

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :
:
COPLEY AND COMPANY, (8-5248) :
RALPH E. COOK, :
CHARLES A. SCHOENECKE, :
J. BLAINE CORRY, :
THEODORE B. GAZARIAN, :
LEONARD J. TILLOTSON. :

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SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION
AS TO
CHARLES A. SCHOENECKE

WILLIAM W. SWIFT
Hearing Examiner

Washington, D. C.

October 6, 1965.

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APPEARANCES:

Charles A. Schoenecke appeared on his own behalf,
without counsel.

Robert F. Watson, Esq., Gerald E. Boltz, Esq. and
John E. Jones, Esq.
of the Denver Regional Office
appeared for the Division of Trading and Markets.

BEFORE: WILLIAM W. SWIFT, HEARING EXAMINER

PROCEEDINGS

The Commission, on November 27, 1964, issued an Order for Public Proceedings and Notice of Hearing pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether the several respondents embraced therein had willfully violated the Securities Act of 1933 ("Securities Act"), and the Exchange Act as alleged in Sections II-A, II-B, II-C and II-D, and whether remedial action was appropriate in the public interest pursuant to Section 15(b) of the Exchange Act.

This initial decision only concerns itself with the allegations directed against the respondent Charles A. Schoenecke, the proceedings against the remaining respondents having been heretofore disposed of by the Commission (see (1) Securities Exchange Act Release No. 7679 wherein the respondent Leonard J. Tillotson was barred from being associated with any broker-dealer; J. Blaine Corry was also barred from being associated with any broker-dealer for a period of twelve (12) months from the effective date of such Release, August 13, 1965 with Corry's future return to the securities business being subject to an appropriate showing that he will be adequately supervised, with the proceedings as to respondent, Ralph E. Cook being dismissed; (2) Securities Exchange Act Release No. 7541, wherein the Commission barred respondent, Theodore B. Gazarian, from any further association with any broker-dealer; and (3) Securities Exchange Act Release No. 7712, wherein the Commission permitted the withdrawal of the registration of Copley and Company as a broker-dealer and discontinued these proceedings as to that respondent).

The proceedings, therefore, are still pending with respect to respondent Charles A. Schoenecke and this Initial Decision, as heretofore stated, is related only to his activities. The hearing as to Mr. Schoenecke was convened in Denver, Colorado on July 14, 1965 by the undersigned, as Hearing Examiner, pursuant to the order of the Commission of July 6, 1965 wherein the undersigned was designated to serve in lieu of an Examiner previously designated. The respondent, Charles A. Schoenecke, appeared without counsel (Tr. pp. 7 and 13).^{1/} Robert F. Watson, Gerald E. Boltz and John E. Jones appeared for the Division of Trading and Markets ("Division"). The hearing was closed on July 15, 1965, after considerable testimony had been adduced and a number of exhibits had been admitted in evidence.

An initial decision was requested by Mr. Schoenecke (Tr. pp. 271-272). Whereupon, the undersigned, as Hearing Examiner, after consulting with him and counsel for the Division, as required by Rule 16(e) of the Rules of Practice, fixed the post-hearing procedure which required that the filing of proposed findings and conclusions and supporting briefs should be done simultaneously, with thirty days being allowed from July 15, 1965 for the first filings and that reply briefs might be filed within fifteen days thereafter (Tr. p. 272).

Such proposed findings, conclusions and brief were duly filed on behalf of the Division of Trading and Markets but the respondent, Charles

^{1/} The following designations are used in this Initial Decision: Division's Exhibits as ("DX__") and Transcript of Testimony as ("Tr. p. __").

A. Schoenecke, has failed to file such documents although his time has long since expired. No reply briefs have been submitted and the entire record¹ relative to the charges against Mr. Schoenecke, including the transcripts of evidence, the exhibits which were admitted in evidence, and the said proposed findings, conclusions and supporting brief submitted on behalf of the Division, has been served upon the undersigned, as Hearing Examiner, for the preparation of this Initial Decision.

The record discloses that Mr. Schoenecke requested an extension to January 11, 1965 of the time within which he was to file an answer to the Commission's aforesaid Order of November 27, 1964, which request was granted by the Commission with the result that Mr. Schoenecke duly filed an answer on January 8, 1965 and a "Motion for More Definite Statement" which was accompanied by a brief in support thereof. A reply thereto was filed on behalf of the Division. On January 22, 1965, Irving Schiller, Hearing Examiner, who had been designated by the Commission to serve as hearing examiner for the purpose of ruling on such motion and other pre-trial applications, entered an order denying such Motion for More Definite Statement (File No. 8-5248-1 of which administrative notice was granted (Tr. p. 9)). It does not appear that Mr. Schoenecke ever filed any objection or took any exception to Mr. Schiller's action in denying such motion.

To substantiate the allegations of the Commission's aforesaid order of November 27, 1964, the Division called Mr. Schoenecke as its first witness - an adverse witness (Tr. p. 14). His testimony extends from page 14 to page 102 of the first day's transcript when Mr. Schoenecke

was temporarily excused, and recalled for further testimony the following day, which was resumed at page 228 and was concluded at page 250 of the transcript.

Mr. Schoenecke testified that he had been employed as a salesman, or registered representative, by Copley and Company from some time in 1960 or 1961 until the termination of that concern (Tr. pp. 21-22). He also testified that he had permitted Copley and Company to use his home and telephone in Golden, Colorado as an N.A.S.D. directory, but Schoenecke to quote his own words, "never served as anything other than a salesman" for Copley and Company (Tr. p. 22).

During the course of the hearing, the aforesaid Order for Public Proceedings of November 27, 1964, upon an oral motion of the Division, was amended by adding a sub-paragraph, designated as sub-paragraph 9 to paragraph II-A in this language "the suitability of this security for the particular investor". A similar amendment was allowed to paragraph II-B of the said Order of November 27, 1965, in the same language and designated as sub-paragraph 6 to paragraph II-B. (Tr. pp. 166, 167 and 168). Mr. Schoenecke offered no objection to these documents, although he was given an opportunity by the Hearing Examiner to take an exception thereto (Tr. p. 168).

In addition to Mr. Schoenecke, the Division also introduced twelve other witnesses, eight of whom were investor witnesses. They related how Mr. Schoenecke contacted them, as a salesman for Copley and Company, and testified as to the various representations he made to them as inducements for the purchases they made of the common stock of Chase Capital Corporation, hereinafter sometimes referred to as Chase Capital, and the common stock

of Western Wool Processors, Inc., hereinafter referred to as Western Wool.

The Hearing Examiner is impressed with the testimony of the investor witnesses who became, as the Hearing Examiner views this record, the victims of Mr. Schoenecke's false and misleading representations and importunings. The Hearing Examiner observed their demeanor while on the witness stand and he believes their testimony. Indeed, there is little substantial evidence in this record which contradicts them.

Such testimony as Mr. Schoenecke gave as an adverse witness and in his own defense is evasive throughout and is self-serving. Furthermore, Mr. Schoenecke, evidently troubled with remorse, he testified that, since leaving the employment of Copley and Company, has engaged in a "vigorous campaign of promoting salesmen's training because of the things" he realized were questionable in the services that he rendered (Tr. p. 256). Moreover, he tells of two trips he made to California, after leaving Copley and Company, to find out what the situation relative to Chase Capital really was, as he was interested in its stockholders, not himself (Tr. p. 269). Instead of making these trips after the persons to whom he sold had lost money on their purchases, he should have made the trips before he attempted to sell them by means of unfounded and materially misleading statements of the actual financial condition of Chase Capital.

At this point, some of the testimony given by the investor witnesses will be reviewed. Mr. Forest C. Mahaffey, of Grand Junction, Colorado, testified that Mr. Schoenecke informed him in a letter or memo, dated April 14, 1962, that stock of Chase Capital was one of the finest offerings of the year, 1962 (DX 13), when in fact Schoenecke considered

stock of Chase Capital to be speculative (Tr. pp. 40-42) and had referred to it as being a "dog" in a memorandum, dated April 23, 1962 (DX 3) which was addressed to "Wen", who is identified as being Wen Davis, Sales Manager of Copley and Company (Tr, p. 35). The financial condition of Chase Capital, as depicted in this record at the time Schoenecke recommended it to Mr. Mahaffey, does not justify Schoenecke in referring to this issue, as he did to Mr. Mahaffey, as "being one of the finest offerings of the year".

Schoenecke informed another of his customers, Mrs. Ruth C. Copes, in a memo or letter, dated April 26, 1962 that Chase Capital would enjoy "the greatest growth in its history" during 1962 and thereafter (DX 9) and that a dividend would result in the first quarter of 1962 (DX 9) when, in fact, Chase Capital filed a voluntary petition in bankruptcy in October, 1962 (DX 1). Mr. Schoenecke also told Mrs. Copes in several conversations that he thought Chase Capital would be a good investment and that the above mentioned dividend was to be paid (Tr. p. 107).

Schoenecke, moreover, told customers that there was a limited amount of stock of Chase Capital available for purchase (DX 9, Tr. p. 103, DX 13, Tr. pp. 115 and 201) when, in fact, Mr. Schoenecke was unaware of any limitations on the-amount of stock of Chase Capital which was available for purchase (Tr. p. 63).

Schoenecke told customers in March and April, 1962 that he would sell them Chase Capital for \$14 and \$14.25 per share, when the market price was \$14.50 per share and rising rapidly (DX 9, Tr. p. 103), DX 13, Tr. p. 115) when, in fact, Schoenecke had personally sold stock of Chase

Capital five to six months previously at \$14.50 per share (DX 26, Tr. p. 197) and the highest asked price at which stock of Chase Capital was quoted in the National Quotation Service "pink sheets" between March 1, 1962 and October 30, 1962 was \$14.25 per share (Tr. p. 192) and when Schoenecke was not aware that the market price of stock of Chase Capital ever exceeded \$14.50 per share (Tr. p. 45).

In May, 1962, Schoenecke, over the telephone, contacted a customer, Leo L. Flaig, whose address was 144 Washington Street, Denver, Colorado, and urged him to buy stock of Chase Capital at \$14 per share because the price would probably be higher later on (Tr. pp. 183, 185) when, in fact, Schoenecke had personally sold stock of Chase Capital six months earlier at \$14.50 per share (DX 26, Tr. p. 197); the highest asked price between March 1, 1962 and October 30, 1962 was \$14.25 per share (Tr. p. 192); and the "last bid" made in the said "pink sheets" was on June 15, 1962 at \$13.25 per share (Tr. pp. 192, 193); and Chase Capital filed a voluntary petition in bankruptcy on February 17, 1962 (DX 1).

During the telephone conversations between Schoenecke and Mr. Flaig, the following representations were made by Schoenecke which resulted in the confirmation which was admitted in evidence as DX 26 having the trade date specified as "6-4-62 as of 5-31-62":

"Q. What, if anything, did Mr. Schoenecke say to you about Chase Capital Corporation during those conversations?

A. Well, I didn't know Chase Capital, so he told me as far as he knew it was a good stock and at that particular time it probably had a great future to it, from what it was at that time, but it was also a risk, it was not a blue chip stock.

Q. Did he say anything to you about a dividend?

A. He mentioned that if we pre-dated the purchase of the stock, that if there was a dividend, that I, would be able to get it because I would have purchased it prior to that time.

Q. Was this prior to June 1st?

A. Prior to June 1st.

Q. Is that why the confirmation states 6-4-62 as of 5-31-62?

A. Yes.

Q. Did you ever get a dividend?

A. No, I never received a dividend.

Q. Did Mr. Schoenecke indicate to you that the stock was available then but maybe not later?

A. Well, he indicated that it was available at that time and if it were available later it probably would be at a higher price than it was at that time.

Q. Did he indicate to you that he thought that Chase Capital stock was one of the best buys of any unlisted stock?

A. He indicated to me or said to me, not in these direct words, that he felt that it was a good stock as far as he knew, and Copley and Company's research knew it was a very good stock and probably was one of the best that they knew of at that time, not the best but one of the best.

Q. One of the best. Did Mr. Schoenecke say anything to you about the \$4.00 commission that Copley and Company was taking on the sale of this stock?

A. I don't recall that ever being mentioned."
(Tr. pp. 184-185)

In April, 1962, Schoenecke told a customer, John R. Kauffman, of 13285 Braun Road, Golden, Colorado, that the then market price of stock of Chase Capital was \$17 to \$17.50 per share (Tr. pp. 201, 204) when Schoenecke was never aware that the market price of stock of Chase

Capital exceeded \$14.50 per share (Tr. p. 45) and when the highest asked price of Chase Capital stock between March 1, 1962 and October 30, 1962 was \$14.25 per share (Tr. p. 192).

Mr. Schoenecke recommended stock of Chase Capital to customers while he was engaged in a sales contest with other salesmen at Copley and Company based on sales of that security (Tr. pp. 109, 122, 135, 204 and 264), without disclosing that he was engaged in such a contest (Tr. pp. 220, 221 and 264). He, Schoenecke, also recommended stock of Chase Capital to customers while he and Copley and Company were taking a mark-up of as much as \$4 per share on the sale of Chase Capital as a "bonus" (Tr. pp. 109, 122, 135, 185 and 204) without disclosing that in fact such a "bonus" was being taken (Tr. pp. 232, 233).

Schoenecke lulled investors into a false sense of security by (1) writing letters to them, dated November 30, 1962, stating that he had visited the properties of Chase Capital in California in November and that they had a "wonderful layout" (DX 12, Tr. p. 110; DX 16, Tr. pp. 123 and 185); (2) by writing a letter to an investor, Mr. Mahaffey, dated March 23, 1963 stating that the market value of stock of Chase Capital in January, 1963 was around \$14 in New York (DX 4, Tr. p. 125); (3) by personally telling an investor, Charles H. Rhinehart, after returning from Los Angeles that he could not understand why promised dividends had not been paid (Tr. p. 136); and (4) by personally telling an investor, John R Kauffman, that he had talked with the president of Chase Capital and that the corporation was in excellent condition (Tr. pp. 202, 203, 212 and 213) when, in fact, the corporation had filed a voluntary petition in bankruptcy on

October 17, 1962 (DX 1) and he, Schoenecke, had learned from the Commissioner of Securities of the State of California that Chase Capital was involved in some type of reorganization (Tr. p. 59).

Furthermore, Schoenecke told a customer, Mrs. Van Houten, in the spring of 1961 that the market price of the stock of Western Wool "would probably double in a year or so" (Tr. p. 143). He told another witness, Mrs. Lorena M. Searle, that Chase Capital was operating at a profit and that she could double her money in six months (Tr. pp. 161, 162). He also told a customer, George L. Patterson, of Aurora, Colorado, among other things, that he would surely double his money within six months (Tr. p. 175). Thus, it is found that Schoenecke made these representations to the three witnesses, mentioned in this paragraph, when he did not believe that anyone could tell what the market does (Tr. p. 263), when there was nothing in the offering circular of Western Wool to support such a statement (File No. 24D-2409-1) and when the market price never came close to doubling (Tr. p. 194).

Referring further to Schoenecke's transaction with George L. Patterson, mentioned in the preceding paragraph, it is found that Patterson was told by Schoenecke that the stock of Western Wool was not a speculation (Tr. p. 175), yet the offering circular under which Schoenecke was ostensibly selling the stock has a full page labelled "Speculative Features" (File No. 24D-2409-1). Furthermore, Schoenecke told two of his customers, Mrs. Searle and Mr. Patterson, in the spring of 1961 that Western Wool was operating at a profit (Tr. pp. 161, 176, 177) when the offering circular stated that the company had operated at a loss up to August 31, 1960 (File

No. 24D-2409-1) and when the company had a net operating loss for the first six months of 1961 and an increased retained earnings deficit over that stated in the August 31, 1960 statement (DX 17, Tr. p. 130) which Schoenecke knew, or could have known, to be the case (Tr. p. 71).

In February, 1961, it is found that Schoenecke also told a customer, George L. Patterson, that there was a limited amount of stock of Western Wool available for purchase (Tr. p. 176) when the only limitation on the amount of stock available was that stated in the offering circular, which amount was 326,128 shares (File No. 24D-2409-1). Schoenecke told the same customer, George L. Patterson, in February, 1961 that he could see no possible way of losing on a purchase of Western Wool stock (Tr. p. 176) when at that time Western Wool was operating at a loss and in fact had been so operating since its inception (File No. 24D-2409-1; DX 17, Tr pp. 130 and 131).

Schoenecke, it is found, failed to deliver to his customers who purchased Western Wool an offering circular as required by the provisions of Regulation A (Tr. pp. 161, 177). Moreover, he failed to inform customers to whom he recommended and sold stock of Western Wool (1) that he advised the president of Western Wool that the company would have to finance wool growers to operate successfully and that the president had rejected this advice (Tr. pp. 68, 69, 70, 150, 164, 177) when in fact Schoenecke felt that such financing was essential to the successful operation of Western Wool (DX 21, Tr. pp. 68, 69); (2) Schoenecke was to get options to purchase stock of Western Wool based on the number of shares of such stock which he sold during the public offering (Tr. pp. 147, 148,

163, 164, 178) when, in fact, Schoenecke, in his letter dated February 2, 1961 addressed to Wm. Copley, of Copley and Company, which was admitted in evidence as DX 29, it is stated that Schoenecke was "to receive options for all sales made including past sales"; (3) Schoenecke did not inform customers to whom he sold stock of Western Wool that in the spring and fall of 1961 it had been operating at a loss since its inception in 1956 (Tr. pp. 145, 146, 161, 177, 208) when in fact such was the case as stated in Western Wool's offering circular, dated December 2, 1960 (File No. 24D-2409-1) as well as in the company's financial statement of June 30, 1961 (DX 17).

In the spring of 1961, it is found that Western Wool had a \$76,684.62 retained earnings deficit on August 31, 1960 which fact was stated in the offering circular, dated December 2, 1960 (File No. 24D-2409-1) and it also had a net loss of \$28,963.44 for the first eight months of 1960 which was stated in the said offering circular of December 2, 1960 (File No. 24D-2409-1).

In the fall of 1961, Western Wool had a net operating loss of \$20,673.77 for the first six months of 1961 (DX 17) and a returned earnings deficit of \$117,471.35 on June 30, 1961 (DX 17) of which Schoenecke did not inform customer, John R. Kaufman (Tr. p. 208).

Schoenecke failed completely to make any effort to determine the suitability of either Chase Capital stock or Western Wool stock for a particular investor's needs and investment objectives (Tr. pp. 111, 164, 169, 170, 179, 180, 187, 188) and, in fact, stated that he would recommend Chase Capital stock to anyone who was interested in it (Tr. p. 55).

Furthermore, Schoenecke failed to disclose to purchasers of stock of Western Wool that the company planned a 5-for-1 reverse split in June of 1961 of its common stock which was being sold to the public (Tr. pp. 147, 162, 177) even though he had been advised of this reverse split in January of 1961 (DX 31; Tr. pp. 274 through 278).

In addition to the testimony, just discussed and reviewed, this record abundantly discloses that the United States mail was widely used by Copley and Company and respondent, Charles A. Schoenecke, and that the means and instruments of transportation and communication in interstate commerce, such as the telephone, were continuously used by them in consummating the sales to these investor witnesses.


CONCLUSIONS OF LAW

Based upon the entire record in these proceedings, insofar as it involves the respondent, Charles A. Schoenecke, and particularly upon the Hearing Examiner's review and discussion of the evidence appearing herein on pages 5 to 14, the following conclusions of law are reached by the Hearing Examiner:

He finds that the allegations set forth in Section II-A and II-B of the Commission's aforesaid Order for Public Proceedings, issued on November 27, 1964 are true with respect to Charles A. Schoenecke, the only respondent involved in this Initial Decision and that said respondent, Charles A. Schoenecke, willfully violated and willfully aided and abetted violations of the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 15c1-2 thereunder.

On the basis of the foregoing, it is found to be in the public interest, within the meaning of Section 15(b)(7) of the Exchange Act to bar said Charles A. Schoenecke from being associated with any broker-dealer.

Accordingly, IT IS ORDERED that Charles A. Schoenecke be, and he hereby is, barred from being associated with any broker or dealer.


William W. Swift
Hearing Examiner

Washington, D. C.

October 6, 1965.