

IN THE MATTER OF
DANIEL J. BRESLIN

doing business as

DANIEL BRESLIN & ASSOCIATES

File No. 3-2225. Promulgated June 24, 1971

Securities Exchange Act of 1934—Sections 15(b) and 15A

BROKER-DEALER PROCEEDINGS

Where registrant broker-dealer was found by hearing examiner to have made offers and sales of unregistered stock without disclosing adverse financial condition of issuer, and to have failed to comply with record-keeping requirements and to segregate funds received from prospective purchasers, *held*, examiner's suspension of registrant's registration, membership in national securities association and right to be associated with any broker or dealer *affirmed*, as appropriate in the public interest under all circumstances, including facts that illegal offers and sales appeared to result from lack of understanding of requirements and all prospective purchasers recovered their funds.

APPEARANCES:

Edward P. Delaney and Willis H. Riccio of the Boston Regional Office of the Commission, for the Division of Trading and Markets.

Daniel J. Breslin, pro se.

FINDINGS, OPINION AND ORDER

Following hearings in these proceedings pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act"), the hearing examiner ordered suspensions, for a period of 45 days, of the registration as a broker-dealer of Daniel J. Breslin, doing business as Daniel Breslin & Associates, of his membership in the National Association of Securities Dealers, Inc., and of his right to be associated with any

broker or dealer. The only issue presently before us is whether such sanctions are adequate to protect the public interest.¹

As found by the hearing examiner, Breslin, who had never before participated in an underwriting, agreed in January 1969, to become an underwriter on a best efforts basis for a proposed public offering, pursuant to Regulation A under the Securities Act of 1933, of shares of common stock of Design International Corporation ("DIC"), which were to be sold at \$9 per share in units of 100 shares. Although no filing had been made with respect to the offering, in February 1969, Breslin posted an office notice which stated "Design International Corporation speculative new issue now in registration, indications of interest now being accepted." Beginning in February he also caused the DIC offering to be included in newspaper listings under the heading "Securities Now in Registration." At a meeting with his personnel in March 1969, Breslin spoke of the proposed offering, described DIC's business (the design and manufacture of hairpieces), stated that it was not currently in a good financial condition but spoke highly of its potential, admonished his representatives not to discuss the offering with anyone until they had offering circulars to distribute, but told them they could take "indications of interest" in the stock. Between about April 1 and June 16, 1969, some 56 persons deposited \$90,300 with registrant in amounts or multiples of \$900. A number of those persons testified that after speaking to one of registrant's representatives about DIC, they deposited the money with the intention of using it to purchase DIC stock. The deposits were recorded as credits to the customers' accounts; 45 of the depositors had never done business with registrant before and new accounts were opened for them. Although Breslin was aware of the general intention of the persons to purchase DIC stock, he treated the funds as general deposits in their accounts and he maintained that no sales were made, that the persons were not guaranteed that they would receive DIC stock when it became available, and they were free to use the funds to their credit in any way they chose. Other "indications of interest" were received for an aggregate of 50,000 to 60,000 shares.

In fact, no DIC shares were ever issued. In May 1969 DIC did make a Regulation A filing with respect to the proposed offering of 33,333 shares of its stock. After receiving a letter of

¹ The hearing examiner also ordered that two of registrant's representatives be suspended from association with a broker or dealer for periods of 20 and 15 days, respectively. No review was sought or ordered of such rulings, and the initial decision has become final as to those respondents.

comment from our staff in the following month, it filed three amendments to the offering circular. On November 12, 1969, when the instant proceedings were instituted, an order was also entered temporarily suspending the Regulation A exemption on the basis of allegations relating to registrant's activities with respect to the proposed DIC offering, and the suspension was thereafter made permanent when no hearing was requested. Of the \$90,300 deposited to customers' accounts with registrant, \$35,700 was used by the customers to purchase other securities, \$48,300 was refunded to the depositors on their request, and \$6,300 was left in various accounts to the credit of the customers.

The examiner found that registrant's activities described above constituted offers and sales of DIC stock in violation of Section 5 of the Securities Act; that the failure to advise customers of DIC's poor financial condition, of the details of the underwriting, and of the possible violations of the Securities Act, constituted violations of the antifraud provisions of the Securities Act and of the Securities Exchange Act; that registrant's failure to segregate the sums received for DIC shares until such shares could be legally transferred to the customers constituted a violation of Section 15(c) of the Exchange Act and Rule 15c2-4 thereunder; and that recording the deposits as credits in customers' accounts rather than as receipts for DIC stock violated the record-keeping provisions.

The examiner concluded from his observation of the witnesses and other evidence in the case that Breslin's violations were attributable to his lack of understanding of the rules regarding the marketing of Regulation A issues, and that it was appropriate in the public interest to impose the forty-five days suspensions described above. The Division of Trading and Markets urges that a more severe sanction is necessary in the public interest for the protection of investors.

We do not agree that registrant's activities constituted, as he asserts, at most technical violations. As the hearing examiner noted, the provisions involved are key sections designed to protect the public in the offer and sale of new issues of securities such as the DIC stock offering, and we view violations of those regulations as serious matters. Nevertheless, we are satisfied that the remedial sanctions imposed by the hearing examiner are adequate to meet the remedial requirement of the public interest under the circumstances of this case. On the basis of our independent review of the record, we accept his finding that the violations relating to the registration

provisions were the result of registrant's lack of understanding of the applicable rules. While, as the examiner recognized, that fact does not excuse the violations, it is a factor to consider in assessing the appropriate sanction.

Accordingly, IT IS ORDERED that for a period of 45 days beginning with the opening of business on June 28, 1971, the registration as a broker and dealer of Daniel J. Breslin, doing business as Daniel Breslin & Associates, be and it hereby is, suspended, and that registrant be, and he hereby is, suspended for the same period from membership in the National Association of Securities Dealers, Inc., and from association with any broker or dealer.²

By the Commission (Commissioners OWENS, SMITH, NEEDHAM and HERLONG), Chairman CASEY not participating.

² In October 1970, registrant filed a notice of withdrawal of his broker-dealer registration, which notice did not become effective because of the institution of these proceedings. Under the circumstances, absent further action by registrant, the notice to withdraw his registration shall become effective upon the expiration of the period of suspension.