

ADMINISTRATIVE PROCEEDING
FILE NO. 3-7261

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of)
)
ROBERT E. ILES, SR.)
)

INITIAL DECISION

Washington, D.C.
October 17, 1990

Warren E. Blair
Chief Administrative Law Judge

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APPEARANCES: Lori A. Trowbridge, Anita M. Nagler, and
Diane C. Fischer, of the Commission's Chicago
Regional Office, for the Division of Enforcement.

Robert E. Iles, Sr., pro se.

BEFORE: Warren E. Blair, Chief Administrative Law Judge

These public proceedings were instituted by an order of the Commission dated September 20, 1989 ("Order") issued pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") to determine whether Robert E. Iles, Sr. ("Iles" or "respondent") had engaged in securities fraud and had been enjoined and criminally convicted as alleged by the Division of Enforcement ("Division") and, if so, what if any remedial action would be appropriate in the public interest.

In substance the Division alleged that Iles wilfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the purchase and sale of common stock of Dupont Instruments Corporation ("Dupont") by engaging in fraudulent conduct and practices utilizing the mails and means and instrumentalities of interstate commerce. In addition, the Division alleged that Iles had been permanently enjoined by one United States District Court from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that another United States District Court had convicted Iles of, among other things, filing false income tax returns and of aiding and abetting the filing of false income tax returns.

At the commencement of the first day of hearing on February 13, 1990, Iles, who was and is an inmate of a federal correctional facility, stated that he was appearing without counsel. He acknowledged receipt of my letter of October 24, 1989 advising him of his right to be represented by counsel of his own choice, and stated that he understood the explanation of his rights, including

cross-examination of the Division's witnesses, as set forth in that letter.

As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings of proposed findings and conclusions and a supporting brief were made by the Division but Iles did not avail himself of the opportunity to submit proposals or a brief.

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

During the relevant time period from on or about May, 1985 to September, 1986 Iles was a beneficial owner and an officer of Structured Shelters Securities, Inc. ("SSSI"), a broker-dealer registered since October 12, 1982 under the Exchange Act, and a registered representative associated with SSSI from August 4, 1982 through June 20, 1988. During all relevant times Iles was a beneficial owner and president of Structured Shelters Financial Management, Inc., an investment adviser registered since November 1, 1982 pursuant to the Advisers Act. From at least August, 1980 to at least January, 1985, Iles was also associated as an officer and Chairman of the Board of Structured Shelters, Inc., a tax and financial planning firm.

Additionally, Iles and Monica Iles ("M. Iles"), his wife, were trustees of the Riago Trust ("Trust") during the relevant periods. For all or part of the time of the Trust's existence, Iles had

actual or constructive control of the Trust's assets and M. Iles, as the Trust's general manager, made disbursements for the Trust. During the relevant period, the Trust was authorized to pay Iles and his wife the entire net income or principal of the Trust. Among other assets held by the Trust was all of the stock of Super Swirl Sales, Inc. ("Super Swirl"), an Ohio corporation licensed to do business in Florida. Iles was Chairman of the Board of Super Swirl.

SUPER SWIRL SALES, INC.

In 1983 Iles met Scott Reid ("Reid"), the inventor of a frozen confection dispenser machine and with a representative of Western Regional International ("WRI"), the manufacturer of that machine. Iles, as agent for the Trust, received an assignment of Reid's interest in the machine and contracted with WRI to continue its manufacture of the machine. At that time the machine, although not perfected, was being marketed by Super Swirl. During two or three years of working on development WRI experienced difficulty with the design of the frozen confection machine and never produced a fully functioning machine for Reid or Super Swirl.

Approximately mid-1984 when relations between WRI and Super Swirl deteriorated, Iles on behalf of Super Swirl contracted with Weld-Fab, Inc. ("WFI"), a Florida manufacturer, to produce a modified version of the Reid machine. Within a year Iles terminated Super Swirl's relationship with that company without WFI's having produced a fully-functioning machine.

In May, 1985 Iles and M. Iles signed a letter of intent on

behalf of the Trust agreeing to a merger between Super Swirl and Dupont, a Utah corporation engaged in a small oil operation in Illinois. On June 10, 1985 all of the assets of Super Swirl were acquired by Dupont in exchange for 35,000,000 shares of restricted stock of Dupont.

DUPONT INVESTMENTS CORPORATION

During the period from about 1983 to the present, Dupont has been a public company whose stock has traded over-the-counter. Until June, 1985 Dupont was engaged in a small oil and gas business and audited financial statements reflect that as of May 31, 1985 Dupont had \$120,113 in assets and a net income of \$30,928 for the six months ended May 31, 1985. For the year ended November 30, 1984, Dupont incurred a loss of \$22,816 and had a retained earnings deficit of \$76,018. As of June, 1985 and through September, 1986 Dupont had 4,000 or more shareholders and 15,000,000 shares of outstanding stock which increased to 50,000,000 shares upon its acquisition of Super Swirl. In June, 1985 Iles was elected Chairman of Dupont's Board and M. Iles became Dupont's secretary and treasurer. Dupont's corporate headquarters moved from Salt Lake City, Utah to Edgewater, Florida where Iles and M. Iles controlled and conducted the company's operations.

VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER

The record establishes that during the period from May, 1985 to September, 1986, while Iles was in control of Super Swirl and of Dupont after the latter's acquisition of Super Swirl, Iles

wilfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Iles committed violations initially by providing Dupont with false information concerning Super Swirl's financial condition at the time of Dupont's acquisition of Super Swirl. After obtaining control of Dupont, Iles committed further violations of Section 10(b) and Rule 10b-5 by causing Dupont to mail additional false information about its financial condition and prospects to its stockholders and to securities firms trading in Dupont stock. During the time that the false representations were being publicized, from approximately May, 1985 to June, 1986, the price of Dupont's common stock rose on the over-the-counter market from a bid/ask price of \$.04/\$.06 to \$1.87/\$2.12.

In furtherance of the proposed acquisition Iles gave Dupont unaudited financial statements of Super Swirl for the four months ended April 30, 1985, for the calendar year 1984, and for the seven months ended December 31, 1983. Dupont used those financial statements in the preparation of a letter mailed on May 20, 1985 to shareholders and securities firms. In that letter Dupont represented that in exchange for 35,000,000 shares of Dupont's common stock, it would acquire assets exceeding "two million six hundred thousand dollars" and that the liabilities to be acquired "do not exceed six hundred thousand dollars." 1/ Super Swirl's pre-acquisition financial statements were also included in three different information packets dated June 20, 1985, July, 1985, and August 31, 1985 which announced Dupont's acquisition of Super Swirl

1/ Division Ex. 17.

and were mailed to Dupont shareholders and to securities firms.

The financial statements given to Dupont by Iles and then disseminated by Dupont to its shareholders and the financial community gave a completely false and misleading picture of Super Swirl's financial condition and results of its operations. The financial deception of Super Swirl's pre-acquisition financial condition was in the greatest part accomplished by Iles through a change in Super Swirl's accounting procedures which Iles, experienced in the field of accounting, 2/ knew or should have known would grossly distort Super Swirl's operational results. In 1985, over the objection of Super Swirl's bookkeeper, Iles directed that purchase orders for the frozen confection machines be reflected as sales and that customer notes received in connection with those purchase orders be treated as assets. In fact, those entries did not reflect economic reality because Super Swirl, with possibly minor exceptions, was incapable of filling those orders with commercially acceptable machines. Since customers by the terms of their agreements with Super Swirl had no obligation to make payment on their notes until after shipment of the machines or, in one or two instances, after installation, the notes did not constitute collectible assets.

The impropriety of Iles' treatment of those accounts on Super Swirl's books is made manifest by the results of an audit of

2/ At a time prior to the period under consideration, Iles was "president protemp [sic] of Computing and Accounting, Inc. an Ohio corporation. . . ." Div. Ex. 54, Item 27I.

Dupont's books for the year ended November 30, 1985. At the conclusion of that audit, the certified public accounting firm submitted the final audited statements to Dupont in April, 1986 with a qualified opinion which stated, inter alia, "the Company's ultimate success and recovery of its capitalized costs of inventory in the development stage is dependent upon further events, including the ability to successfully develop and market the company's product and the attainment of further operations. The outcome of these matters cannot be determined at this time." 3/

In the course of the audit, primary issues of concern to the auditors were the recordings of machine sales and the related notes receivable on Dupont's books in view of the fact those accounts made up a significant portion of the financial statements. In the opinion of the auditors, Super Swirl's and Dupont's treatment of purchase orders as sales and the recording of notes receivable as assets with a concomitant crediting of the sales income account were improper. The auditors accordingly made adjusting entries to the general ledger of Dupont to reverse those postings. After the adjustments the audited financial statements prepared for the year ending November 30, 1985 reflected no notes receivable as assets and no revenue from sales of the confection dispensers. Dupont's total assets were shown as \$1,182,657 and its liabilities, all current, \$1,357,944. The accompanying income statement listed revenue of \$62,610 for the year, none derived from dispenser sales, and a net loss of \$138,518 for the year.

The magnitude of the deception practiced by Iles is also evidenced by the auditor's findings set forth in Note 2 to the audited financial statements that a cumulative net loss of Dupont from the inception of the company's development stage activities on June 22, 1983 through November 30, 1985 amounted to \$311,796 and sales revenue for that period amounted to only \$21,876. In brief, had the Super Swirl pre-acquisition financial statements as of April 30, 1985 given by Iles to Dupont conformed to generally accepted accounting principles, the long term accounts receivable valued at over \$2,000,000 and representing over 75% of the assets shown on the balance sheet would have disappeared along with almost all of the claimed retained earnings of \$2,714,186.

Iles' deceptive tactics for promoting the price of Dupont stock did not stop with the wide dissemination of false and misleading financial statements. He also resorted to misrepresentations concerning the development of the dispenser and availability of manufacturing facilities. During 1985 and 1986 Dupont brochures and letters prepared under Iles' direction were mailed to shareholders and to securities firms which passed that information on to prospective investors. The information in those documents falsely represented that the Super Swirl machine had received approval from the National Sanitation Foundation which evaluates the safety of food dispensers, falsely represented the readiness of Super Swirl's dispenser for mass production, falsely represented that the dispenser met stringent standards of the Canadian Standards Association which in Canada tests and certifies

the electrical safety of products, and falsely represented Dupont's ability to meet the potential demand for those dispensers which Iles claimed to be "for over four thousand machines in 1986." 4/ In a further promotional effort, Iles addressed a meeting in Los Angeles in June, 1986 attended by 300 or 400 persons including stockbrokers and shareholders. At that meeting Iles represented that Dupont had orders for thousands of the Super Swirl dispensers. In fact, as of November, 1985 Dupont had purchase orders for 220 dispensers and had never received approval of the machine from the National Sanitation Foundation or the Canadian Standards Association.

To find a violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the evidence must prove that Iles acted with scienter, a term defined by the Supreme Court as a "mental state embracing intent to deceive, manipulate, or defraud." 5/ That Iles acted with the requisite mental state in conceiving and carrying out a fraudulent program designed to inflate the market price of Dupont stock through use of false representations and omissions of material facts is established by the record beyond peradventure.

PERMANENT INJUNCTION

As a result of a complaint filed by the Commission against Iles and of a finding that Iles had failed to timely answer that

4/ Division Exhibit 22.

5/ Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193-94, n. 12 (1976).

complaint, a permanent injunction was entered on June 21, 1989 by the United States District Court for the Middle District of Florida enjoining Iles from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the purchase or sale of Dupont securities or the securities of any other issuer. 6/ The allegations of misconduct in the complaint were similar to those alleged in these proceedings.

CRIMINAL CONVICTIONS

On May 13, 1988 the United States District Court for the Southern District of Ohio adjudged Iles guilty as charged: (1) as to Count One of the indictment for conspiracy to defraud in violation of Title 18, Section 371, U.S. Code; (2) of aiding and abetting in the preparation of a false tax return as charged in Counts Two through One Hundred Thirty Four, in violation of Title 26 Section 7206(2), U.S. Code; (3) of filing a false income tax return as charged in Count One Hundred Thirty Five, in violation of Title 26, Section 7206(1), U.S. Code; and (4) of failure to file income tax returns as charged in Counts One Hundred Thirty Six and One Hundred Thirty Seven, in violation of Title 26, Section 7203, U.S. Code. Iles was sentenced to a total term of thirteen years imprisonment and a total fine of \$940,000. 7/

6/ SEC v. Dupont Instruments Corporation, C.A. No. 89-123-CIV-ORL-18 (M.D. Fla., June 21, 1989).

7/ United States of America v. Robert E. Iles, Sr., CR-1-87-37-01 (S.D. Ohio, May 13, 1988).

PUBLIC INTEREST

Having found that Iles wilfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, that he had been permanently enjoined by one United States District Court from engaging in certain practices in connection with the offer and sale of securities, and that he had been convicted on May 13, 1988 by another United States District Court of a criminal violation of Section 7206(1), U.S. Code and of other felonies as charged in the indictment, it is necessary to consider the remedial action appropriate in the public interest.

The Division argues that Iles' violations are of a nature and extent that a bar against his associating with a broker-dealer or investment adviser is required for the protection of the public and to demonstrate to the financial community that the misconduct engaged in by Iles will not be tolerated and will result in the perpetrator's expulsion from the securities and investment advisory businesses.

Upon careful consideration of the record and the arguments of the parties, it is concluded that the public interest does, as urged by the Division, require that Iles be barred from association with any broker-dealer or investment adviser. Not only does the record reflect Iles' long-continuing blatant fraud against public investors in connection with the offer and sale of Dupont stock, the criminal convictions, and the permanent injunction, but also a trail of disciplinary orders issued against him or his entities since 1981 by eight state regulatory authorities. Further, Iles

has evidenced no remorse for his misconduct nor shown any indication of rehabilitation. Taking even the most charitable view of Iles' activities and of the likelihood of his conducting himself in accordance with the standards expected of persons privileged to be engaged in the securities business, it can only be concluded that allowing Iles to remain in the securities or investment advisory field would pose not only a risk but a menace to the investing public. 8/

O R D E R

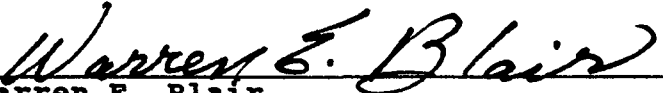
Accordingly, IT IS ORDERED that Robert Iles, Sr., is barred from association with a broker-dealer or an investment adviser.

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

8/ All proposed findings and conclusions submitted have been considered, as have the contentions of the parties. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.

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.



Warren E. Blair
Chief Administrative Law Judge

Washington, D.C.
October 17, 1990