of a felony but of only a

misdemeanor. He further contends that the misdemeanor was not one "involving moral turpitude, and accordingly the Commission's suspension was unauthorized and void and should be lifted."

Respondent's argument must be rejected as a misapplication and misinterpretation of the "no knowledge" clause.

The penalties provision of the Securities Exchange Act of 1934 makes violation thereof a felony.[4/] "It is not the actual sentence, but the possible one which determines the grade of the offense." People v. Hughes, 137 N.Y. 29 (1955).

It has been held that the "no knowledge" provision applies solely to the severity of the penalty which may be imposed following conviction. Thusly, where the court accepts and finds that the person "had no knowledge of such rule or regulation" he may not be imprisoned. However, lack of knowledge of the rule or regulation does not preclude imprisonment where the activity complained of and for which the party has been convicted of also is a violation of the Act.

Judge Knapp analyzed this issue with precision in United States v. Sloan, D.C. So. Dist. N.Y., No. 74 Civ. 859, July 3, 1975, as follows:

"The weakness in this argument is that it is based on an inaccurate interpretation of the purposes of the "no knowledge" proviso in 15 U.S.C. §78ff(a). This clause is rather unique in that it permits a defendant prior to sentencing to rebut the presumption that he had knowledge of

---

4/ 18 U.S.C. states in pertinent part:

"Notwithstanding any act of Congress to the contrary:

(1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.

the rule or regulation (Emphasis added) of which he had been convicted of violating. It was included in the 1934 Act as a compromise measure to allay certain fears in Congress that . . . the legislators were subjecting totally "innocent" people -- persons who might act without knowledge that their conduct was now prohibited by a rule -- to possible incarceration. It is equally clear, however, that Congress did intend to maintain the usual presumption of knowledge with respect to the standards prescribed in the securities acts themselves. The "no knowledge" proviso is explicitly limited to lack of knowledge of a "rule or regulation . . ."

This conclusion is in harmony with the rationale expressed in several other decisions, and the interpretation placed thereon. Judge Friendly in United States v. Peltz, 433 F.2d 48 (1970) at Page 54 in discussing the "no knowledge" provision states that ". . . lack of knowledge of a rule or regulation prevents imprisonment but not a fine." In United States v. Lilley, 291 F.Supp. 989, 992 the court found "that Congress intended to charge every man with knowledge of the standards prescribed in the securities acts themselves." See, Herlands, Criminal Law Aspects of the Securities Exchange Act of 1934, 21 Va. Law Review 139, 148-149, 190-193. United States v. Mandel 296 F.Supp. 1038, 1040.

It must therefore be concluded that the crime to which the respondent pleaded guilty was a felony.

The respondent further argues that the government is estopped from denying that the conviction was a misdemeanor. The contention is without merit. It is based on the statement that the Assistant United States Attorney made to the court as part of his recommendation arising out of plea bargaining, to wit, the respondent would plead guilty to the one count

and be allowed to file a "no knowledge" affidavit; this affidavit would not allow the court to impose a prison sentence, and therefore "the government believes [that the affidavit] by law operates to make that law a misdemeanor."

In effect, what the Assistant United States Attorney was stating to the court was that for the purpose of sentencing the respondent, the "no knowledge" clause permitted no jail sentence and for this purpose only, a sentence corresponding to a misdemeanor would be indicated. That is precisely the meaning and intent of the "no knowledge" clause.

In any event, the courts have repeatedly stressed that an estoppel does not lie against the government for the acts or affirmative action of its agents or employees not within their authorized powers. The penalty for securities fraud is particularized in the legislative enactment. The United States Attorney cannot surrender or waive that which the Congress has defined and promulgated. In no case will the government be estopped where a strict enforcement of the statute promulgated will avoid it -- Sanitary District of Chicago v. United States, 206 U.S. 405, 427.

It is clear that the statute violation to which the respondent pleaded guilty was a felony; only in the sentencing aspect could the court ameliorate the punishment. There can be no estoppel herein against the government under the existing facts and circumstances.

Respondent also argues that not only was he not convicted of a felony, but that he was convicted of a misdemeanor not involving moral turpitude. This contention is similarly without merit.

This respondent was convicted of "unlawfully, wilfully and knowingly using the mails fraudulently in violation of Title 15, United States Code . . . ." A review of the more pertinent authorities indicates that the main determining circumstance delineating the presence of moral turpitude offenses is that the element of fraud is present as part of the offense. In Jordan v. DeGeorge, 341 U.S. 223, the court recognized this principle stating at p. 227, ". . . without exception federal and state courts have held that a crime in which fraud is an ingredient involves moral turpitude".

At page 229 the Court further stated, ". . . it can be concluded that fraud has consistently been regarded as such a contaminating component in any crime that American courts have, without exception, included such crimes within the scope of moral turpitude." This principle has been approved in other courts throughout the county -- Ponzi v. Ward (D.C. Mass., 1934) 7 F. Supp. 736; Berman v. Reimer, 123 F.2d 331 (C.A. 2, 1941); Burr v. Immigration and Naturalization Service, 350 F.2d 87, 91 (C.A. 9, 1965); Kirby v. Alcoholic Beverage Control Appeals Board, 72 Cal. Reptr. 823, 926; Iowa State Bar Association v. Kraschel, 148 N.W. 2d 621, 627, 260 Iowa 187; Rukavina v. Immigration and Naturalization Service, 303 F.2d 645, 646 (C.A. 7).

It should be noted that the findings of the Florida State Board of Accounting relative to De-Nur's conduct are of no moment here. The Boards internal decision, based on its own standards and the evidence before it in no way alters or expunges the criminal conviction of the respondent before a Federal District Court under the applicable provisions of the federal security laws.

For all the foregoing reasons, I find that the petition of Amnon De-Nur to lift the automatic suspension issued by the Commission on July 21, 1972 under Rule 2(e)(2) must be denied.[5/]

Accordingly, IT IS ORDERED that the automatic suspension of Amnon De-Nur from appearing or practicing before the Commission should continue.

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.

Irving Sommer
Administrative Law Judge

September 12, 1975
Washington, D.C.

5/ 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.