ADMINISTRATIVE PROCEEDING
FILE NO. ~~3-2703~~
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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
JACK SCHAEFER	:

INITIAL DECISION

Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.
April 9, 1974

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APPEARANCES: Richard L. Jaeger, Fred M. Berman and Jules Moskowitz for the Division of Enforcement.

Paul M. Godlin of Schur, Rosenberg, Handler & Jaffin for respondent Jack Schaefer.

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

This is a public proceeding instituted by Commission order (Order) of December 29, 1970, amended by order of May 27, 1972, pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 (Exchange Act) to determine whether 22 named respondents committed certain charged violations of the Securities Act of 1933 (Securities Act) and the Exchange Act and regulations thereunder, as alleged by the Division of Enforcement (Division) and the remedial action, if any, that might be appropriate in the public interest.

Between June 9, 1971 and January 18, 1974, the Commission accepted offers of settlement from 20 of the respondents so that this proceeding has been determined as to them. 1/ The Division did not introduce any evidence with respect to respondent Steven Weil and recommends that the proceeding be dismissed as to him. Accordingly, the findings herein are applicable only to the remaining respondent Jack Schaefer.

With respect to Schaefer the Order alleges, in substance, that he willfully violated and willfully aided and abetted violations of

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1/ The offers of settlement were accepted by the Commission in Securities Exchange Act Releases as follows: John Zeeman, 9205, June 9, 1971; Baerwald & DeBoer, 9237, August 2, 1971; Herman F. Baerwald, 9272, August 2, 1971; D.H. Thomas & Co., D.H. Thomas & Co., Inc., David Hugh Treherne-Thomas, Robert J. Gallic, 9333, September 14, 1971; Franklin S. DeBoer, 9435, January 3, 1972; Glidden, Morris & Co., A. Leland Glidden, 9557, April 10, 1972; Charles J. Fischer, 9631, June 6, 1972; W.E. Burnett & Co., Charles M. Cushing, Elliot Schneider, Wayne Rooks, Arnold Runestad, Edward Frankel, 9711, August 4, 1972; Albert F. Briggs, 9949, January 1, 1973; George C. VanAken, 10430, October 11, 1973; and Charles D. Erb, 10607, January 18, 1974.

Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, by inducing customers to purchase securities of Bookshelf of America (Bookshelf) on the basis of non-public or inside corporate information.

Respondent Schaefer was represented by counsel throughout the portion of the proceeding applicable to him and proposed findings of fact and conclusions of law and supporting briefs were filed 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.

The respondent Jack Schaefer is an attorney by training and has engaged in the practice of law. However, for over 20 years he had been engaged in the securities business as a salesman. He had a one percent partnership interest in Baerwald & DeBoer from February 1968 to June 1969 and remained at Baerwald & DeBoer as a registered representative until August, 1969. Baerwald & DeBoer was a partnership located in New York City which was registered with the Commission as a broker-dealer from May 19, 1966 until August 2, 1971, when its registration was revoked. (Securities Exchange Act Release No. 9237).

Bookshelf of America (Bookshelf), a mail order distributor of religious books was founded in 1953 by Arthur Lawrence Worby (Worby) who was its president from 1953 until 1969. Bookshelf had a public offering of its stock in July 1961, underwritten by D.H. Blair & Co. (Blair) with Elliot Schneider (Schneider), then associated with Blair, handling the offering. After the underwriting Schneider became a director of Bookshelf, continuing in that capacity until the fall

of 1970. Schneider joined Baerwald & DeBoer in November 1966 and became a partner in January 1967. He owned a 19 percent interest in Baerwald & DeBoer and was one of the firm's three senior partners along with Herman Baerwald (Baerwald) and Franklin DeBoer, (DeBoer) who was the managing partner of Baerwald and DeBoer until June 1969.

In 1968 Bookshelf was in need of capital and negotiated with Baerwald & DeBoer to bring out an offering of $100,000 worth of debentures convertible at $1.00 a share so that there would be another 100,000 shares of Bookshelf outstanding. However, according to Worby, during the negotiations the outstanding stock rose to $3.00 a share and Baerwald & DeBoer stated it could not do the offering at $1.00 while the market price was $3.00. The underwriting was abandoned and shortly thereafter Schneider and DeBoer approached Worby with an offer to privately buy 100,000 shares of Bookshelf for the firm of Baerwald & DeBoer at $1.00 a share. This purchase was accomplished in August 1968 and a few days later Schneider and DeBoer each purchased 18,750 shares privately from another shareholder so that with 137,500 shares, Schneider, DeBoer and the firm controlled Bookshelf. Prior to obtaining control Baerwald & DeBoer, through Schneider, had acted as advisors to Bookshelf but immediately upon obtaining control it became very active in pursuing merger possibilities and in using Bookshelf's capital to invest in other securities.

Apparently some of the 100,000 shares of Bookshelf purchased by the firm were offered to Baerwald & DeBoer partners. The record is

unclear as to this but Schaefer testified that he was required to purchase 1,429 shares of restricted Bookshelf stock for the capital of the firm. He stated that he did not want to make this purchase but it was either that or give up his one percent partnership interest. It appears that his participation was pro-rated on the basis of his investment in the firm. The shares were purchased in his wife's name.

Steven Weil (Weil) acted as a finder in bringing East New York Medical Centers (Enymac) to the attention of Baerwald & DeBoer as a merger prospect for Bookshelf. Early in April 1969, Worby was asked by Schneider to authorize Weil to negotiate the acquisition of Enymac by Bookshelf. On April 10, 1969, a meeting was held at the offices of Baerwald & DeBoer concerning the merger of Bookshelf and Enymac. Present were Worby, Weil, Baerwald, DeBoer, Schneider, and an attorney for Baerwald & DeBoer. Although Worby at first objected he was persuaded to sell his remaining shares in Bookshelf and on April 17, 1969, pursuant to request he resigned as president and a director.

A letter to shareholders dated April 25, 1969, announcing that Bookshelf had agreed in principle to acquire medical centers was the first dissemination to the public of news relating to the pending merger with Enymac and the discussions leading up to it. The release also announced that Dr. Philip Gamm, one of the co-founders of Enymac, had been elected president of Bookshelf, replacing Worby.

Schneider testified that in April, 1969, while the merger negotiations were going on, Schaefer would ask how the deal was going and that he would tell him. Schneider testified, "Jack is an aggressive man who asks frequently." On April 16, 1969, Schaefer purchased 3,000 shares

of Bookshelf at 5½ to 6¼ for the account of a customer.

Schaefer testified on his own behalf and said that although Schneider was a partner in Baerwald & DeBoer and a director of Bookshelf he did not ask him about Bookshelf or the merger negotiations. Schaefer testified that he had been present at the hearing during Schneider's testimony and that Schneider's testimony concerning him (Schaefer) was false. Schaefer testified before the staff of the SEC on February 2, 1970, during the investigation of this matter and portions of that testimony were introduced in this proceeding. Schaefer told the staff, under oath, that he knew Bookshelf was going to take over Enymac and make some changes from its usual line of business and go into the Medicaid-Medicare field and that he felt that this could be beneficial to the stock. However, he testified at the hearing that his previous testimony was incorrect. He denied having any inside information concerning Bookshelf and stated that his purchase of the 3,000 shares for his customer was based on his own investigation and information from persons other than Schneider and DeBoer.

Schaefer testified that his purchase of Bookshelf stock came about when he walked into the order room at Baerwald & DeBoer to place an order for another stock and the order room clerk remarked that there had been a lot of activity in Bookshelf, it had come up from $2 and asked why don't you get into it? Schaefer said that he gave an order on the spot to buy 5,000 shares for the account of N.M. Rothschild & Sons, but as it turned out was able to get only 3,000 shares. Schaefer said that he did not have discretionary authority for the

Rothschild account but had the right to use his judgment to recommend and purchase stock for the account because the five hour time difference between New York and London where Rothschild was located made it difficult to get in touch with them. Schaefer could not remember whether he spoke to Rothschild before or after he made the Bookshelf purchase. The purchase was made on April 16, 1969, at 5½ to 6¼ and by April 25, 1969, the day of the announcement of the merger of Bookshelf and Enymac, was trading as high as 13½. Rothschild's 3,000 shares were sold between May 5 and 29, 1969, after news of the merger had been released, at prices ranging from 10 to 12 3/4, for a profit of $17,100.

In his brief Schaefer categorically denies that he obtained any relevant information concerning Bookshelf from Schneider, or anyone else. He argues that he had no direct knowledge of the merger negotiations and that everything he knew about Bookshelf was a matter of common knowledge to other brokers on the street and, therefore, was not inside information. Moreover, he asserts, he withheld no information in his possession concerning the status of Bookshelf from his customer and, accordingly, full disclosure having been made, there is no basis for the finding of violations as alleged in the order.

The evidence supports a finding that Schaefer willfully[2/] violated and willfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

2/ All that is required to support a finding of wilfulness is proof that a respondent acted intentionally in the sense that he was aware of (continued)

Schaefer's testimony at the hearing, which was in conflict with his prior testimony, that he had no knowledge of the merger negotiations being conducted by his partners in Baerwald & DeBoer, is not credible. The preponderance of the evidence is to the contrary. He recommended, and purchased on the spot on his own initiative, a substantial block of Bookshelf stock while news of the merger negotiations was non-public. It is concluded that he executed this transaction on the basis of inside, non-public information which he possessed. In the Investors Management case the Commission stated:

> We consider one who obtains possession of material, non-public corporate information which he has reason to know emanates from a corporate source, and which by itself places him in a position superior to other investors, thereby acquires a relationship with respect to that information within the purview and restraints of the anti-fraud provisions. When a recipient of such corporate information, knowing or having reason to know that the corporate information is non-public, nevertheless uses it to effect a transaction in the corporation's securities . . . . we think his conduct cannot be viewed as free of culpability under any sound interpretation or application of the anti-fraud provisions. 3/

It is clear that Schaefer's activities fall within these proscriptions and those of the Commission's anti-fraud provisions.

Schaefer's argument that he made full disclosure of the information in his possession and, therefore, there is no basis for any alleged violation, is rejected. The thrust of the allegation is that the inside information which he acted on should have been made public

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2/ (continued)
what he was doing and either consciously, or in careless disregard of his obligations, knowingly engaged in the activities which are found to be illegal. Hanley v. Securities and Exchange Commission, 415 F.2d 589, 595-6 (2 Cir. 1969); NEES v. Securities and Exchange Commission, 414 F.2d 211, 221 (9th Cir. 1969); Dlugash v. S.E.C., 373 F.2d 107-10 (2d Cir. 1967); Tager v. S.E.C., 344 F.2d 5, 8 (2d Cir. 1965).

3/ Investors Management Co. Inc., Securities Exchange Act Release No. 9267, p. 11 (7-29-71).

and not disclosed selectively. If, however, disclosure prior to effecting the transaction would have been improper or unrealistic under the circumstances, then the alternative would have been to forego the transaction.[4/]

It is found that Schaefer willfully violated and willfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Other Matters

The Division did not introduce any evidence against Steven Weil and moves for dismissal of the allegations against him.

PUBLIC INTEREST

The Division has recommended that Schaefer be suspended from association with any broker-dealer for a twelve-month period. Schaefer argues that he has been in the securities business for many years and has no prior claim against him for alleged violations of the security laws; that his interest in the partnership was minimal and that even if technical violations should be found against him no sanctions should be imposed.

In considering an appropriate sanction to be imposed consideration must be given to the attitude of the respondent. Although he has been in the securities business for over 20 years and has been a partner in a brokerage house Schaefer displayed little or no concept of the

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4/ Cady Roberts & Co., 40 S.E.C. 907, 911 (1961).

duties of a registered representative. He admitted to ignorance of the sections of the acts and the rules he is charged with violating and, in addition, testified that his duty was to make money for his client and that in that connection it might be a drawback to make inquiry concerning the company whose stock is being traded. He stated that the most important thing is what the belief is about a company, not what it actually does. "If there is interest in a stock, if volume begins to come in . . . the fact that there is enough of a belief around that people are willing to buy it, is of more importance to me that trying to learn every last detail of a situation . . . ."

The characterization of a violation as "technical" does not excuse anyone engaged in the securities business from the duty of complying with the applicable rules and regulations under the securities laws. 5/

Upon consideration of all of the circumstances presented herein it is concluded that Schaefer should be suspended from association with any broker-dealer for a period of six months.

ORDER

Accordingly, IT IS ORDERED that the respondent Jack Schaefer is suspended from association with any broker-dealer for a period of six months from the effective date of this order.

5/ Samson, Roberts & Co., Inc., Securities Exchange Act Release No. 7593 (5-4-65).

FURTHER, IT IS ORDERED that the allegations against Steven Weil are dismissed.

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(f), 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. 6/

Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.
April 9, 1974

6/ To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected.