

ADMINISTRATIVE PROCEEDING
FILE NO. 3-2848

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

FILED

DEC 13 1974

SECURITIES & EXCHANGE COMMISSION

In the Matter of
LINCOLN SECURITIES, et al.

(8-15573)

INITIAL DECISION

Edward B. Wagner
Administrative Law Judge

Washington, D.C.
December 13, 1974

U.S. SECURITIES & EXCHANGE COMMISSION

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In the Matter of	:	
LINCOLN SECURITIES, et al.	:	INITIAL DECISION
(8-15573)	:	

APPEARANCES: Franklin D. Ormsten and John J. O'Connor of the
New York Regional Office for the Division of
Enforcement

Richard Greenberg, pro se

BEFORE: Edward B. Wagner, Administrative Law Judge

THE PROCEEDINGS

This public proceeding was instituted by an order of the Commission, dated February 19, 1971, pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act) to determine whether respondents willfully violated and willfully aided and abetted violations of the Securities laws and rules thereunder as alleged by the Division of Enforcement (Division) and the remedial action, if any, that might be appropriate in the public interest.

The only respondent who appeared in the evidentiary hearing and made post-hearing filings is Richard Greenberg.^{1/}

The Order charged respondent Greenberg with willful aiding and abetting of willful violations of Section 7(c) of the Exchange Act and Regulation T thereunder, and of Section 15(c)(3) and Rule 15c3-1 thereunder. Greenberg was also charged with having willfully violated and willfully aided and abetted violations of the

^{1/} Respondents Eugene and Susan Parsons, a/k/a Ed and Blanche Pierce, failed to file an answer and appear in this proceeding and, pursuant to applicable provisions of the Commission's Rules of Practice, were deemed in default and the proceeding determined against them based upon the provisions of the order (SEA Rel. No. 10710, April 2, 1974).

The Division represented at the hearing that Respondents Lincoln Securities, Abe Camhi and William Hyman had submitted offers of settlement. No Commission orders accepting such offers have been issued at this time.

Findings made in this initial decision will not be binding upon any of the above respondents.

antifraud provisions of both the Exchange Act and the Securities Act of 1933 (Securities Act) and with having failed reasonably to supervise other persons with a view to preventing the alleged violations above referred to.

An evidentiary hearing was held in New York City on November 14, 1973 and on November 28, 1973. Thereafter, both the Division and Greenberg, who represented himself, filed Proposed Findings, Conclusions and Law and Briefs. The Division filed a reply to Greenberg's filing.

The findings and conclusions herein are based upon the evidence as determined from the record and upon observation of the witnesses. Preponderance of the evidence is the standard of proof applied.

Background

Lincoln Securities (Lincoln), a partnership with offices formerly at 156 Franklin Street, Hempstead, New York has been registered as a broker-dealer with the Commission since April 1, 1970. Lincoln was a small firm with 3 partners, 2 employees doing back office work and a capital contribution by the partners of approximately \$105,000.

Richard Greenberg has been in the securities business since 1965 and is a college graduate with a background in accounting. He became associated with William Hyman and Abe Camhi in Lincoln Securities in early 1969 as a result of a decision to pool their resources and expand the firm previously owned by Camhi alone.

Greenberg is shown on Lincoln's B/D filing as a limited partner and registered representative, but this description is inaccurate as is developed below.

Status of Greenberg

A preliminary question to the nature of his involvement in and responsibility for alleged violations concerns Greenberg's status at the Lincoln firm.

The Division contends that the facts elicited in the proceeding and New York State law demonstrate that Greenberg was a de facto general partner and that the representation to the contrary is a "bare-faced legal conclusion." (Division's Findings of Fact, etc., p. 20). Greenberg appears to argue that the Division is bound by the Order for Proceedings which recites that Lincoln's B/D filing shows Greenberg as a limited partner and registered representative and that the Division is "arbitrarily assigning titles to individuals, at their will, to fit whichever alleged violations are involved." (Respondent's Proposed Findings of Fact, etc. p. 1). He further disputes a Division characterization of the size of his contribution to the partnership and maintains that for him to be held responsible there must be an "S.E.C. Law that states a registered representative and limited partner can be charged with the violations attributable to a Registered Principal and General Partner and the Division has not quoted any such law." (Respondent's Proposed Findings of Fact, etc. p. 6.)

Greenberg had a substantial financial interest in Lincoln amounting to about 29% of its capital at August 31, 1970. He contributed about 1/3 of its original capital. He received one third of the firm's profits. He worked full time at Lincoln, had authority to sign checks, had general responsibility for accounting work and capital computations at the firm, was the firm's trader and reviewed the firm's back office work. His own testimony indicates that Abe Camhi, who was represented to be the sole partner in the firm's B-D filing, spent a great deal of his time on his own insurance business to the exclusion of devoting his full attention to the firm's business. (Tr. 142, 144).

Under New York and general law Greenberg's position and activities constitute him a de facto general partner. See Lichtyger v. Franchard Corporation, 18 N.Y. 2d 528, 535-36, 277 N.Y.S. 2d 377, 382 (1966). That others have so viewed Greenberg's status is indicated by the fact that when Lincoln went into bankruptcy all of the personal assets of the partners, including those of Greenberg, were turned over to the receiver to satisfy the claims of creditors.

It is concluded that Greenberg was not merely a limited partner or "stockholder" of the firm but was clearly a general partner.

Regulation T Violations

The Division introduced evidence relating to over 240 separate violations of Section 7(c) of the Exchange Act and Regulation T thereunder occurring from December 10, 1969 to September 1, 1970 involving the account of Eugene and Susan Parsons. These alleged violations fell into a number of categories, including

- (1) short sales were permitted in customer's special cash account and subsequently covered;
- (2) short sales were permitted in the special cash account and that violation (permitting short sales in a special cash account) was compounded by the absence of any covering transactions;
- (3) securities were purchased in the special cash account and subsequently sold without payment having been received therefor;
- (4) no payment was made for securities purchased in the special cash account;
- (5) securities purchased in the special cash account on a 35 day delivery-versus-payment basis were not delivered within the prescribed time;
- (6) rules restricting activity for 90 days in accounts having prior credit violations were not invoked; and
- (7) insufficient equity was maintained to support the account's short positions.

Greenberg contended at the hearing that the firm's records contained defensive material as to many of these charges and requested their production. In lieu of furnishing these records the

Division entered into a stipulation with Greenberg that "some" Regulation T violations had occurred with respect to the Parsons 2/ account.

The Parsons account was opened at Lincoln around December 28, 1969, which was several months after Greenberg joined the firm. The account was handled by Martin Bartesky, a registered representative of Lincoln, and was a source of large commissions.

Greenberg argues, that since there were more than 800 transactions in the Parsons account, "some" Regulation T violations are far below normal. It is true that in view of the stipulation it is impossible to find that any specific number of violations occurred, or that the

2/ The text of the stipulation was as follows:

"[I]t was agreed that the following stipulations will stand in lieu of the production of records and in lieu of further representation with respect to the Reg T violations.

In respect of the Reg T violations, it will be recalled that Division asserted that there were 243 such violations.

It is now stipulated between the Respondent Greenberg and the Division that there were some Reg T violations. At Lincoln Securities during the period in question but that the number was significantly less than 243.

It is further stipulated that those Reg T violations grew out of the Parsons accounts and that the Parsons maintained accounts at other brokerage firms wherein there are other similar Reg T violations and it is further stipulated that the Parsons, prior to the time that they maintained their account at Lincoln Securities, engaged in activities in the State of California which defrauded other broker-dealers.

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The stipulation concerning Reg T violations has been entered into by Mr. Greenberg without prejudice to his right to argue or to testify that such violations were not his responsibilities". (Tr. 120-122).

violations that did occur fell within any of the particular categories listed or others, or had any precise magnitude in terms of amount of credit extended or duration. However, as the stipulation states, there were a number of violations. The Commission has never taken the position that a certain number of Regulation T violations are permissible.

There is no direct evidence in the record that Greenberg was aware of the Regulation T violations or participated in them. For this reason it is not concluded that Greenberg was an aider and abetter of these violations, and this charge contained in Section II, Paragraph A of the Order is dismissed.

Greenberg is also charged with a failure reasonably to have supervised other persons under his supervision with a view to preventing the Regulation T violations by such other persons. The Regulation T violations occurred during a period of some 8 months. Greenberg, a de facto general partner who worked full time at the firm, had responsibility for and reviewed back office operations where such violations could have been detected and remedial action taken. Further, on two occasions -- first in March 1970 when the \$500,000 to \$750,000 credit balances in the Parsons account created net capital problems for the firm and later in September when it was decided to call upon the Parsons to deliver stock certificates to cover larger sale transactions -- Greenberg assumed and exercised authority with the other two partners over the activities of Bartesky, the sole contact with the Parsons. There is no evidence that any appropriate preventitive action was taken concerning the Regulation T violations at any time.

Under the circumstances it is concluded that Greenberg failed reasonably to supervise, within the meaning of Section 15(b)(5)(E) of the Exchange Act, Lincoln and others, subject to his supervision who committed violations of Section 7(c) of the Exchange Act and Regulation T.

Net Capital Violations

The record establishes that Lincoln as of August 31, 1970 had a net capital deficiency of \$103,300 and a capital deficit of \$18,500. As of September 16, 1970 the net capital deficiency had increased to \$186,900 and as of October 9, 1970 to \$225,100.

Lincoln effected transactions other than liquidating transactions between August 31, 1970 and September 10, 1970. When Lincoln went into bankruptcy at the end of 1970 \$100,000 was owed to broker-dealers who had done business with the firm. Although Greenberg states that funds are available to make partial payments to them, there is no indication of how many cents on the dollar they may receive.

Although Greenberg had general responsibility for Lincoln's accounting work and capital computations and supervised the firm's back office, he disclaims any responsibility for the violations which occurred, because he claims he was on vacation "most of the time" from August 31, 1970 to September 10, 1970. (Proposed Findings etc; p. 4.) As the Division points out, he cannot avoid responsibility on this basis, since even on those days he was absent he should have delegated his authority to responsible persons and has not shown that this was the case. Further, in view of its size, nature and activity, the

Parsons account, which was a principal factor in the firm's net capital violations and eventually caused the firm's bankruptcy, was a potential disaster at all time. The account had created net capital problems in March 1970 of which Greenberg was aware at the time. No appropriate steps or precautions were taken by him to prevent the situation which did occur.

Greenberg argues that his conduct in connection with the Net Capital violations was not "willful". However, evil motive, an intent to violate the law or knowledge that the law is being violated are not required. All that is necessary is that he acted intentionally in the sense that he was aware of what he was doing. Hughes v. Securities and Exchange Commission, 174 F.2d 969, 977 (D.C. Cir. 1949); Thompson Ross Securities Company, 6 S.E.C. 1111 (1940). It is clear that Greenberg's conduct was "willful".

In view of the above, it is concluded that Lincoln willfully violated Section 15(c)(3) of the Exchange Act and the Net Capital Rule from August 31, 1970 through September 10, 1970 and that Greenberg as the general partner of the firm responsible for and directly involved in this phase of the firm's operations willfully aided and abetted such violations.

Greenberg is also charged with a failure reasonably to have supervised with respect to the Net Capital violations. In view of the conclusion that he willfully aided and abetted such violations the charge of failure to supervise in this same connection is dismissed.

Fox Securities Company, Inc., SEA Rel. 10475, pp. 5-7 (November 1, 1973); Anthony J. Amato, SEA Rel. No. 10265, p. 5 (June 29, 1973).

Antifraud Violations

The Division has proposed a conclusion of law to the effect that from about December 10, 1969 to December 31, 1970 Greenberg willfully violated and willfully aided and abetted violations of the antifraud provisions of the Securities Act and Exchange Act in failing to disclose to the public and other brokers at a time when Lincoln continued to do business (a) non-compliance with the Net Capital Rule (b) insolvency and (c) withdrawal of capital from the firm by Greenberg during the firm's insolvency. Greenberg^{3/} argues that insolvency prior to September 10, 1970, the last date on which the records shows the firm transacted a securities business, has not been proven. The Division has proposed no finding of insolvency on or prior to September 10, 1970, and there is no evidence in the record to support such a finding.

The withdrawals to which the Division refers are, as Greenberg contends, approximately one-third of his normal salary withdrawals and do not appear to be in excess of the value of services rendered.

^{3/} Section II, Paragraph C(2) of the Order for Proceedings also charged Greenberg and others with participation in a scheme with the Parsons wherein a series of transactions were effected for the Parsons account whereby securities were purchased, sold and sold short at a time when the Parsons were unable or unwilling to pay for such securities or cover such short sales and wherein the Parsons were permitted to engage in these transactions despite failures to pay and deliver and permitted to withdraw cash and securities even though such continued activities were in violation of Regulation T. No evidence was submitted to show complicity in such a scheme by Greenberg, and no conclusion of law to this effect was proposed.

Failure to disclose non-compliance with the Net Capital Rule without more does not adequately support the antifraud charges. Fox Securities Company, Inc., SEA Rel. No. 10475, p. 6, fn. 13, (November 1, 1973).

Under the circumstances, the antifraud charges contained in Section II, Paragraph C of the Order for Proceedings are dismissed.

Broker-Dealer Amendment

The Division has charged in the Order for Proceedings that the firm willfully violated and Greenberg willfully aided and abetted the violations of Section 15(b) and Rule 15b3-1 thereunder in not amending its BD form to reflect that Barry Sutz, a person controlled by the firm, had been enjoined in a Federal District Court from further violations of certain provisions of the Exchange Act and certain rules thereunder.

Greenberg and the Division stipulated that Barry Sutz had been so enjoined and that he was an employee of Lincoln Securities subsequent to the injunction. It was expressly stated on the record that no stipulation was reached as to Greenberg's knowledge concerning the injunction.

Official notice is taken, as requested by the Division, of Commission Public Official File No. 8-15573-1 containing the B-D filings of Lincoln Securities, and it is found that no amendment was filed reflecting the hiring of Barry Sutz and the injunction. No further evidence concerning this charge was offered. The record does

not reflect that Greenberg had knowledge of the injunction or was under any duty to ascertain its existence stemming, for example, from responsibility for hiring employees or for filing B-D forms and amendments with the Commission. The B-D forms which are in the file appear to have been executed by Camhi.

Under the circumstances the charge of willful aiding and abetting by Greenberg of the violations referred to above has not been established, and this charge contained in Section II, Paragraph D of the Order is dismissed.

Further, no basis for a charge of failure to supervise in this connection has been made out on the record, and that charge, contained in Section II, Paragraph E of the Order, insofar as these alleged violations are concerned, is also dismissed.

Public Interest

The violations in which Greenberg was involved were extremely serious. The Net Capital Rule has been frequently referred to as "one of the most important weapons in the Commission's arsenal to protect investors." Blaise D'Antoni Associates v. SEC, 289 F. 2d 276, 277 (5th Cir. 1961). In departing from the requirements of this rule and in failing to take adequate steps to prevent the improper extension of credit to the Parsons, Greenberg subjected those who dealt with the firm to undue financial risks. There can be little doubt that the departures from legal requirements involved here were causative factors in the bankruptcy of the firm with substantial amounts owing to other broker-dealers.

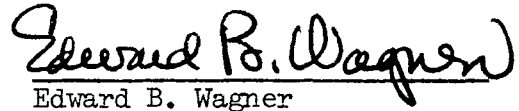
In view of the foregoing, it has been concluded that Greenberg should be barred from association with any broker or dealer for a period of one year and thereafter permitted to return only in a supervised capacity. It is concluded that such an order will serve the purpose of adequately impressing upon Greenberg the need for compliance with the securities laws in the future.

Accordingly, IT IS ORDERED that Richard Greenberg is barred from being associated with any broker or dealer, except that after one year from the effective date of this order he may become associated with a registered broker-dealer in a non-supervisory, non-proprietary capacity upon a satisfactory showing to the Commission that he will be adequately supervised.

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 (15) 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 ^{4/} decision shall not become final with respect to that party.


Edward B. Wagner
Administrative Law Judge

Washington, D.C.
December 13, 1974

^{4/} 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.