

ADMINISTRATIVE PROCEEDING
FILE NO. 3-4449

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

RECEIVED

DEC 30 1975

In the Matter of
EDWARD A. SPEHAR
(Schreiber Bosse & Co., Inc.)

INITIAL DECISION

Washington, D.C.

Irving Sommer
Administrative Law Judge

DEC 30 1975



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FILE NO. 3- 4449

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WASHINGTON, D.C. 20549

Office of Administrative Law Judges

Date : December 30, 1975

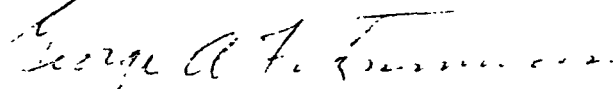
Re: Edward A. Spehar (Schreiber Bosse & Co., Inc.)

Dear Sirs:

Enclosed is the Initial Decision of Irving Sommer,
Administrative Law Judge.

Your attention is directed to the Commission's Rules of Practice,
and particularly to Rules 17, 18, 22 and 23, which pertain to
petitions for review of initial decisions, briefs and the service
and filing thereof.

Sincerely,


George A. Fitzsimmons
Secretary

Enclosure

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Before the
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In the Matter of :
EDWARD A. SPEHAR : INITIAL DECISION
(Schreiber Bosse & Co., Inc.) :
:

APPEARANCES: Orazio Sipari, Hyman Braham, and Joan M. Fleming,
of the Chicago Regional Office of the Commission,
for the Division of Enforcement

Crede Calhoun, for Edward A. Spehar

BEFORE: Irving Sommer, Administrative Law Judge

These public proceedings were instituted pursuant to Sections 15(b) and 15(A) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 10(b) of the Securities Investor Protection Act of 1970 ("SIPA") by order of the Commission dated March 7, 1974 ("Order"). The Order directed that a public hearing be held to determine whether the respondents 1/ named therein had engaged in the misconduct charged by the Division of Enforcement ("Division") and what, if any, remedial action pursuant to the Exchange Act and SIPA is appropriate in the public interest.

In substance, the Division alleged that respondent Edward A. Spehar wilfully violated the antifraud provisions of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in the offer and sale of the common stock of Leasepac Corp. ("Leasepac") in that false and misleading statements were made to a purchaser concerning the financial condition of the registrant, the nature of an SEC investigation of registrant and the prediction of a substantial and quick rise in the price of Leasepac. Spehar was also charged with fraudulently inducing the purchase by guaranteeing the purchaser against loss.

1/ Schreiber Bosse & Co., Inc. ("registrant"), Richard H. Schreiber ("Schreiber"), Thomas D. Bosse, Walter Manson, Patrick J. Holland, Harold Franklin and Morton Franklin were also named as respondents. The Commission issued its findings and order imposing remedial sanctions as respects all respondents in this proceeding other than respondent Spehar: Exchange Act Releases Nos. 11112 (1974), 11194 (1975) and 11372 (1975). Findings herein are made only as to respondent Edward A. Spehar. Hereinafter, unless otherwise indicated, the word "respondent" refers only to Spehar.

Respondent appeared through counsel who participated throughout the hearing. 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.

REGISTRANT

Schreiber Bosse & Co., Inc., an Ohio corporation with its principal place of business in Cleveland, Ohio, became registered as a broker-dealer pursuant to the Exchange Act on December 5, 1969.

The Commission instituted an injunctive action on May 1, 1973,^{2/} and on June 26, 1973 the Court issued a permanent injunction enjoining the registrant from further violations of Sections 15(b)(3) and 17(a) of the Exchange Act and Rules 15c3-1, 15c3-3 and 17a-11 thereunder.^{3/} On May 1, 1973, the Securities Investor Protection Corporation ("SIPC") filed an application seeking appointment of a trustee pursuant to Section 5(b)(3) of the SIPA to liquidate registrant's business, with the result that a trustee was appointed on May 7, 1973.

2/ SEC v. Schreiber Bosse & Co., Inc. Civil Action File No. C-73-456 (D.C. No. Dist. Ohio, Eastern Division).

3/ Rule 15c3-1 requires the maintenance of minimum net capital, Rule 15c3-3 requires the creation of a special reserve bank account for the exclusive benefit of customers, and Rule 17a-11 requires a report of financial condition from a broker-dealer whose net capital is less than the minimum set forth under Rule 15c3-1.

RESPONDENT

Edward A. Spehar, a native of Cleveland, Ohio, is 32 years of age and attended high school and college in his home town. He has been employed in the securities field since 1963 or 1964 by various stock brokerage concerns in the position of trader. He was employed by registrant as a trader from the inception of the business until the firm ceased doing business. In addition he had a few retail customers consisting of close friends and family.

Violations of the Antifraud Provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder in Connection with the Offer and Sale of Leasepac Stock.

The Order alleges that from on or about March 21, 1973 to on or about May 7, 1973, the respondent wilfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by making untrue statements of material facts and by omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made not misleading, in connection with the offer and sale of Leasepac. The fraudulent statements and conduct involved:

- (1) The financial condition of registrant,
- (2) Prediction of substantial and quick rise in the price of Leasepac Corp. stock,
- (3) Guarantee against loss to the purchaser of Leasepac stock, and
- (4) The nature of an SEC investigation of registrant.

The relevant events concerning the alleged misstatements and misrepresentations by the respondent occurred on either March 19 or 20, 1973, during the course of a meeting between the respondent and one Robert Birrer. Respondent had visited the car dealership owned by Birrer for car service. Prior to said date, Spehar had not conducted any business with Birrer.

Birrer testified that shortly before March 19, 1973, he sold 1200 shares of Leasepac through a broker other than registrant because he had heard the registrant, which he knew had a large position in the stock was in financial difficulty, i.e., its solvency was in question, there was an SEC investigation of the registrant being conducted, and his experience with late payments on cars leased by the registrant. He testified that Spehar induced him to repurchase the 1200 shares of Leasepac which the registrant had purchased for its own account.

Birrer attributed his repurchase of the stock to representations by Spehar that the registrant was not in financial difficulty, that he would be out of the stock within 3 to 4 weeks with a profit and most important, that he was guaranteed not to lose any money.

Spehar denies making any such representations. In essence, to sustain the charges herein, we must rely almost exclusively on the testimony of Birrer regarding the representations made. We consider it necessary therefore, to peruse this testimony and determine its inherent credibility.

I have had the opportunity of observing Birrer on the stand, and to weigh accordingly the credibility of his testimony. In general, the witness evidenced considerable hostility to the respondent, and on cross examination at times engaged in argument rather than giving testimony.

His statement, "I am almost here on a vindictive basis," (SEC Investigatory Tr. 33) signalled his fluctuating and contradictory statements thereafter.

A. The Nature of an SEC Investigation

The gravamen of the fraud is that Spehar, during conversations on the critical days, March 19 or 20, 1973, misrepresented by stating if there was an SEC investigation it was no more than a routine check. The validity of this charge can be established only if on said dates there was such an investigation; absent this fact, there was no violation. The evidence shows that the SEC investigation of the registrant did not commence until March 29, 1973.

There is no evidence of record that at anytime prior thereto, there were SEC investigators at the premises of the registrant, or that Spehar knew of any such investigation prior to March 29, 1973. The Division has failed to sustain this charge by a preponderance of the evidence and, accordingly, it is dismissed.

B. The Financial Condition of Registrant

This charge is both vague and deceptive. Since Spehar is said to have misrepresented the financial condition of the registrant to Birrer, it is important to note that Birrer's testimony indicates he told Spehar that he had heard the registrant was having "a little difficulty", "some difficulty", or "nothing more than the fact they were in financial difficulty". His testimony that he also mentioned the "solvency" of the registrant to Spehar is not believable, considering his prior statements describing their financial status.

Addressing himself merely to the fears of Birrer as to the difficulties of the registrant, Spehar was candid and forthright in stating that to "the best of my knowledge they were not in financial difficulty". His answer was a reasonable response to the allegation under all the existing facts and circumstances. He did not vouchsafe the firm's solvency. Spehar confronted the president of Schreiber Bosse and was assured that its financial position was good. Schreiber contacted Birrer and confirmed this state of affairs. Spehar related all the various signs present and visible to him, demonstrating a going brokerage firm with no apparent severe financial dislocations, i.e., the office and all employees were functioning, he was doing his daily trading, he was being paid and had recently attended a securities convention out of town under firm auspices and he was using a leased car paid for by the firm. Spehar was not an officer, stockholder or party privy to the financial statements, and the evidence shows he neither was shown nor received weekly

financial statements. Under the circumstances, I cannot conclude that he should have been reading the financial statements to apprise himself of their condition. Considering his status at the registrant, his inquiry of the president relating to the firm's financial condition, and the other surrounding facts that he noted, there was adequate basis for his statements relative to the financial condition of the registrant. I find that this charge has not been proven by a preponderance of the evidence and, accordingly, it is dismissed.

C. Prediction of Substantial and Quick Rise in the Price of Leasepac Corporation Stock

The record establishes and Spehar admits that he represented to Birrer that Leasepac, which was selling at approximately 6 1/2 - 7 could be expected to rise 1 to 2 points or possibly slightly more in a short period of time (within 30 days). Since Birrer wished to be out of the stock in a short period of time, this was the time limit agreed upon. Spehar's opinion was based on his noting increased buying interest in the stock by institutional investors, and from information given to him by Schreiber concerning possible new business prospects for Leasepac Corp., i.e., the corporation was looking at a computer service company overseas, they were considering expanding their disc pack leasing business and there was a possibility of a business arrangement with Memorex involving obsolete disc packs.

There was no reasonable basis for the representations and predictions made by Spehar. As a trader he was well aware of the speculative nature of Leasepac. He made no investigation into the financial condition of the corporation nor of its business operations.

Considering that he knew it was a speculative over the counter security, he was not entitled to blindly accept the information advanced by Schreiber, and should have been more diligent before making a representation of a substantial price rise. On the facts available to him, Spehar had no reasonable basis for predicting the future market swing of Leasepac in the ensuing 30 days.

That Spehar did not intend to deceive in "forecasting the market performance of Leasepac", cannot excuse the fact that there was no reasonable basis for his representations and predictions.

"The making of predictions and representations, whether couched in terms of opinion or fact, which are without reasonable basis is violative of the antifraud provisions of the securities acts." 4/

Expressions of opinion that Leasepac would rise substantially in price in a relatively short period of time, were unjustified, and were inherently fraudulent. 5/

It is concluded therefor that Spehar wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. 6/

4/ M.V. Gray Investments, Inc., et al., 44 S.E.C. 567, 571 (1971).

5/ Armstrong, Jones and Company, 43 SEC 888, 896 (1968); R. Baruch and Company, 43 SEC 13, 18 (1966).

6/ See Tager v. S.E.C., 344 F. 2d, 5, 8 (C.A. 2, 1965): "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."

D. Guarantee Against Loss to the Purchaser of Leasepac Corp. Stock

Birrer testified that Spehar guaranteed he would never get less than 6 1/2 (his purchase price) for Leasepac.

Spehar denies making any guarantee against loss, stating he told Birrer he "would watch the stock and if possible get him out at a higher price." The record as presently constituted does not support a finding that any guarantee against loss was made. The testimony of Birrer on this point is not credited. Birrer attempted to supply corroboration through his employee Michael W. Thompson. Thompson inadvertently heard a fragment of the conversation between Birrer and Spehar, stating he was in the room "a minute, maybe two minutes". However, the testimony of Thompson not only is not supportive, but shows it was Birrer himself who supplied this self serving information. Thompson emphatically testified that all he heard was Spehar telling Birrer that "he thought it will be a good buy to purchase Leasepac stock back." It was Birrer who told Thompson that "he had assurances that it was not going to go below 6 1/2 or something like that".

Of further significance in finding the non-existence of any such guarantee is Birrer's testimony that the telephone conversation between Schreiber, the president of the registrant, and himself, which was a "carbon copy" of what Spehar had told him, and which he called "almost canned", did not include any guarantee.

Under cross examination Birrer admitted that he did not receive nor did he request any guarantee from Schreiber since he didn't "think it was necessary". It is not credible that he had discussed

all topics with Schreiber, yet this topic which he considered the most important reason for his purchase was not broached. If Birrer did not think it necessary to obtain such a guarantee commitment from the president of the brokerage concern, it is not believable that he received one from Spehar, an employee.

It is concluded that this charge was not proven by a preponderance of the evidence and, accordingly, it is dismissed.

Public Interest

On the question of the need for remedial action, the Division asserts that Spehar's misrepresentations and omissions, which violate the cardinal principle of fair dealing required of all those in the securities field, make it necessary that he be suspended from association with a broker or dealer for a minimum of 90 days in order to protect the investing public. Respondent strongly urges that he was honest and above board in his dealings herein and was himself a victim of the fraudulent practices of the registrant.

As noted above, the charges with respect to three of the alleged violations were dismissed.

The record before me did demonstrate that the respondent had violated the antifraud provisions of the Securities Act, and the Exchange Act and Rule 10b-5 thereunder.

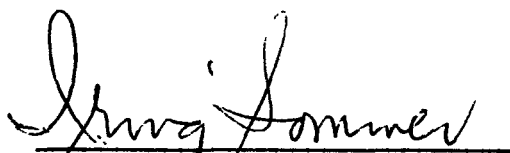
I have considered the various factors urged by the respondent, as well as the surrounding facts and circumstances herein in mitigation. The evidence shows that the respondent was hired as a trader and did not ordinarily deal with the investing public. While his actions concerning

the price predictions cannot be condoned, in view of his prior clean record and that this was an isolated transaction, his candidness and obvious truthfulness while testifying leads me to the conclusion that the public interest would be adequately served by censuring the respondent. ^{7/}

Accordingly, IT IS ORDERED that Edward A. Spehar be, and he hereby is censured.

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 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

Washington, D.C.
December 30, 1975

^{7/} 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.