(Securities Exchange Act Release No. 8087)

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
June 1, 1967

In the Matters of J. P. HOWELL & CO., INC. 40 Exchange Place New York, New York and MICHAEL LA MARCA STEPHEN NEGRI EDWARD VANASCO File No. 8-5548 Securities Exchange Act of 1934 - Sections 15(b) and 15A	FINDINGS, OPINION AND ORDER REVOKING BROKER-DEALER REGISTRATION AND BARRING ASSOCIATION WITH BROKER-DEALER

BROKER-DEALER PROCEEDINGS

Grounds for Revocation of Registration

Grounds for Bar from Association with Broker-Dealer

Where registered broker-dealer, in offer and sale of speculative security, made misleading representations and predictions concerning, among other things, future market price and issuer's financial condition and prospects, held, in the public interest to revoke broker-dealer's registration and bar its president and salesmen from association with any broker or dealer.

APPEARANCES:

Charles Snow, Navarre T. Perry and David H. Smith, of the New York Regional Office of the Commission, and W. Gomer Krise, for the Division of Trading and Markets.

Bernard J. Coven, for J. P. Howell & Co., Inc., Michael LaMarca and Stephen Negri.

Harvey J. Klaris, of Feiner and Klaris, for Edward Vanasco.

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Following hearings in these proceedings pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act"), the hearing examiner filed an initial decision in which he concluded, among other things, that the registration as a broker and dealer of J. P. Howell & Co., Inc. ("registrant") should be revoked, and that Michael LaMarca, the president and a principal stockholder, and Stephen Negri and Edward Vanasco, salesmen of registrant, should be barred from

association with any broker or dealer. 1/ We granted a petition for review filed by these respondents, they and our Division of Trading and Markets ("Division") filed briefs, and we heard oral argument on behalf of Vanasco. 2/ Upon an independent review of the record, and for the reasons stated in this opinion and in the initial decision, we affirm the sanctions proposed by the hearing examiner.

During the period June 1961 to July 1962, registrant, together with or aided and abetted by LaMarca, Negri and Vanasco, willfully violated the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 15c1-2 thereunder in the offer and sale of stock of Puritan Chemical Corp. ("Puritan").

Puritan was organized in February 1959 for the purpose of acquiring the assets of Ayer Chemicals, Inc., which manufactured deodorizers. Puritan's business, however, consisted largely of the sale of arrangements of artificial flowers. In June 1959, Puritan, pursuant to a registration statement filed under the Securities Act, commenced a public offering of 500,000 shares of its common stock at $1.25 per share through Dunne & Co. ("Dunne") as underwriter. By April 24, 1961, Dunne had sold only 32,250 shares, and about that time registrant agreed to become co-underwriter with Dunne on a best-efforts basis with respect to the 467,750 shares not yet sold. The registration statement as amended became effective on June 2, 1961, and registrant sold about 70,100 shares of Puritan stock to the public before the offering was terminated on July 11, 1961. 3/ Thereafter registrant continued to deal in the stock and through July 1962, it and its salesmen effected sales of Puritan stock to public customers at prices ranging from 1 to 1-5/8 per share for an aggregate price of nearly $200,000.

In many instances salesmen sold stock to previously unknown persons by means of high-pressure telephone solicitation, without knowledge of the financial circumstances or investment needs of such persons. Salesmen also induced customers to make hasty purchase decisions and in some cases sent confirmations when customers had not ordered stock. In addition, registrant utilized several pieces of sales literature, one of which was a bulletin prepared by registrant dealing in glowing terms with Puritan's new product "Plantarama," which consisted of artificial flowers and foliage permanently set in window boxes. The bulletin quoted Puritan's president as anticipating a $25 million market for this type of product by 1965 with Puritan "in the forefront," and in conclusion

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1/ The examiner also concluded that registrant should be expelled from membership in the National Association of Securities Dealers, Inc. ("NASD"). Subsequently, the NASD terminated registrant's membership for failure to pay an assessment, thereby rendering this issue moot.

2/ Two salesmen who did not seek review of the initial decision have been barred from association with a broker-dealer pursuant to that decision. Charles Hoffman and Philip Waldman, Securities Exchange Act Release No. 7832 (March 4, 1966). Two other salesmen of registrant named as respondents in the order for proceedings were not served.

3/ The total number of shares sold by registrant and Dunne during the offering, including the 32,250 shares which Dunne had previously sold, was 103,080.

stated, "We feel that we can share [the president's] optimism." Registrant also distributed reprints of several newspaper articles concerning Plantarama, one of which stated that Puritan's president expected the company to "chalk up a million in sales" on this product alone for 1961, and that he "put" the artificial flower industry at $80 million for 1961 and predicted it would grow to $150 million by 1965.

A customer who purchased 200 shares of Puritan stock in June 1961, at the offering price of $1.25 per share, testified that he received a telephone call from Vanasco in which Vanasco stated that Puritan stock was "a very good stock" and an opportunity to make money, would go up a few dollars a share within a few months, and was being undersold at its offering price since its true value was $3 to $4 a share. When the customer hesitated, Vanasco put another salesman on the telephone who also urged the customer to buy, stating that Puritan "would be at 3 or 4 within a period of 3 or 4 months," and that the customer must not delay or he would lose his opportunity. The customer agreed to buy 100 shares, but Vanasco and/or the other salesman asserted that this purchase was not enough and that the customer should sell other stock which he owned in order to purchase additional Puritan stock. The customer finally bought 200 shares but rejected Vanasco's suggestion that he purchase more.

Five customers who purchased Puritan stock through Negri in January and February 1962, testified that Negri variously represented that Puritan was doing very well and that its stock was "an excellent opportunity for capital gains," a better investment than the stock of a certain well known company, and that it would double in price within a few months. Customers were not told by Negri of losses which Puritan had suffered.

Similar representations were made by other salesmen of registrant to the effect that Puritan stock would double or more within a few weeks, that by the end of 1961 it would be selling for at least 7 or 7½, that Puritan had obtained a contract from a large chain of grocery stores worth several million dollars which would cause the price of the stock to double within a week or ten days, and that the customer must buy immediately as there was no time to lose. 4/

There was no adequate or reasonable basis for the optimistic representations made with respect to Puritan. Among other things, the prospectus included as a part of the registration statement recited that since its inception Puritan had operated at a deficit, and that, with regard to its current operations, "little progress" had been made beyond the completion of arrangements for wider product distribution.

4/ Respondents assert that it was prejudicial to admit the testimony of customers who dealt only with the two salesmen who were not served with the order for proceedings herein. Such testimony was properly admitted, however, since it was certainly relevant to the charges against registrant. Section 15(b)(5) of the Exchange Act specifically provides that willful violations by persons associated with a broker-dealer may be the basis for disciplinary action against the broker-dealer. Cf. Valley State Brokerage, Inc., 39 S.E.C. 596, 599 (1959). Counsel for respondents had full opportunity to and did cross-examine such witnesses.

The financial information included in the prospectus showed that Puritan had lost over $17,000 for the ten months ended June 30, 1960, that its deficit at that date exceeded $32,000, and that the company had a small net profit of about $1,850 for the six months ended December 31, 1960. Moreover, the dreary picture painted by the prospectus continued throughout the period in question. For the fiscal year ended August 31, 1961, Puritan had a loss of more than $62,000, and for the year ending August 31, 1962, its losses were nearly $58,000, raising its total deficit to more than $150,000. The company obtained only one sample order from the grocery chain which was later cancelled.

Registrant and LaMarca argue that they had a right to rely on information supplied them by the issuer's president and to assume that customers who received copies of the Puritan prospectus would take into account the information it presented regarding the company's financial condition. They also assert that reliance was properly placed on the office manager of registrant's branch office for the proper conduct of its business there, 5/ and that LaMarca monitored the telephone conversations of salesmen in registrant's main office.

We cannot accept respondents' position. As we have repeatedly pointed out, predictions of specific and substantial increases in the price of a speculative security within a relatively short time are inherently fraudulent and cannot be justified. 6/ Moreover, not only were copies of the prospectus not received by customers who purchased Puritan stock after the expiration of the period in which a prospectus was required to be delivered, but it appears that customers who did receive such copies received them with their confirmations after misrepresentations had been made, and such representations thus carried with them an implication that the salesmen and registrant had later or inside information contrary to that in the prospectus and supporting those representations. 7/ In any event, compliance with the requirement for delivery of a prospectus does not license a broker-dealer or his salesmen to indulge in misleading statements. Rather, the information in a prospectus furnishes a background against which a registrant and its salesmen can test the representations they are making, and those who sell securities by means of representations inconsistent with the information in the prospectus "do so at their peril." 8/

Particularly where such representations are at variance with the picture portrayed by the prospectus, there is no justification for accepting at face value self-serving optimistic statements of the president of the issuer. 9/ Despite repeated efforts, LaMarca was unable to obtain

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5/ Registrant maintained a branch office in Rockville Centre, New York from December 1961 to May 1962. Negri worked at this office until it closed, and then transferred to registrant's main office.

6/ See, e.g., R. Baruch and Company, Securities Exchange Act Release No. 7932, p. 6 (August 9, 1966) and cases there cited.

7/ Cf. Aircraft Dynamics International Corp., 41 S.E.C. 566, 569-70 (1963).

8/ Ross Securities, Inc., 41 S.E.C. 509, 510 (1963); Underhill Securities Corporation, Securities Exchange Act Release No. 7668, p. 6 (August 3, 1965).

9/ Lawrence Securities, Inc., 41 S.E.C. 652, 656 (1963).

financial statements subsequent to those in the prospectus except for an interim report stated to show profit of about $7000 for a period of three months around September 1961, during which period, according to Puritan's president, half of Puritan's annual business was concentrated.

LaMarca of course was aware of the adverse financial condition of Puritan portrayed in the prospectus, and, as noted, he had in general been unsuccessful in obtaining later financial statements. Yet he arranged for the printing of copies of the bulletin and of the newspaper articles containing the misleading optimistic predictions of Puritan's president and he made such copies available to salesmen in both of registrant's offices for mailing and use in their sales presentations. Moreover, if, as he asserts, he monitored the main office salesmen's telephone conversations, he must have been aware of the other fraudulent representations that were being made, especially in view of the fact that sales of Puritan stock accounted for about 40% of registrant's business during the period in question and constituted an even larger part of its activities during some months. The hearing examiner credited the testimony of the investor witnesses that such representations were in fact made, and we find nothing in the record to move us towards a different conclusion. We conclude that registrant and LaMarca were cognizant of and directed the fraudulent sales campaign which was carried on here.

Vanasco denied making the representations attributed to him. He testified that at his first meeting with the customer-witness at a social gathering in early 1961, about six months before the sale of the stock, he mentioned that he worked with a broker-dealer firm, whereupon the customer said he invested in speculative stocks, that he had funds of his own and his family was wealthy, and that he was interested in new issues. According to Vanasco, when he stated that his firm had "an issue in registration that was coming out around the spring or summer [at] roughly one dollar a share," the customer ordered 200 shares to be delivered when the issue became effective. Vanasco asserted that he later filled the customer's order without having any further conversation with him concerning Puritan and without bringing any other salesman into the picture. The examiner, however, who heard the witnesses and observed their demeanor, credited the testimony of the customer, finding that, although such testimony contained minor inaccuracies, the customer "had made a careful effort to relate the circumstances under which he made his purchase." We have reviewed the record, and find no basis for disagreeing with the examiner's conclusions.

Subsequent to the filing of the petition for review of the examiner's initial decision, Vanasco through new counsel submitted the affidavits of two persons who stated they were present at the social gathering and overheard the conversation between the customer and Vanasco, with the request that such affidavits be accepted as additional evidence or that the hearings be reopened to take the testimony of the affiants. In our opinion the application was properly denied by the hearing examiner, since no reasonable grounds were shown for failure to adduce such evidence at the hearings, 10/ and the affidavits are not properly before us. 11/

10/ See Rule 21(d) of our Rules of Practice, (17 CFR 201.21(d)). Assuming, as one affiant states, that he was unable to testify at the hearings because of illness, no explanation is offered as to why an adjournment was not sought or any other effort made at that time to secure this witness' testimony. The other affiant does not plead illness but merely asserts he was not "able to testify" at the hearings, without stating any reason for such inability.

11/ Cf. C. A. Benson & Co., Inc., Securities Exchange Act Release No. 7856, p. 8, n. 34 (April 8, 1966).

We note that on January 17, 1963, on the basis of a complaint filed by our staff in 1960, the United States District Court for the District of New Jersey permanently enjoined registrant and LaMarca from engaging in the securities business while registrant's liabilities exceeded its current assets or it was unable to meet its current liabilities, from making any untrue or misleading statements concerning registrant's financial condition, and from violation of our net capital rule. 12/

Respondents contend that the public interest does not require the sanctions which the examiner imposed. Vanasco asserts, among other things, that at the time of the violations he was young and inexperienced, that he sold very little Puritan stock, that only one investor witness testified against him, and that the Commission has assessed lesser sanctions in comparable cases.

All of the respondents, however, participated in a concerted high pressure sales campaign to defraud the investing public. We do not believe that the public should be exposed to further risk of fraudulent conduct by those who have demonstrated their gross indifference to the basic duty of fair dealing required of persons in the securities business. While it may be regrettable that one as young as Vanasco became involved in registrant's activities, neither his youth nor his inexperience excuses the fraud in which he engaged. 13/ Nor does the fact that only a single investor witness testified against him detract from the gravity of his conduct. 14/

12/ Civil Action File No. 546-60. See S.E.C. v. J. P. Howell & Company, Inc., 229 F. Supp 699 (D. N.J., 1962), aff'd 330 F. 2d 958 (C.A. 3, 1964). Registrant and LaMarca argue that it was improper to admit evidence of the injunction since it must have prejudiced the examiner in reaching his conclusions on the other charges brought against them in the order for proceedings. However, there was no impropriety in alleging and proving the existence of the injunction. The existence of the injunction against registrant and its president is itself a statutory basis for disciplinary action pursuant to Section 15(b) of the Exchange Act, provided we find such action in the public interest. Gibbs & Company, 40 S.E.C. 963, 965 (1962). The hearing examiner can be deemed to have confined this evidence to its proper sphere. Cf. R. Baruch and Company, Securities Exchange Act Release No. 7932, p. 10 (August 9, 1966). Nor is there any merit in the contention by registrant and LaMarca, made in connection with the introduction of evidence of the injunction, that there was a failure to comply with the provision of Section 9(b) of the Administrative Procedure Act (5 U.S.C. §558(c)) that an opportunity to achieve compliance with legal requirements be afforded before the institution of proceedings. Not only do these proceedings fall within the exception to that provision for cases of willfulness or those in which the public interest requires institution of proceedings without further opportunity for compliance, but it is difficult to see what could have been accomplished by an advance notification to these respondents that the injunction was to be employed as a basis for disciplinary action against them. See Gibbs & Company, 40 S.E.C. 963, 968, n. 8 (1962); Milton J. Shuck, 38 S.E.C. 69, 75, n. 5 (1957), aff'd Shuck v. S.E.C., 264 F. 2d 358 (C.A.D.C., 1958).

13/ See Ross Securities, Inc., 41 S.E.C. 509, 516-7 (1963); A. J. Caradean & Co., Inc., 41 S.E.C. 234, 240 (1962).

14/ Underhill Securities Corporation, Securities Exchange Act Release No. 7668, pp. 11-12 (August 3, 1965); Ross Securities Inc., supra.

After consideration of all the circumstances, 15/ we conclude that the various factors cited are insufficient to overcome the serious fraud found here, and that it is in the public interest to revoke registrant's registration and to bar LaMarca, Negri and Vanasco from association with any broker or dealer. The exceptions to the initial decision of the hearing examiner are overruled or sustained to the extent that they are inconsistent or in accord with our decision.

Accordingly, IT IS ORDERED that the registration as a broker and dealer of J. P. Howell & Co., Inc. be, and it hereby is, revoked; and that Michael LaMarca, Stephen Negri and Edward Vanasco be, and they hereby are, barred from being associated with any broker or dealer.

By the Commission (Chairman COHEN and Commissioners OWENS, BUDGE, and WHEAT), Commissioner SMITH not participating.

Orval L. DuBois
Secretary

15/ In determining the sanctions to be imposed in the public interest, the examiner stated that he did not attach any weight to the injunction outstanding against registrant and LaMarca. In our opinion, even apart from the existence of the injunction, the violations found above would of themselves make it in the public interest to revoke registrant's registration and bar LaMarca.