

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
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WCBA INVESTMENTS, INC.
:
PETER YATES TAYLOR, SR.
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(8-12554)
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SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

Sidney Gross
Hearing Examiner

Washington, D. C.
January 30, 1970

ADMINISTRATIVE PROCEEDING
FILE NO. 3-2023

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SECURITIES AND EXCHANGE COMMISSION

In the Matter of :
WCBA INVESTMENTS, INC. : INITIAL DECISION
PETER YATES TAYLOR, SR. :
(8-12554) :

BEFORE: Sidney Gross, Hearing Examiner

APPEARANCES: William Goldsberry, Sheldon Mazor and
Joseph L. Grant, for the Division of
Trading and Markets.

Peter Yates Taylor, Jr., pro se and for
WCBA Investments, Inc.

This proceeding is brought pursuant to Section 15(b) and 15A of the Securities Exchange Act of 1934, as amended ("Exchange Act") by order of the Securities and Exchange Commission ("Commission") dated June 5, 1969 to determine what, if any, remedial action is appropriate in the public interest against WCBA Investments, Inc. ("registrant") and Peter Yates Taylor, Sr. ("Taylor") as a result of alleged wilful violations of the securities laws during the period from on or about January 1, 1968 to June 5, 1969 ("the relevant period").

The order for proceedings alleges that during the relevant period registrant wilfully violated and Taylor wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder in that registrant failed to make and keep current certain of its books and records; ^{1/} that registrant wilfully violated and Taylor wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder in that registrant failed to file a report of financial condition, Form X-17a-5, duly certified, for the calendar year 1968; ^{2/} that

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- 1/ Section 17(a) of the Exchange Act, as pertinent here, requires brokers and dealers to make and keep current such books and records as the Commission may prescribe as necessary and appropriate in the public interest or for the protection of investors. Rule 17a-3 specifies the books and records which must be maintained and kept current.
- 2/ Rule 17a-5 as applicable here, requires that every broker or dealer registered pursuant to Section 15 of the Exchange Act file reports of financial condition containing the information required by Form X-17a-5 and prescribes the time for the filing of such reports.

registrant wilfully violated and Taylor wilfully aided and abetted violations of Section 15(b)(6) of the Exchange Act and Rule 15b6-1 thereunder in that they caused to be filed with the Commission on or about April 9, 1969 a "Notice of Withdrawal from Registration as Broker-Dealer Pursuant to Rule 17 CFR 240.15b6-1" ("Form BDW") containing a false and misleading statement of a material fact regarding registrant's liability to customers for money or securities and omitted to state such liability.^{3/}

Respondents were represented by Taylor who is not an attorney. Proposed findings of fact and conclusions of law and briefs have been filed by the Division. Respondents filed a "rebuttal" thereto and the Division filed a reply brief.

On the basis of the record in the proceeding, including the documentary evidence, the testimony of witnesses, the proposed findings of fact and conclusions of law and briefs together with respondents' "rebuttal," the Hearing Examiner makes the following findings and conclusions.

WCBA Investments Inc. is a corporation having its principal place of business in Milwaukee, Wisconsin. It has been registered with the Commission as a broker and dealer since October 7, 1965. Taylor is its president and a director of registrant.

3/ Section 15(b)(6) permits withdrawal from registration as a broker or dealer on such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors. Rule 15b6-1, as pertinent here, provides that the notice of withdrawal on Form BDW shall become effective after 60 days unless the Commission institutes a proceeding to censure, suspend or revoke the registration of the broker or dealer prior to the expiration of the 60-day period.

On October 16, 1969, registrant was expelled from membership in the National Association of Securities Dealers, Inc. ("NASD")^{4/} and Taylor's registration was revoked for failure to pay the fines and costs assessed against them in connection with findings of violations of NASD rules.^{5/}

The record abundantly establishes that during the relevant period registrant failed to make and keep current its general ledger as required by Rule 17a-3. Entries were not made in registrant's general ledger for the periods January 1, 1968 to June 30, 1968, July 1, 1968 to September 30, 1968 and October 1, 1968 to December 31, 1968 until after the expiration of each such period at which time registrant delivered its books and records to its accountant in order to enable him to make the necessary postings to the general ledger. Registrant's books were not delivered to the accountant at any time in 1969 for that purpose and entries were not made in the general ledger for the year 1969.

Rule 17a-3 also requires that a registered broker-dealer must prepare trial balances and net capital computations "currently at least once a month."^{6/} When the Commission's investigator visited

^{4/} NASD Manual, Changes to List of Members and Disciplinary Actions (September 6, 1969 through December 8, 1969), page 366.

^{5/} See WCBA Investments, Inc. et al., Securities Exchange Act Release No. 8630 (June 20, 1969), in which the Commission, on application for review, sustained the findings of violations by the NASD and penalties it imposed.

^{6/} Rule 17a-3(a)(11).

registrant's offices on May 29, 1969 for the purpose of examining registrant's books, Taylor informed him that registrant had no trial balances. Respondents' answer to the allegations of the order for proceedings relating to registrant's failure to make and keep trial balances states "* * * respondents readily admitted to your examiner that we were and are guilty of this infraction of Rule 17a-3(11) * * *." The accountant's testimony in which he attempts to equate the general ledger to a trial balance is manifestly unacceptable.

In addition, Rule 17a-3(11) provides for the preparation of a record of net capital computations "as of the trial balance date, pursuant to Rule 15c3-1." Both the accountant and Taylor admit that no "formal" or "official" net capital computations were ever made. The accountant's testimony that he prepared working net capital figures on the occasions when he posted the general ledger and threw them away hardly constitutes compliance with the rule. In any event his explanations with respect to both the balance sheet and the net capital computations are manifestly inadequate since it is obvious that neither the general ledger postings (which he would substitute for trial balances) nor the net capital computations (which he threw away) could have been made monthly as required by the rule.

The Commission has "repeatedly stressed the importance in the regulatory scheme for strict compliance with the requirement that

books and records be kept current.^{7/} Compliance with the rule relating to maintenance of books and records is regarded as an "unqualified statutory mandate"^{8/} dictated by a broker-dealer's obligation to investors to conduct its securities business on a sound basis.^{9/} A general ledger that does not reflect securities transactions which were effected over one month before cannot be considered current.^{10/} Not even illness can excuse the failure to post books for three months since, unless current records are maintained, neither the broker-dealer nor those charged with its regulations are in a position to know whether it is meeting the net capital requirements.^{11/} Nor is the need for full compliance obviated by an assertion that the information which would have been contained in books a broker-dealer failed to keep is available in other records it maintained.^{12/}

^{7/} "It is obvious that full compliance with those requirements must be enforced and registrants cannot be permitted to decide for themselves that in their own particular circumstances compliance with some or all is not necessary;" Olds & Company, 37 S.E.C. 23 (1956); Pennaluna & Company, Inc., Securities Exchange Act Release No. 8063 (April 27, 1967).

^{8/} Billings Associates, Inc., Securities Exchange Act Release No. 8217 (December 28, 1967).

^{9/} Cf. Schwabacher & Co., Securities Exchange Act Release No. 8677 (August 28, 1969).

^{10/} David Joel Benjamin, 38 S.E.C. 614 (1958).

^{11/} Palombi Securities Co., Inc., 41 S.E.C. 266, 226 (1962).

^{12/} J. B. Howard, 41 S.E.C. 960 (1964).

report on or before that date. He said that he would continue to work on it, but that he could not give any assurance of a definite completion date.

By letter dated March 20, 1969, the Commission's Chicago Regional Office reminded registrant of its failure to file the Form X-17A-5 report. It advised registrant that timely filing thereof "is considered to be a serious and substantial obligation" and that it is necessary that consideration be given to appropriate enforcement action. Taylor testified he spoke with a representative of the Commission a few days after registrant received the letter and agrees he stated that the report would be filed soon. As of June 5, 1969, the date of the issuance of the order for proceedings herein, the report had not been filed. Thereafter, on June 30, 1969, registrant transmitted its Form X-17A-5 for the year ending December 31, 1968^{16/} to the Chicago Regional Office.

Under Rule 17a-5(d) a broker-dealer may apply to the Commission for an extension of time to file the Form X-17A-5 report up to 90 days after it was due if he cannot file within the time specified "without undue hardship." Obviously, the rule anticipates that late filing may sometimes be unavoidable and makes provisions for extensions of time

^{16/} It is pertinent that both the certification by a member of the accountant's staff and Taylor's affidavit as to the accuracy of the report are dated June 2, 1969. The accountant notarized Taylor's signature to his affidavit. No explanation has been furnished for the delay in filing other than Taylor's statement that he filed it after receiving it from the accountant.

to file such reports. However, registrant made no application for such relief.^{17/} The filing of the report required by Rule 17a-5 is a reasonable and important requirement in furtherance of the Commission's statutory function to protect investors and the public interest^{18/} which should be and is enforced. In Whitney & Company, Inc.,^{19/} the Commission commented on the fact that, as here, registrant had permitted the time for filing to expire without requesting an extension of time and concluded that the rule had been wilfully violated.

As heretofore indicated, Taylor is registrant's president and a member of its board of directors.^{20/} Taylor arranged for the retention of registrant's accountant, he delivered registrant's books or caused them to be delivered to the accountant on each of the occasions on which the latter posted entries into the general ledger. Taylor discussed registrant's net capital position with the accountant on several occasions but, nevertheless, failed to cause registrant to comply with the requirement that net capital computations be maintained. Taylor advised the accountant of the February 15, 1969 deadline for the filing of the Form X-17A-5 report and was aware, before the

^{17/} Registrant's letter of June 30, 1969, transmitting the report admits to certain inaccuracies therein and the Division proposes that findings of fact and conclusions of law be made with respect thereto. But they are outside the scope of the order for proceedings which alleges only failure to file a duly certified report.

^{18/} Ernest F. Boruski, Jr., Securities Exchange Act Release No. 7418 (September 11, 1964). See also Schwabacher & Co., Securities Exchange Act Release No. 8677 (August 28, 1969). Whitney-Phoenix Company, Inc., 39 S.E.C. 245 (1959). Beisel, Way & Company, 40 S.E.C. 532 (1961).

^{19/} 40 S.E.C. 1100 (1962) See also Fred T. Garner, 39 S.E.C. 626 (1960)

^{20/} The Commission's decision in WCBA Investments, Inc., et al., supra, states that registrant admittedly was controlled by Taylor.

deadline, that the report would not be ready. Nevertheless, he failed to request an extension of time or to take any other step to avoid registrant's failure to comply.

Under all of the circumstances set forth above it is concluded that in failing to make and keep current its general ledger for 1968, in failing to maintain a general ledger for 1969, in failing to maintain records of its net capital computations and trial balances, in failing to timely file its financial report for the year ending December 31, 1968 on Form X-17A-5, registrant wilfully ^{21/} violated and Taylor wilfully aided and abetted registrant's violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder.

On April 9, 1969 registrant filed with the Commission a Form BDW - "Notice of Withdrawal from Registration as Broker-Dealer Pursuant to Rule 17 CFR 240.15b6-1," which was executed by Taylor on April 6, 1969. Under Rule 15b6-1 the withdrawal would have become effective on the 60th day after filing unless, prior thereto, the Commission instituted proceedings pursuant to Section 15(b) of the Exchange Act to censure, suspend or revoke registrant's registration. The order for proceedings seeking such relief was issued by the Commission on June 5, 1969, 57 days after registrant filed its Form BDW. The withdrawal, consequently, did not become effective.

21/ A finding of wilful violation does not require a showing of intent to violate the law. "It is sufficient that the person charged with a duty intends to do the act which is violative of the statute." Norman Pollisky, Securities Exchange Act Release No. 8381 (August 13, 1968).

The Form BDW includes the question "Does registrant owe any money or securities to any customer * * *?" Registrant responded in the negative. However, at the time the Form BDW was executed, registrant owed to its customers either cash or securities totalling approximately \$56,000 arising out of the following circumstances.

Registrant had presented to its customers plans for the purchase of shares in the Keystone S-4 Fund ("Keystone") and in the Atlantic Fund for Investment in U. S. Government Securities, Inc. ("Atlantic Fund"). Under the Keystone plan, the customer would present to registrant its check made to registrant's order. The check was deposited in an account maintained by registrant entitled "WCBA Investments Trust Account" which was maintained separately from registrant's regular account. A check would be drawn by registrant to Keystone from the Trust Account in payment of the shares. Keystone would not issue certificates but would forward its statement directed to "WCBA Investments Inc., Special Account," ("Special Account") indicating the total shares purchased. Registrant maintained separate ledger sheets for each customer reflecting that customer's interest in the Keystone shares represented by the Special Account. Keystone had no knowledge of registrant's individual customers and so far as it was concerned, the owner of the shares was "WCBA Investments Inc., Special Account." As of April 6, 1969 Keystone's statement showed ownership by the Special Account of 2,277.199 shares at \$6.60 per share. Registrant's records disclosed that registrant owed these shares to 183 customers.

Registrant's customers also invested in the Atlantic Fund. The procedure was identical with that followed in respect of Keystone except that Atlantic Fund issued certificates in the name of WCBA Investments, Inc., Special Account. And as in the case of Keystone, registrant maintained separate records for each customer reflecting his interest in the Atlantic Fund shares. As of April 26, 1969, the Special Account was the owner of 1,710 shares of Atlantic Fund. On April 29, 1969 Atlantic Fund confirmed to Special Account ^{22/} the purchase of 1,710 shares at \$25.42 per share for a total of \$43,468.20. ^{23/}

Accordingly, the record clearly establishes that on April 6, 1969, when Taylor executed the Form BDW for registrant, registrant owed securities valued at about \$57,000 ^{24/} and, accordingly, that registrant's negative response to the question in the Form BDW whether it owed money or securities to any customer was false.

22/ In error, the confirmation was directed to Wisconsin Citizens' Benefit Association.

23/ By letter dated April 7, 1969, signed by Taylor, registrant wrote to its customers who had purchased Keystone shares requesting that registrant be authorized to either redeem the shares or to transfer the shares to a direct account to be opened by the customer with Keystone. As of the date of the hearing, i.e., August 12, 1969, registrant still retained 283.489 shares of Keystone representing the purchases of two customers. By letter dated April 7, 1969, signed by Taylor, registrant advised its customers who had purchased Atlantic Fund shares that it would redeem the shares and remit the proceeds. The funds received by registrant for the shares were distributed between May 12 and May 14, 1969 to the customers who had purchased them.

24/ With Keystone shares computed at \$6.00 pursuant to Taylor's estimate of net asset value.

It is concluded therefore that registrant wilfully violated and Taylor wilfully aided and abetted registrant's violation of Section 15(b)(6) of the Exchange Act and Rule 15b6-1 thereunder.

Public Interest

Taylor, who appears to be principally responsible for registrant's operations, is no stranger to disciplinary action. In 1951 he was permanently enjoined from selling the securities of Vacu-Top Jars, Inc. by a decree of the Supreme Court of the State of New York entered on February 23, 1961^{25/} on the consent of Taylor and others. An order of the Secretary of State of the State of Illinois dated May 31, 1962 revoked Taylor's registration as a securities salesman for Wisconsin Continental Securities Corporation based upon Taylor's refusal to furnish information relating to the injunction of the New York Supreme Court referred to above. The Commissioner of Securities of the State of Wisconsin entered "Findings and Order" dated April 16, 1969 and a "Decision and Order" dated June 5, 1969^{26/} denying registrant's application for a 1969 license as a securities dealer and denying Taylor's application for a 1969 license as a securities agent representing registrant. The order arose out of registrant's and Taylor's activities violating the conditions of registration of the

25/ People of the State of New York v. Vacu-Top Jars, Inc., Herbert Y. Taylor and Peter Y. Taylor. In their consent, both Taylors denied the allegations of fraud in the complaint.

26/ In the Matter of Wisconsin Citizens' Benefit Association, WCBA Investments, Inc. and Peter Y. Taylor, Sr., File Nos. 2A. 6523 and 1.2070.

units of beneficial interest of Wisconsin Citizens' Benefit Association. Further, disciplinary action was taken against registrant and Taylor by the NASD which found, in proceedings instituted in November 1966 and December 1966, that they used improper sales literature; that for the first half of 1966 registrant did not prepare trial balances as required by Rule 17a-3; that registrant failed to maintain other records; and that registrant conducted business while its net capital was below minimum requirements. The NASD censured both registrant and Taylor. It fined registrant \$500 and Taylor \$1300. Costs of \$255 were assessed against both. The application of registrant and Taylor for Commission review of the NASD's action was dismissed.^{27/}

It is significant that the violations found above in the instant proceeding in respect of failure to prepare trial balances were also the subject matter of the NASD proceeding albeit covering an earlier period, i.e., the first half of 1966. Moreover, Taylor admitted in his testimony that he was aware, on or about January 1, 1968, of the requirements of Rule 17a-3 that a registered broker-dealer must maintain and keep current "ledgers reflecting all assets and liabilities, income, expense and capital and record of proofs of money balance of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital as of the trial balance date."

27/ WCBA Investments, Inc. et al., supra.

It is readily apparent that Taylor and registrant have demonstrated a reckless disregard of their responsibility to comply with the Commission's rules relating to the maintenance of books and records, the filing of reports and the need for accuracy and truth in the filing of applications with it. The foregoing, taken together with the history of disciplinary actions taken against Taylor and registrant constrain the conclusion that registrant's application for withdrawal should be denied, that registrant's registration should be revoked and that Taylor should be barred from association with any broker-dealer.^{28/} Accordingly,

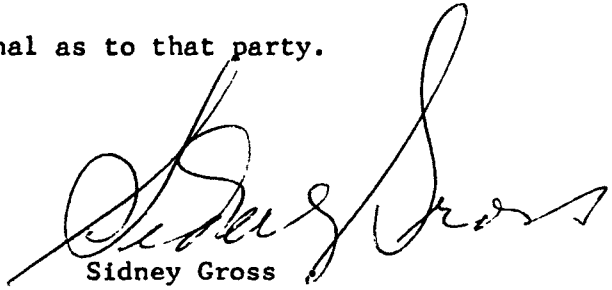
IT IS ORDERED that the request for withdrawal of the registration as a broker and dealer of WCBA Investments, Inc. be, and it hereby is, denied; that such registration be, and it hereby is, revoked; and that Peter Y. Taylor, Sr. be, and he hereby is, barred from being associated with any broker or dealer.^{29/}

^{28/} To the extent that the proposed findings and conclusions submitted to the Hearing Examiner are in accord with the views set forth herein they are accepted, and to the extent they are inconsistent therewith they are expressly rejected.

^{29/} It is unclear whether registrant's and Taylor's membership in the NASD could be reinstated by payment of the fines and costs assessed against them in WCBA Investments, Inc. et al., supra. However, under Article I, Section 2 of the NASD's By-Laws, the Commission's approval of reinstatement would be required where registrant is subject to an order revoking its registration as a broker or dealer and Taylor is subject to an order barring him from association with a broker or dealer.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice.

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within 15 days after service thereof on him. Pursuant to Rule 17(f) this initial decision shall become the final decision of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition to review or the Commission takes action to review as to a party, this initial decision shall not become final as to that party.



Sidney Gross
Hearing Examiner

Washington, D. C.
January 30, 1970