

IN THE MATTER OF
SANFORD H. BICKART

File Nos. 3-1. Promulgated March 8, 1968

Securities Exchange Act of 1934—Section 15 (b)

BROKER-DEALER PROCEEDINGS

**Grounds for Suspension from Association with Broker-Dealer
Fraud in Offer and Sale of Securities**

Where salesman of registered broker-dealer, in offer and sale of speculative security, made fraudulent representations and predictions concerning, among other things, issuer's properties, future market price of its stock, and listing of such stock on an exchange, *held*, in the public interest to suspend salesman from association with broker or dealer.

APPEARANCES:

Charles Snow and *Mortimer Gerber*, of the New York Regional Office of the Commission, for the Division of Trading and Markets.

Sanford H. Bickart, pro se.

FINDINGS, OPINION AND ORDER

Following hearings in these proceedings pursuant to Section 15 (b) of the Securities Exchange Act of 1934 ("Exchange Act"), the hearing examiner filed an initial decision in which he concluded, among other things, that Sanford H. Bickart, a salesman of Thomas, Williams & Lee, Inc. ("registrant"), then a registered broker-dealer, should be suspended from association with a broker-dealer for a period of 6 months.¹ We granted Bickart's petition for review of that decision, and he and our Division of Trading and Markets ("Division") filed briefs. Upon an independent review of the record, we make the findings set forth below.

From about June to August 1963, Bickart willfully violated

¹ On January 11, 1965, in prior proceedings against registrant, we permitted its notice of withdrawal of registration to become effective. In the instant proceedings, registrant's president and six other salesmen have been barred from association with any broker or dealer. Securities Exchange Act Release Nos. 7657 (July 26, 1965); 7673 (August 9, 1965); 7879 (May 2, 1966); and 43 S.E.C. 185 (1966).

anti-fraud provisions of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 17 CFR 240.10b-5 thereunder in the offer and sale of stock of Kent Industries, Inc. ("Kent").

Four customers, who purchased a total of 9,000 shares of Kent stock at $1\frac{1}{2}$ and $1\frac{5}{8}$, testified to various representations made to them by Bickart. Among other things, Bickart stated that Kent was an "excellent buy" with "terrific potential," that the company owned or controlled large orange groves and other valuable real estate in Florida, that Kent stock was listed on the Salt Lake Stock Exchange ("SLSE"), that it had been delisted because of certain irregularities which had since been corrected and it would be relisted in the immediate future and increase in value, that there was a "strong possibility" that the stock would rise in price a few points within a few months, and that it would at least double in value. Bickart told one of the customers that, although Kent had a deficit, profits were anticipated in the near future, and he did not mention Kent's adverse financial condition to the other three customer-witnesses.

Bickart's factual representations were materially false or misleading and his predictions had no reasonable basis. As of February 28, 1963, Kent had an accumulated deficit (unaudited) of \$394,792. Its Florida real estate had no orange groves and was undeveloped and heavily mortgaged. It not only lacked funds to develop the land, but could not afford to make the mortgage or tax payments or even to pay for recording the deeds evidencing its title. Its stock had been suspended from trading on the SLSE in May 1963, due to its failure to submit financial data and its agent's refusal to transfer stock certificates because Kent did not pay the transfer costs, and the suspension has never been lifted.² After the spring of 1963, no operations were engaged in by the company, and in May 1964 it became defunct.³

Bickart denies making any fraudulent representations to his customers and asserts, among other things, that he made an adequate investigation before selling Kent stock, that he was justified in relying on the information supplied by registrant's president, and that, as soon as he discovered that Kent stock had been "delisted," he so informed his customers. He further contends that indicating to a customer that a stock will rise in price cannot violate the law where customers are experienced and aware of market risks, and asserts that all of his clients could have sold

² Kent stock was delisted in April 1966.

³ Bickart cites Kent's negotiations for an exchange of debentures with an insurance company, which assertedly "might have yielded considerable income" to Kent. However, the negotiations were discontinued in April 1963.

Kent stock prior to his leaving registrant's employ without suffering any loss.

We find no merit in Bickart's contentions. The hearing examiner, who heard the witnesses and observed their demeanor, credited their testimony that Bickart made the representations to which they testified, and we find no basis in the record for reaching a different conclusion.⁴ Other than an optimistic market letter prepared by registrant in June 1963, the record does not disclose the nature of any information supplied to Bickart by registrant's president which might have induced Bickart to make the fraudulent representations we have found, and, for the most part, those representations related to matters not mentioned in that letter or went beyond the statements made therein.⁵ The record further shows that Bickart never spoke to any official of Kent and was unable to obtain any significant information on Kent from a prominent financial service or from several brokers whom he consulted. Bickart admitted that, aside from registrant's president, his only source of worthwhile information was an "official" of the SLSE who assertedly told him that Kent's president was "very reliable" and "a good businessman," that Kent was "very good" and that a "lot of [Kent] stock" had been sold "to eastern companies." It is clear that Bickart's investigation was inadequate to support the representations made.

Moreover, we have repeatedly pointed out that predictions of specific and substantial increases in the price of a speculative security within a relatively short period of time are inherently fraudulent and cannot be justified.⁶ The fact that Bickart's customers might have been able to dispose of their Kent stock without suffering a loss prior to his departure from registrant, or may have been experienced investors aware of market risks cannot excuse the fraudulent representations made to them.⁷

⁴ Subsequent to the initial decision, Bickart submitted letters from two of the customer-witnesses. Aside from the fact that no showing has been made pursuant to Rule 17 CFR 201.21(d) of our Rules of Practice to warrant leave to adduce additional evidence, those letters merely express the customers' belief that Bickart had acted in good faith.

⁵ As a justification for his asserted reliance, Bickart claims that, before accepting employment with registrant, he made inquiries of a Division attorney, the National Association of Securities Dealers, Inc., and the Attorney General of New York, none of whom told him of any infractions by registrant or its president or anything derogatory about Kent. Aside from the question whether the results of such inquiries would constitute a reasonable basis for reliance, there is no evidence in the record that Bickart made any such inquiries, and the Division states it has no knowledge of any directed to the Commission.

⁶ See, e.g., *Irving Friedman*, 43 S.E.C. 314 (1967). Bickart cites *S.E.C. v. Broadwall Securities, Inc.*, 240 F. Supp. 962, 968 (S.D.N.Y., 1965), and *S.E.C. v. Rapp*, 304 F.2d. 786 (C.A. 2, 1962), as holding that a salesman's statements as to future market prices are mere predictions and opinions and are not fraudulent. Bickart misreads the holdings in those cases. In *Broadwall*, the district court expressly rejected an argument to that effect, and in *Rapp* the court of appeals reversed and remanded a district court decision which so held.

⁷ See *R. Baruch and Company*, 43 S.E.C. 13, 19 (1966).

Bickart's claim that he was unaware that Kent had been suspended from trading until he called the SLSE in late July 1963 is inconsistent with his testimony during the investigation to the effect that the purpose of his call was to find out why trading had been suspended, and the record shows, as the examiner found, that he knew of but failed to disclose such suspension at the time he told a customer that Kent was listed on the SLSE. In addition, although Bickart was admittedly aware that Kent had no earnings, he failed to inform customers of that fact, and, as previously mentioned, told only one of the customer-witnesses that Kent had a deficit.

Bickart argues that in various respects he was denied due process. He asserts that, since the examiner had granted him a severance, the record of the principal hearings in these proceedings was improperly admitted in evidence against him; that the transcript of his investigative testimony should also have been excluded because he was at that time testifying without an attorney and assumedly as "a friend of the court"; and that the Division failed to produce at the hearing notes taken by a staff attorney of an interview with one of the customer-witnesses. There is no substance to these arguments.⁸

The examiner severed the proceedings as to Bickart when the principal hearings were almost over and on the express condition that the record of such hearings would become part of the record against Bickart. The four customer-witnesses against Bickart were not called to testify until the severed hearings, and our findings against him are not based on the prior record, except those relating to the actual condition of Kent during the period in question, which are based on the unchallenged testimony of Kent's president prior to the granting of Bickart's motion for a severance.⁹

When Bickart was called as a witness during the investigation he was explicitly advised of his privilege against self-incrimination and his right to be represented by counsel, and warned that anything he said might be used against him. As to the notes

⁸ We also find no merit in Bickart's further contention that his constitutional rights were violated when he was named a respondent because he had previously requested the four Kent stock because Bickart was not satisfied with the information he had received from customer-witnesses to ask this Commission to institute these proceedings. Moreover, the record shows that Bickart merely advised one of the customer-witnesses in September 1963 to sell his registrant and conveyed to such customer. The letters from this customer submitted by Bickart after the hearings state only that Bickart had suggested he and other customers enlist the aid of this Commission or the Attorney General of New York in connection with such information, but that registrant's president had dissuaded him as well as another customer from doing so.

⁹ At the severed hearings no effort was made by Bickart's then counsel, who had also attended the principal hearings on behalf of Bickart and another respondent, to recall Kent's president for further testimony or to attempt to show that the condition of Kent was other than as described by its president. Cf. *R. Baruch and Company*, 43 S.E.C. 13, 23 (1966).

referred to by Bickart, the record shows that they were in fact turned over to the counsel who represented him at the severed hearings.

Finally, Bickart contends that the sanction imposed by the examiner is too harsh. He asserts, among other things, that as a result of these proceedings he lost his employment with a New York Stock Exchange firm and almost all of his customers, that if the sanction is upheld he will be unable, at his age of 63, to start over again, and that he was employed by registrant for only a few months and had left before these proceedings were instituted.

The Examiner, in imposing only a 6-month suspension, stressed the facts that, about September 1963, Bickart advised two customer-witnesses to sell their Kent stock because of his dissatisfaction with Kent and told a third customer-witness, subsequent to his purchases, that the Attorney General of New York was "looking into" Kent and that "there was no reason . . . not to cooperate with [him]." In view of the serious fraud committed by Bickart we are not disposed to grant him any further leniency.¹⁰

Bickart has requested a stay pending judicial review of our affirmance of the action of the examiner. In order to provide Bickart with an opportunity to take an appeal before the suspension begins to run, we shall make the suspension effective as of the opening of business on March 25, 1968, unless he files a petition for review pursuant to Section 25 (a) of the Exchange Act prior to that date. If he does so, the suspension shall be stayed pending final determination of such petition.

Accordingly, IT IS ORDERED that Sanford H. Bickart be, and he hereby is, suspended from being associated with any broker or dealer for a period of 6 months commencing as of the opening of business on March 25, 1968.

IT IS FURTHER ORDERED, that, in the event a petition for review of the order of suspension is filed pursuant to Section 25 (a) of the Securities Exchange Act of 1934 prior to that date, said order shall be stayed pending final determination of such petition.

By the Commission (Chairman COHEN and Commissioners OWENS, BUDGE, WHEAT and SMITH).

¹⁰ The exceptions to the initial decision of the hearing examiner are overruled or sustained to the extent they are inconsistent or in accord with our decision.