ADMINISTRATIVE PROCEEDING
FILE NO. 3-6076

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

LARRY D. BLAVIN, INDIVIDUALLY AND :
d/b/a PROVIDENCE INVESTMENT ADVISORY :

INITIAL DECISION

Filed 3/21/83

March 21, 1983
Washington, D.C.

Ralph Hunter Tracy
Administrative Law Judge

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LARRY D. BLAVIN, INDIVIDUALLY AND d/b/a PROVIDENCE INVESTMENT ADVISORY	: :	INITIAL DECISION

APPEARANCES: Alexia Morrison and Curt H. Mueller, Attorneys for the Division of Enforcement

Sheldon Michael Bessman and J. Cristy Osborn for Larry D. Blavin

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

This public proceeding was instituted by Commission Order (Order) dated November 17, 1981, pursuant to Section 203(c)(2) of the Investment Advisers Act of 1940 (Advisers Act) to determine whether the application of Larry D. Blavin (Blavin), individually and d/b/a Providence Investment Advisory (Providence), for registration as an investment adviser should be denied.[1]

The Order alleges, in substance, that Blavin, individually and d/b/a Providence, has wilfully violated Section 10 of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder; also Sections 203(a), 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder.

The evidentiary hearing was held in Detroit, Michigan on October 26 and 27, 1982. Blavin and Providence were represented by counsel at the hearing. Proposed findings of fact, conclusions of law, and supporting briefs were filed by the Division of Enforcement (Division) only.

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

FINDINGS OF FACT AND LAW

Respondent

Blavin was born in Detroit, Michigan on November 4, 1934. He attended Detroit Institute of Technology, where in 1954 he completed a degree of BA in Business Administration. In 1959 he received a

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1/ In order for the Commission to comply with Section 203(c)(2)(B) of the Advisers Act an appropriate consent was obtained from Blavin staying the effective date of the registration.

BS in Pharmacy from Wayne State University, Detroit, Michigan, and became a registered pharmacist. Since then his primary occupation has been as a pharmacist with J.L. Hudson Co., a large department store in Detroit, Michigan; Revco D.C., Inc., a discount drug chain; Kroger Co., a supermarket chain; Allied Supermarkets, Inc., a food and drug chain; and since 1980, the owner and operator of Farmington Hills Pharmacy, Farmington, Michigan, a suburb of Detroit.

While he was employed by Revco, between 1962 and 1969, he became a registered representative and worked on a part-time basis for B.C. Morton, a brokerage firm in Detroit. He later was employed part-time as a registered representative by Mutual Fund Sales and, later, by Goodbody & Company. In February 1981 he established Providence Investment Advisory, a newsletter offering investment advice. Each letter described and recommended one particular security and was mailed to prospects in the United States and Canada, for a subscription fee of $30 a year. Prior to establishing the letter Blavin had made appearances before groups of doctors, some of which were investment clubs, for which he received fees ranging from $150 to $200. When he began Providence he purchased mailing lists of professionals, primarily physicians, and solicited them for subscriptions. By August 31, 1981 he had approximately 650 subscribers in about 40 states and Canada; he was however, sending out as many as 5,000 letters a month. From at least April through November 1981, Blavin was the author and publisher of six issues of Providence, each of which discussed a different company and recommended purchase of its

stock.

Investment Adviser Registration Provisions

The Order charges that during the period from at least April 1981 to November 17, 1981 (the date of the Order) Blavin wilfully violated Section 203(a) of the Advisers Act by engaging in business as an investment adviser when Providence was not registered as such with the Commission.[2/]

Blavin was contacted by the SEC on June 15, 1981. At that time he admitted that he was not registered as an investment adviser, but on June 24, 1981 he filed an application to register on Form ADV.[3/] By letter of August 3, 1981, Blavin consented to delay the effective date of his registration pending resolution of an investigation by the SEC. However, despite this consent, Blavin published three more issues of the Providence newsletter in August, October, and November 1981.

It is clear from the record that Blavin was an investment adviser, that he was not registered, and that he made use of interstate commerce while engaged in business as an investment adviser. Accordingly, it

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2/ Section 203(a) provides, in pertinent part, that it shall be unlawful for any investment adviser, unless registered, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser. Section 202(a)(11) states that "Investment Adviser" means any person who, for compensation, engages in the business of advising others, . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities;

3/ In his answer to the Order, Blavin also admitted that Providence had not been registered.

is found that he wilfully violated Section 203(a) of the Advisers Act.[4/]

Anti-Fraud Provisions

The Order alleges that, during the period from at least April 1981 to November 17, 1981, Blavin, individually and d/b/a/ Providence, wilfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act, and Rule 206(4)-1(a)(5) thereunder, in connection with the purchase and sale of the securities of Alanda Energy Corp. (Alanda) and Velvet Exploration, Ltd. (Velvet) by employing directly and indirectly devices, schemes, and artifices to defraud and by means of untrue statements of material facts and omissions to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading.[5/]

4/ Section 203 is a strict liability provision. SEC v. Meyers, 285 F. Supp. 743 (D. Md. 1968); SEC v. Wall Street Transcript Corp., 422 F. 2d 1371,1376 (2d Cir.), cert. denied, 398 U.S. 958 (1970); Marketlines, Inc., v. SEC, 384 F.2d 264,267 (2d Cir. 1967), cert denied, 390 U.S. 947 (1968).

5/ Section 10(b) as here pertinent makes it unlawful for any person to use or employ in connection with the purchase or sale of a security any manipulative device or contrivance in contravention of rules and regulations of the Commission prescribed thereunder. Rule 10b-5 defines manipulative or deceptive devices by making it unlawful for any person in such connection: "(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 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 . . . " Section 206 contains analogous anti-fraud provisions. Rule 206(4)-1(a)(5) forbids the distribution of any advertisement which contains any untrue statement of a material fact or which is "otherwise misleading."

As part of the aforesaid conduct, Blavin and Providence variously (1) purchased the securities of Alanda and Velvet, (2) subsequently caused the dissemination of materially false and misleading information through the investment advisory newsletter concerning, among other things, the assets, operations, income earnings, and cash flow of said companies, and (3) thereafter sold such securities at a substantial profit.

The May newsletter, which was distributed on or about May 20, 1981, was devoted entirely to touting the stock of Alanda, a small Canadian corporation engaged in oil and gas exploration. In April and May, just prior to the time the newsletter was published, Blavin had purchased more than 78,000 shares of Alanda stock. Blavin testified before SEC staff members that he had purchased only 7,000 shares of Alanda stock; but when confronted with the fact that he had purchased more than 78,000 shares admitted that he had testified falsely as to the extent of his purchase of Alanda shares because he thought it would look improper in view of the fact that he distributed a newsletter recommending Alanda.

The May 1981 newsletter stated: that Alanda's current cash flow was in excess of $3,500,000 when, in fact, it was minimal; that the projected cash flow for 1982 was $7,500,000 when it actually was $1,100,000; that Alanda's current assets were $3,500,000 when more correctly they were approximately $253,000 (Canadian); that "Alanda has drilled 63 wells in one Oklahoma project - anticipated results - 50 producing wells" when the Oklahoma drilling program was not even scheduled to begin until August 1981 and was later postponed until

October; that Alanda would have 90 wells producing 2,500 barrels of oil daily by February 1982 when Alanda officials had no idea what its daily production would be.

With respect to the above statements Blavin has admitted that the current cash flow figures for 1982 were strictly his own estimates and not figures furnished by Alanda; that the current asset figure of $3,500,000 was based on his own calculations; and that the 90 producing well figure was "primarily a speculation" on his part. Moreover, prior to the distribution of the May newsletter Blavin was told by an Alanda representative that it contained inaccurate information which should be corrected before distribution. However, Blavin failed to make the corrections.

In addition to the aforementioned false and misleading information, the May 1981 newsletter contained materially misleading statements about Alanda, such as Alanda is a "money machine" and Alanda has a "whopping interest" in drilling programs.

The price and volume of trading in Alanda stock increased substantially after the distribution of the May newsletter. From a bid price of $3 a share for the weeks before May 22 it rose to $4.25 and increased to $5.75 in the week of May 29, 1981. Weekly trading volume rose from 50,000 and 69,200 shares in the two weeks prior to distribution to 291,900 and 371,000 in the two weeks after distribution. Thereafter it declined until it reached 65,400 shares in

the week of June 26, 1981.

From May 28, 1981 to July 6, 1981, Blavin sold his entire position in Alanda stock for an estimated profit of at least $76,000.

From May through September 1981, Blavin purchased a substantial amount of the stock of Velvet, another Canadian company engaged in oil and gas production. On or about September 28, 1981, Blavin distributed the October 1981 _Providence_ newsletter containing false and misleading information concerning Velvet's assets, operations and income, including the following: that Velvet's mining operation in Mexico covers 200 acres when the mine covers only 22 acres; that Velvet's partner in the Mexican mining operation is the Mexican government when, in fact, the partner is a Mexican national as required by Mexican law; that Velvet's current liabilities were under $15,000 when the company president had told Blavin that Velvet had no current liabilities; that Velvet's present oil income totaled $384,000 a year but Blavin knowingly included non-oil income in that figure.

In October 1981, after he had distributed his newsletter recommending Velvet, Blavin sold more than 224,000 shares of Velvet stock for a profit in excess of $200,000.

On October 28, 1981, as a result of unusual price movement and volume increases, the Vancouver Stock Exchange suspended trading in Velvet stock. The manager of compliance for the Vancouver Exchange testified that the unusual market activity in Velvet stock, including

the price and volume increases, was attributable to Blavin's newsletter. Accordingly, Velvet was required to issue a press release clarifying the statements made by Blavin in his October 1981 newsletter.

False representations, or representations that are false and misleading because necessary qualifications or explanations are omitted, have long been held, in a number of cases, by the courts and the Commission, to constitute activity violative of the anti-fraud provisions of the securities acts. Charles Hughes & Co., v. Securities and Exchange Commission, 139 F.2d 434,437 (2d Cir. 1943); Norris & Hirshberg v. Securities and Exchange Commission, 177 F.2d 228,233 (D.C. Cir. 1949); Charles E. Bailey & Co., 35 S.E.C. 33,43 (1953); Harris Clare & Co., Inc., et al, 43 S.E.C. 198,201 (1966).

It is fundamental that a misrepresentation or omission must be material to serve as a basis for a finding that a violation of the anti-fraud provisions of the federal securities laws has occurred. The concept of materiality has been described as the cornerstone of the disclosure system established by the federal securities laws. The basic test adopted by the courts for determining materiality is whether "a reasonable man would attach importance . . . (to those facts) in determining his choice of action in the transaction in question." Securities and Exchange Commission v. Texas Gulf Sulphur Co., 401 F.2d 833,849 (2d Cir. 1968), cert denied sub. nom Coates v. Securities & Exchange Commission, 394 U.S. 976 (1969). Positive proof

of reliance is not necessary. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in the making of his decision.[6/] Likewise, an omitted fact is material if "disclosure of the omitted fact would have been viewed by the reasonable investor as having altered the total mix of information made available."[7/]

It is obvious that Blavin made many material misstatements and omissions in his newsletter.[8/] In addition, he failed to disclose his overall scheme, which is known in the trade as "scalping." This practice consists of purchasing shares of a security for your account shortly before recommending that security for investment and then immediately selling the shares at a profit upon the rise in market price following the recommendation.

In the capacity of an investment adviser Blavin owed an even more stringent duty to his clients than would a securities salesman. As the Supreme Court stated in Securities and Exchange Commission v. Capital Gains Research Bureau, 275 U.S. 180,194 (1963), an investment adviser is a fiduciary who owes his clients "an affirmative duty of utmost good faith and full and fair disclosure of material facts." The very enactment by Congress of the Advisers Act evinced recognition of the nature of the advisory relationship and of the need for a regulatory scheme to protect investors from such

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6/ Affiliated Ute Citizens of Utah, et al. v. United States, 406 U.S. 128,153 (1972).

7/ TSC Industries, Inc., v. Northway, Inc., 426 U.S. 438,449 (1976).

8/ An additional misstatement is that the newsletter states that Providence Investment Advisory is a "chartered and registered service," which it was not.

persons who may engage in fraudulent and deceptive practices. Abrahamson v. Fleschner, 568 F.2d 862 (2d Cir. 1977); Securities and Exchange Commission v. Myers, 285 F. Supp. 743 (D.C. Md. 1968).

It is found that Blavin, individually and d/b/a Providence, wilfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder. It is found, also, that Blavin clearly had the scienter necessary to establish the violations. In any event, findings of scienter are not required in order to establish violations of Sections 206(2) and 206(4) of the Advisers Act. All findings of fraud are made under the latter two sections. The findings that Blavin also violated Section 206(1) of the Advisers Act and Section 10(b) of the Exchange Act are merely cumulative. See Steadman v. S.E.C., 603 F.2d 1126,1134 (5th Cir. 1979), aff'd 450 U.S. 91 (1981). See also S.E.C. v. Capital Gains Research Bureau, Inc., 375 U.S. 180,195,200 (1963); Aaron v. S.E.C. 446 U.S. 680,691-693, 696-697 (1980).

Public Interest

On March 4, 1983, the Commission announced in Litigation Release No. 9917, that on March 1, 1983 the U.S. District Court for the Eastern District of Michigan, Southern Division, issued an opinion granting summary judgement on all counts of its complaint against Blavin and Providence for violations of the anti-fraud provisions of the Exchange Act and the registration and anti-fraud provisions of the Advisers Act.

The court also directed the Commission to prepare an order of permanent injunction and a plan of disgorgement for issuance by the court.[9/]

The above complaint, along with motions for a temporary restraining order and a preliminary injunction, was filed in November 1981. On November 18, 1981, by stipulation of both parties, the court entered an order enjoining Blavin from issuing any further newsletters or trading in any security which he had previously mentioned therein. In December 1981 the SEC learned that Blavin had sold approximately 47,000 shares of I.R.E. stock after publication of his November newsletter touting it. In January 1982 the court entered a preliminary injunction and ordered disgorgement of $179,000, the proceeds of Blavin's sale of I.R.E. stock.

Blavin continued to violate the court's orders by issuing newsletters under the auspices of Target Investment Advisory, and Spectrum 4 Investor Communications, Inc. In September 1982 the court found Blavin in criminal contempt for repeated and wilfull violations of its November 18, 1981 order and the preliminary injunction of January 1982, and sentenced him to 30 days in jail and a $1,000 fine. This sentence was affirmed by the Court of Appeals for the Sixth Circuit on March 14, 1983.

9/ In its opinion the court said: "Although the defendant has not raised the issue, this Court must consider potential First Amendment issues with reference to the publication of the investment advisory letter. Section 202(11) of the Act contains an exception for the publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation. The Court is convinced, however, that Blavin does not fall within this exception." See also, Securities and Exchange Commission v. Lowe, et al. (D.C., N.Y. Feb. 1, 1983)

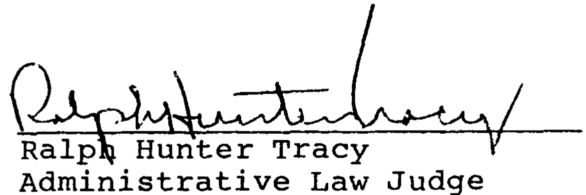
Blavin's persistently egregious and blatant conduct in defiance of regulatory disciplines demands that his application for registration as an investment adviser should be denied.

ORDER

IT IS ORDERED that the application of Larry D. Blavin, individually and d/b/a Providence Investment Advisory, for registration as an investment adviser be, and hereby is, denied.

This order shall become effective in accordance with and subject to the provisions of 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 the initial decision upon him, filed a petition for review pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(d), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, the initial decision shall not become final with respect to that party.[10/]



Ralph Hunter Tracy
Administrative Law Judge

March 21, 1983
Washington, D.C.

10/ All proposed findings, conclusions, and contentions have been considered. They are accepted to the extent that they are consistent with this decision.