

**FILE COPY**

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

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In the Matter of

LINDER, BILOTTI & CO., INC.  
50 Broadway  
New York, New York

File No. 8-9570

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RECOMMENDED DECISION

FILED

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SECURITIES & EXCHANGE COMMISSION

Washington, D. C.  
March 12, 1965

Irving Schiller  
Hearing Examiner

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BEFORE: Irving Schiller, Hearing Examiner

APPEARANCES: John P. Cione, Roberta S. Karmel and  
Arthur F. Matthews, Esqs.  
For the Division of Trading and Markets  
Securities and Exchange Commission.

David J. Stolzar, Esq. of Kaufman, Stolzar  
and Kaufman for Linder Bilotti and Co.,  
Inc. and Armand Bilotti.

These are proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) to determine whether Linder Bilotti & Co., Inc. (registrant) willfully violated certain provisions of the Securities Act of 1933 (Securities Act) and the Exchange Act and certain specified rules and regulations thereunder and if so, what, if any, remedial action is appropriate in the public interest under Sections 15(b) and 15A of the Exchange Act and whether, under Section 15A(b)(4) of the Exchange Act, Armand Bilotti (Bilotti) and Hyman S. Linder (Linder), or either of them, should be found to be a cause of any such action.<sup>1/</sup>

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1/ The Securities Acts Amendments of 1964 (Public Law 88-467) amends, among other things, Sections 15(b) and 15A of the Exchange Act. Since these proceedings were instituted prior to August 20, 1964, the effective date of the aforesaid amendments, the reference throughout this recommended decision will be to the provisions of the Exchange Act as in effect prior to August 20, 1964.

With respect to revocation, Section 15(b), as applicable to this case, provides that the Commission shall revoke the registration of any broker or dealer if it finds that it is in the public interest and such broker or dealer or a controlling or controlled person of such broker or dealer has willfully violated any provision of the Securities Act of 1933 or the Exchange Act or any rule thereunder.

Under Section 15A(b)(4) of the Exchange Act, in the absence of Commission approval or direction, no broker or dealer may be admitted to or continued in membership in a national securities association if the broker or dealer or any partner, officer, director or controlling or controlled person of such broker or dealer was a cause of any order of revocation which is in effect.

The order for proceedings alleges, among other things, that from approximately July 31, 1962 to September 30, 1963 registrant, Linder and Bilotti effected transactions in securities in willful violation of the net capital requirements of Section 15(c)(3) of the Exchange Act and Rule 17 CFR 240.15c3-1 thereunder;<sup>2/</sup> that from about July 31, 1962 to September 30, 1963 registrant, Linder and Bilotti willfully violated the anti-fraud provisions of the Exchange Act and of the Securities Act in the offer for sale and sale of interest-bearing corporate notes of the registrant and in the shares of the Class A common stock of the Elite Theatrical Productions, Ltd. (Elite)<sup>3/</sup> and that from approximately May 24, 1963 to September 26, 1963, registrant, Linder and Bilotti, singularly and in concert, willfully violated Sections 5(a) and (c) of the Securities Act in the offer to sell and sale and delivery after sale of the Class A common stock of Elite when

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<sup>2/</sup> Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder prohibit any broker or dealer from using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security (with certain stated exceptions) otherwise than on a national securities exchange, when his aggregate indebtedness to all other persons exceeds 2,000 per centum of his net capital. The terms "aggregate indebtedness" and "net capital" as used in the rule are defined therein.

<sup>3/</sup> The anti-fraud provisions alleged to have been violated are Section 17(a) of the 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. The effect of these provisions, as applicable here, is to make unlawful the use of the mails or interstate facilities in connection with the offer or sale of any security by means of a device to defraud, an untrue or misleading statement of a material fact, or any act, practice or course of business which operates or would operate as a fraud or deceit upon a customer, or by the use of any other manipulative or fraudulent device.

no registration statement had been filed or was in effect as to the said securities under the Securities Act.<sup>4/</sup>

The order for public proceedings in the instant case directed the hearing examiner to determine first whether it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant as a broker and dealer pending final determination of whether such registration should be revoked. After hearings were held and proposed findings and briefs submitted by all parties the hearing examiner recommended that the Commission suspend registrant's registration as a broker and dealer. Respondents filed exceptions and a supporting brief and the Commission, on November 13, 1964, issued its findings, opinion and order suspending registrant's registration as a broker-dealer (Securities Exchange Act Release No. 7460).

Thereafter, hearings were resumed to afford all parties the opportunity of presenting additional evidence relating to all of the remaining issues set forth in the Commission's order for proceedings. At such hearing the order for proceedings was amended, upon motion of the Division of Trading and Markets, to allege that during the period from approximately May 1, 1962 to October 10, 1963 registrant willfully

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<sup>4/</sup> Sections 5(a) and 5(c) of the Securities Act make it unlawful to use the mails or the facilities of interstate commerce to sell or deliver a security unless a registration statement is in effect as to such security, or to offer a security unless a registration statement has been filed with respect to such security.

violated Section 15(c)(1) of the Exchange Act and Rule 17 CFR 240 15c1-2 thereunder in that registrant effected securities transactions with customers at prices which were not reasonably related to the prevailing market price and induced excessive trading in customers' accounts to generate profits for registrant in disregard of the financial welfare or investment aims of the said customers and that Linder and Bilotti aided and abetted such violation.<sup>5/</sup> All parties present agreed that the record relating to the issue of suspension should constitute the record as to all other issues and no additional testimony or other evidence was adduced at the reconvened hearing.

Proposed findings and a supporting brief was filed by counsel for the registrant and Bilotti<sup>6/</sup> consisting of a one-page document requesting the hearing examiner to give due consideration to the proposed findings of fact and conclusions of law previously submitted on the issue of suspension. The Division's proposed findings and conclusions and brief, in essence, also requested that consideration be given to the proposed

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<sup>5/</sup> Similar allegations were set forth in the order for proceedings as a part of a scheme to defraud customers in connection with the offer and sale of registrant's interest-bearing notes and the common stock of Elite. The hearing examiner found that registrant charged customers unreasonable and excessive mark-ups but concluded that the record failed to establish that such conduct was related to the scheme to defraud with respect to the sale of registrant's notes and the Elite common stock. The motion to amend the order for proceedings was thereafter made. Such motion was, in essence, one to conform the pleadings to the proof.

<sup>6/</sup> Upon resumption of the hearings in these proceedings counsel for registrant stated on the record that Linder was informed that the hearings would be reconvened. Linder informed such counsel that he did not wish to participate any further in the proceeding. Counsel for registrant withdrew as counsel for Linder.

findings of fact and conclusions of law and brief submitted on the issue of suspension and in addition requested that additional findings be made with respect to the amended allegations of willful violation relating to unreasonable mark-ups and excessive trading.

The hearing examiner has previously considered all of the testimony adduced at the hearings and on the basis of the record, including all documents and exhibits therein, submitted a recommended decision to the Commission. Since such decision sets forth findings and conclusions with respect to all of the allegations in the order for proceedings and since no additional evidence was submitted at the reconvened hearing no useful purpose would be served by repeating the findings and conclusions heretofore made. Accordingly, the hearing examiner adopts each and every finding and conclusion set forth in his recommended decision and incorporates them herein except for certain conclusions as noted below. The hearing examiner also adopts each and every finding and conclusion set forth in the Commission's decision and incorporates them herein. It is noted that the Commission has reserved decision with respect to certain issues deeming them unnecessary for resolution with respect to the issue of suspension.

It is respectfully recommended that the Commission adopt all of the findings and conclusions heretofore made by the hearing examiner as set forth in the recommended decision dated July 29, 1964, other than the conclusions set forth in paragraphs numbered 39 and 42 relating to unreasonable mark-up and excessive trades.

As noted above, the order for proceedings was amended to allege that registrant effected transactions in the purchase and sale of securities and charged its customers prices which were not reasonably related to the prevailing market price in willful violation of the Exchange Act. The facts relating to the prices charged by registrant to its customers and the relationship of such prices to the prevailing market price during the period in question are fully set forth in paragraphs 35 through 38, inclusive, of the hearing examiner's earlier decision and are incorporated herein. On the basis of the record the hearing examiner finds that during the above-mentioned period registrant willfully violated Section 15(c)(1) of the Exchange Act and Rule 17 CFR 240.15c1-2 thereunder and that Linder and Bilotti aided and abetted such violation by registrant.

The order as amended also alleges that registrant willfully violated the Exchange Act in that registrant engaged in excessive trading in customers' accounts to generate profits for registrant in disregard of the financial welfare or investment aims of customers. The facts relating to registrant's conduct with respect to the said allegation are fully set forth in paragraphs 40 and 41 of the hearing examiner's previous decision and are incorporated herein. On the basis of the record the hearing examiner finds that during the period May 1962 through September 1963 registrant willfully violated Section 15(c)(1) of the Exchange Act and Rule 17 CFR 240.15c1-2 thereunder



and that Linder and Bilotti aided and abetted in such violation by registrant.

Public Interest

Having found that registrant willfully violated certain provisions of the Securities Act and the Exchange Act the remaining questions relate to determining what, if any, remedial action is appropriate in the public interest under Section 15(b) and 15A of the Exchange Act and whether, pursuant to Section 15A(b)(4) of the said Act, Linder and Bilotti, or either of them, should be found to be a cause of any such action. We pointed out previously that the record contains overwhelming evidence of serious misconduct, complete disregard of the financial welfare of customers and the utter abdication of the fiduciary duties which a broker-dealer owes to his customers. These activities were in willful violation of the Commission's net capital requirements and the anti-fraud provisions of the Acts with respect to the sale of registrant's interest bearing notes to customers and the offer and sale of the common stock of Elite by means of false and misleading representations and omissions to state material facts. To these must now be added two more willful violations of the Exchange Act and the Rules thereunder. These violations relate to charging customers excessive mark-ups and mark-downs and engaging in excessive trading. The practice of charging unreasonable mark-ups and engaging in excessive trading, in addition to being violative of the anti-fraud provisions, were inconsistent with just and equitable principles of

trade and contravene Sections 1 and 4 of Article III of the Rules of Fair Practice of the NASD.

The record also discloses that in a partial sampling of customers' ledgers for the years 1962 and 1963 the same securities were bought from and sold to different customers at or about the same time and, in many instances, on the same day. Registrant made no effort to establish that "switching" of securities back and forth between customers was in the interests of such customers or intended to accomplish any investment plan or program of such customers. In the absence of any such proof the hearing examiner concludes that registrant engaged in these transactions solely for the purpose of providing a fruitful source of income. Most of registrant's customers who testified stated that they placed complete reliance on registrant to act in their best interest and it is clear from the record that Linder and Bilotti took gross advantage of such trust and confidence. In a number of instances customers whose portfolios, at the time they commenced doing business with registrant, contained good grade investment securities, were advised to sell them and purchase securities of a highly speculative nature. These customers relied upon and acted in accordance with the recommendations of Linder and Bilotti.

Indicative of registrant's lack of concern for its customers is further evidenced by its conduct at the time it sold its notes. Registrant gave each of the lenders a formal loan agreement and a purported financial statement. These lenders testified they were

unable to read the financial statement but, nevertheless, signed such statement at the request of Linder and Bilotti. Though on their face these documents appeared to be proper the financial statement failed to reflect registrant's mounting net operating deficit or the true financial condition of registrant. When Linder and Bilotti were asked for an explanation, lenders were told either that the papers were mere formalities or that the loan was for the purpose of permitting registrant to expand its business and no effort was made to reveal the true facts or to furnish a meaningful explanation of either of the documents. Such conduct demonstrates a complete lack of understanding of the duties and responsibilities of a broker-dealer to its customers. We noted in our earlier decision and because we believe it significant we point out again that the privilege of performing the functions of a broker-dealer involving as it does the public investor should be available only to those who have demonstrated their ability to meet at least minimal standards of integrity and competence.<sup>7/</sup> The record in the instant case discloses no such demonstration and public interest requires this registrant to be revoked.

Recommendation

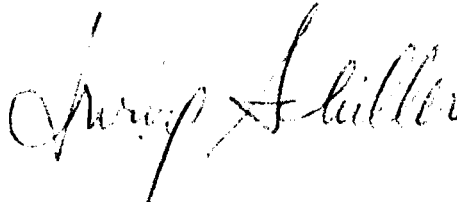
In view of the willful violations found and the type of activities conducted by registrant, it is respectfully recommended that

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<sup>7/</sup> See House Document No. 95, Pt.5, 88th Congress, 1st Session, pp. 37-40.

the Commission enter an order finding that it is in the public interest to revoke registrant's registration as a broker and dealer and expel it from membership in the NASD. It is further recommended that the Commission find that Linder and Bilotti willfully violated and aided and abetted in registrant's willful violations of the Securities Act and the Exchange Act and the respective rules thereunder and that each of such individuals is a cause of any order of revocation or expulsion entered with respect to registrant.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Irving Schiller".

Irving Schiller  
Hearing Examiner

Washington, D. C.  
March 12, 1965