(Securities Exchange Act Release No. 7965)

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.
September 29, 1966

In the Matters of	:	
KAMEN & COMPANY 50 Broadway New York, New York	:	
and	:	
ABRAHAM KAMEN	:	
File No. 8-4175	:	FINDINGS AND OPINION OF THE COMMISSION
FREDERICK CIRLIN ASSOCIATES, INC. 50 Broadway New York, New York	:	
and	:	
FREDERICK CIRLIN BRIAN FREDERICK BARRABEE	:	
File No. 8-11319	:	
Securities Exchange Act of 1934 - Sections 15(b), 15A and 19(a)(3)	:	

BROKER-DEALER PROCEEDINGS

Grounds for Suspension from National Securities Exchanges, Registered Securities Association and Association with Broker-Dealer

Where registered broker-dealer and its managing partner over period of about six months failed to exercise adequate supervision to discover fraudulent activities by employees in dealings with other broker-dealers, held, under all the circumstances temporary suspension of broker-dealer from national securities exchanges and registered securities association, and managing partner from association with any broker or dealer in public interest.

Grounds for Revocation of Registration

Participation in Fraudulent Scheme

Where compelling inference from evidence was that registered broker-dealer and its president were participants with knowledge of a fraudulent scheme, and, at the very least, had deliberately closed their eyes to facts they had a duty to see, held, in the public interest to revoke broker-dealer's registration and to bar its officers from association with any broker or dealer.

APPEARANCES:

Charles Snow, Bert L. Gusrae, Martin E. Goldman, Harvey I. Lacon, Neal M. Goldman and David H. Smith, of the New York Regional Offfice of the Commission, and W. Gomer Krise, for the Division of Trading and Markets

Joseph Flom and Barry H. Garfinkel, of Skadden, Arps, Slate, Meagher & Flom, and Geoffrey M. Kalmus, for Kamen & Company and Abraham Kamen.

Andrew E. Kuchinsky and Louis Jacobus, for Frederick Cirlin Associates, Inc. and Frederick Cirlin.

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These consolidated proceedings pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 ("Exchange Act") present the issues of what if any remedial action is appropriate in the public interest with respect to Kamen & Company ("K Co.") and Abraham Kamen, its managing partner, and Frederick Cirlin Associates, Inc. ("Cirlin Associates") and Frederick Cirlin and Brian F. Barrabee, its principal officers.

Background of the Proceedings

These proceedings are an outgrowth of a manipulative scheme involving the use of contrived transactions in the stock of Jerome, Richard & Co., Inc. ("Jerome"), then a registered broker-dealer in New York City, as a means of furnishing over-the-counter broker-dealers reciprocation for business in listed securities furnished by such broker-dealers to K Co., a member of the New York Stock Exchange ("NYSE"). Five persons, George Herman, Laurence H. Ross and Jerome M. Grossinger, registered representatives, and Frances Ginsburg and Anthony Perrotta, clerical assistants, sometimes hereinafter referred to as "the group", were the principal actors in devising and carrying out this scheme.

In the middle of 1962, Herman and Ross arranged to have Jerome organized and registered with the Commission as a broker-dealer, first as a partnership and then as a corporation, although neither Herman nor Ross were listed as partners or officers nor was their domination and control of Jerome disclosed. In November 1962, Jerome purportedly made a public offering pursuant to Regulation A under the Securities Act of 1933 of 50,000 shares of its stock at $4 per share. 1/ Herman and Ross sold 25,025 of these shares to relatives, friends and associates, and Jerome reported to the Commission that the offering was terminated as to the remaining shares. Herman and Ross then arranged for the repurchase of all of these shares, so that they obtained control of all of the outstanding shares for the group's use in the scheme.

The scheme was put into effect in December 1962 while members of the group were employed at Reuben Rose & Co., Inc. ("Rose Co."), another NYSE member, and after January 1963 and until July 1963, it continued while members of the group were at K Co. Numerous non-exchange member broker-dealers throughout the country were solicited by Herman, Ross, Grossinger or Ginsburg to place their exchange business in listed securities, first with Rose Co. and subsequently with K Co., on the representation that those firms would reciprocate by furnishing over-the-counter business, usually in the ratio of $1 of profit on over-the-counter

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1/ We temporarily suspended the Regulation A exemption from registration sought for the public offering of Jerome stock on September 14, 1964 (Securities Act Release No. 4723), and the suspension became permanent on October 14, 1964.

business for each $4 of commissions on listed business. The group also represented that various market information and free long distance telephone services would be available to the over-the-counter concerns.

The reciprocation in over-the-counter business was in fact furnished in the form of arranged transactions in Jerome stock. In the typical situation, a member of the group would telephone an out-of-town non-exchange member dealer (A) and in a single conversation instruct that dealer to purchase a specified number of Jerome shares from another designated dealer (B) at a specified price and simultaneously to sell the same shares to yet another designated dealer (C) at a specified price which was usually 1/8 or 1/4 of a point higher than the purchase price. This last dealer (C) was then in a similar manner instructed by a member of the group to buy the shares at that higher price from the prior dealer (A) and simultaneously to sell them to still another designated dealer (D) at an even higher price. In this manner a large number of circuits of consecutive purchase and sale transactions were effected among approximately 100 non-member broker-dealers, in such a way as to permit such broker-dealers to realize profits in varying amounts.

In most instances the non-member broker-dealer participating in a directed transaction in Jerome stock had no prior relationship with the broker-dealer from whom he was instructed to buy or to whom he was told to sell. Confirmations were exchanged between the participating non-member broker-dealers but neither Rose Co. nor K Co. was a party to any of these transactions and no confirmations were sent to or by Rose Co. or K Co.

In the beginning, from December 1962 through April 1963, blocks of Jerome stock were continuously shuttled in the above manner from Jerome itself on circuits which also ended at Jerome, usually after going through at least two intervening broker-dealers. For a very brief period, T.L.H. Investors, Inc., a family corporation controlled by Herman, served as the terminus point of such circuits. Thereafter, beginning early in May and continuing into July 1963, Cirlin Associates was used as the origin and terminus of the circuits. In June and early July 1963, Herman and Ross through four dummy corporations caused 7,400 shares of Jerome stock to be sold to Cirlin Associates from Swiss bank accounts, and these shares were also introduced into the circuits.

There was no trading in Jerome stock not connected with the circuits described above. The 25,025 shares outstanding were traded in these circuits over and over again so that in the period December 1962 through July 1963 approximately 600,000 shares were bought and sold, at prices which increased from the stated public offering price of $4 per share in November 1962 to the range of $18-$20 per share in July 1963. 2/ From July 10 through July 17, 1963, a total of 24,750 shares in 34 circuits originated at Cirlin Associates, and after going through various intervening broker-dealers, ended at Fenli & Co., Inc., and Rybyl, Inc., two more dummy corporations organized by Herman and Ross the previous month in North Dakota and Wyoming. The failure of these two dummies to pay for the stock sold to them resulted in losses to various broker-dealers totalling over $475,000. In July 1963, our staff began an investigation into the Jerome situation, and when Kamen was informed of the questions thus raised, he discharged Ross and Grossinger.

2/ The series of contrived consecutive purchase and sale transactions began in December 1962 at the level of about $10 per share, and had reached a level of about $16 in February 1963.

After hearings, the hearing examiner submitted an initial decision in which he found that K Co. and Kamen were not free of responsibility for the group's activity while some of its members were employed at K Co. 3/ and he concluded that K Co. should be suspended from membership in the NYSE, the American Stock Exchange ("ASE"), and the National Association of Securities Dealers, Inc. ("NASD") for 10 business days, and that Kamen should be suspended from association with any broker or dealer for 90 days. The hearing examiner also concluded that the registration as a broker-dealer of Cirlin Associates should be revoked, and that Cirlin and Barrabee should be barred from association with any broker or dealer. We granted petitions for review of the initial decision, briefs were filed, and we heard oral argument.

Responsibility of K Co. and Kamen

K Co. was organized in 1956 as successor to a partnership formed two years earlier. Its principal business, both before and after the January - July 1963 period involved here, was trading in securities listed on the NYSE and the ASE for the accounts of private investors, and its transactions were cleared through another NYSE member, Carl M. Loeb, Rhoades & Co. ("Loeb Rhoades"). During that period the firm had two general partners and between 10 and 12 registered representatives, and Kamen as the managing general partner was in charge of the firm's office and the supervision of its employees.

K Co. hired Ross in January 1963, and shortly thereafter Ross arranged with Kamen for a meeting with Herman and Grossinger to discuss a proposal that they be engaged to set up a department to develop exchange business from over-the-counter broker-dealers. Herman, Ross and Grossinger had previously worked together during 1962, first with Lieberbaum & Company ("Lieberbaum"), also a member of the NYSE, and then with Rose Co., where Herman was manager of a similar broker-dealer department. Kamen was told that through the group's efforts and connections K Co. could obtain a large volume of business in listed securities from over-the-counter dealers if the firm were willing to provide quick and efficient services for such dealers, principally the furnishing of free long-distance telephone service for transmission of orders and procuring of current quotations, and the providing of research, statistical and advisory materials from K Co.'s clearing broker, Loeb Rhoades.

Kamen agreed, and a broker-dealer department was created at K Co. and supplied with special telephone facilities. In February 1963, Grossinger, Perrotta and Ginsburg came to work with Ross. 4/ Herman, who was also supposed to join Ross in that department, delayed doing so because of an asserted question relating to NYSE clearance, and in March 1963, again became a registered representative with Lieberbaum.

3/ On the basis of their defaults in these proceedings, we found that Grossinger, Ginsburg and Perrotta had willfully violated anti-fraud and registration provisions of the securities acts by their activities with respect to Jerome stock. We revoked Jerome's broker-dealer registration and barred those three individuals as well as Herman from being associated with any broker or dealer. Securities Exchange Act Release No. 7688 (August 27, 1965). Service was not effected on Ross, who was also named a respondent. The NASD has expelled Jerome and Cirlin Associates from membership.

4/ Ginsburg had worked as a secretary for Herman in various firms during and possibly prior to 1962. Perrotta had worked with the group at Rose Co. for a few weeks.

From January through July 1963, Ross and Grossinger introduced about 170 accounts to K Co., of which more than 100 were broker-dealer accounts. 5/ During this period K Co.'s total gross commissions were $327,044, of which $181,815, or about 55%, were produced by the broker-dealer department, whose activities also resulted in the receipt by K Co. of about $20,000 in "give-up" checks directed to it by mutual funds at the request of various over-the-counter broker-dealers. The gross commissions produced by the broker-dealer department were distributed 40% to K Co.'s clearing broker, Loeb Rhoades, 40% to the broker-dealer department subject to certain charges, and 20% to the firm. 6/

As indicated above and as the hearing examiner found, the group's scheme for reciprocal transactions in Jerome stock was well under way before the broker-dealer department was formed at K Co. in February 1963, and there is no evidence that Kamen or anyone else in K Co. other than members of the group solicited broker-dealer business or directed transactions in Jerome stock. Similarly, as the hearing examiner determined, there is no evidence to support a finding that Kamen had actual knowledge of the group's plan which ultimately resulted in the bilking of various broker-dealers or of the methods by which it was accomplished. However, we find, as did the hearing examiner, that Kamen and K Co. in their supervision of the broker-dealer department pursued a policy of non-interference and thereby failed to discharge their responsibilities to institute and maintain reasonable supervisory procedures designed to prevent violations of the securities acts and regulations, and that such failure on their part is a basis for remedial action against them under Section 15(b) of the Exchange Act.

We note at the outset that members of the group operating through K Co. were furnished office space and facilities and enabled to hold themselves out as representatives of K Co. for an extended period of about six months, and that their activities brought in a large volume of business which not only surpassed the volume produced by the rest of the firm but was in an area and of a type new to K Co. Although the volume and newness of the broker-dealer department's business called for diligent supervision of its operations, Kamen's over-all supervision of that department's activities in obtaining business was materially deficient. He himself wondered how the department was able to obtain such a large volume of listed business, but did not seek to go beyond Ross and Grossinger's repeated oral assurances that no rebates were being given

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5/ Ross was instrumental in opening an account for Jerome with K Co. and until May 1963 there was a substantial volume of transactions in listed securities through that account. After Loeb Rhoades reported that Jerome had in a number of instances failed to take delivery of listed securities at the time Loeb Rhoades was accustomed to make delivery, Kamen insisted that Jerome pay for all current exchange transactions and make a substantial deposit before any more orders for exchange business were accepted. Jerome thereupon discontinued doing its exchange business through K Co. The record indicates that Jerome had begun effecting exchange transactions through Lieberbaum in March 1963, when Herman again became associated with that firm.

6/ Under the original arrangement, K Co. paid all of Perrotta's salary and half of Ginsburg's. Beginning in May 1963, all of these expenses were charged to the broker-dealer department. The telephone expense attributed by K Co. to the broker-dealer department totalled over $14,000 for the period February - July 1963, and was paid by K Co.

and that the listed business they obtained was attributable solely to the services that K Co. did provide the non-member broker-dealers. K Co. had little if any reciprocal business to give such broker-dealers, and even Loeb Rhoades was moved to question Kamen as to the reasons for such an influx of listed business from non-members. In addition, before employing Ross, Kamen had been alerted by Ross' prior employer that Ross and his accounts required close supervision. 7/ Such factors made it clear that a more diligent and searching oversight, including inquiries to the newly obtained broker-dealer customers, was called for.

Kamen did not make any efforts to become acquainted with the broker-dealer customers of the department or to make any inquiries of them which might have revealed the reciprocal arrangements in Jerome stock. It is significant that in June 1963,in a conference with Kamen and the broker-dealer department's largest account respecting slow payments, a partner of Loeb Rhoades was led to make inquiry himself of that customer as to why he was giving so much listed business to K Co. Although at that point the customer replied that he was doing so because of the services being furnished to him by K Co. and that he was not getting any business back, a further incident which occurred should have made Kamen more inquisitive. After the meeting the customer remarked to Kamen, "These boys (Ross and Grossinger) owe me $40,000." When Kamen asked for an explanation, suggesting that the customer must be joking, the customer replied that he was serious, but that Kamen should not mention the incident to Ross or Grossinger and that he "would take care of it" himself. Although Kamen did question Ross and Grossinger who denied any such indebtedness, and Ross later told Kamen that he had called the individual in question who admitted he was only joking, Kamen made no further inquiries. Even assuming Kamen may have believed he had exhausted his means of obtaining information about this one account, this incident should have at least moved him to make an independent investigation to determine whether other accounts of the group might be receiving some form of compensation for listed business furnished to the firm.

Kamen's policy of not injecting himself directly into the activities of the broker-dealer department is illustrated by the handling of the mail and records of that department. It was the practice in the firm that

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7/ Before employing Ross, Kamen called Ross' previous employer, for whom Ross had worked only one month and who told Kamen that although Ross was "honest as far as [he] knew," he was letting Ross go because both he and his accounts "needed too much supervision." Kamen made no further investigation of Ross before hiring him. Although it is true that Kamen obtained the approval of the N.Y.S.E., the A.S.E., and the NASD when he hired Ross, and it also appears that the notice of termination sent by the prior employer to the N.Y.S.E. stated that it knew of no reason why Ross should not be employed by another firm, such approvals do not relieve an employer broker-dealer of his responsibilities for a proper and adequate inquiry as to a prospective employee's background and record. Kamen had a duty to satisfy himself as to the experience and good repute and character of Ross as an employee and his failure to make more than a most superficial inquiry is indicative of his lack of attention to this aspect of his managerial responsibilities. Kamen's laissez faire attitude was again evidenced when at a later date Kamen mentioned Ross, Grossinger and Herman to a partner of Lieberbaum, and that partner suggested that Kamen come talk to him about these individuals, but Kamen did not do so.

mail addressed to or for the attention of one of the registered representatives, or which from the envelope could be identified as coming from an account of a registered representative, would be given, unopened, to that representative. Ross and Grossinger were provided files to keep their incoming correspondence and other papers at their desks. However, no procedures were established to review such correspondence, or even to ascertain whether it was kept, and Kamen never undertook to examine the files. No attempt was made to coordinate mail so received by Ross and Grossinger with the firm's central files and records, and we think it clear that such mail procedures were inadequate. 8/

At least after the June 1963 incident involving the reference to an indebtedness of $40,000 to a customer, any compunctions Kamen may have previously had about communicating directly with broker-dealers whose accounts Ross and Grossinger had obtained, or about examining the files of the broker-dealer department or of opening and reading mail addressed to the office for Ross and Grossinger, could not justify his failure to act. And a review of the mail coming in to the broker-dealer department would have revealed to Kamen the existence of trades in Jerome stock directed by the group.

Kamen and K Co. assert that the misconduct of their employees was committed with the assistance of the participating broker-dealers, none of whom communicated directly with Kamen about the reciprocal arrangements because they were aware of the peculiar and suspect nature of the matched purchase and sale transactions. 9/ They further assert that because of

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8/ See Bond & Goodwin, Inc., 15 S.E.C. 584, 599-600 (1944). The lack of any adequate surveillance of the group's mail and records is also shown by the fact that when Kamen discharged Ross and Grossinger late in July 1963, they were able to pack up and carry away the department's files and records. In addition, although Herman became registered with Lieberbaum in March 1963, mail addressed to K Co., attention of Herman, continued to be received through June and July 1963, and such mail was turned over to Ross and Grossinger, purportedly for delivery to Herman, without being opened and examined as to its possible connection with K Co.'s affairs.

Certain members of other NYSE firms testified that it was the practice in their firms for a registered representative's mail to be given to him directly without first being reviewed by his superiors. That such a practice may exist in other firms cannot justify it when it would constitute a failure of reasonable supervision (Cf. C. A. Benson & Co., Inc., Securities Exchange Act Release No. 7346, p. 6 (June 15,1964); Amsbary, Allen & Morton, Inc., Securities Exchange Act Release No. 7834, p. 4 (March 7, 1966)) nor can the existence of such a practice justify the failure to make any arrangements for the return to or retention of such mail in the firm's records.

9/ The form of these transactions was unlike any other transaction any such participating broker-dealer had in his prior experience in the securities business. Some broker-dealers did refuse to go through with transactions in Jerome stock directed to them by the group. One such broker-dealer testified that when he received a call from Ross with instructions to buy 600 shares of Jerome stock at 18-7/8 from one dealer and simultaneously sell the 600 shares at 19 to another dealer, the transaction seemed unusual and questionable and he refused to go through with it because, as he put it, "the entire thing had a fishy aroma."

this fact and because of the manner in which the group concealed their improper activities, 10/ it was difficult to detect the scheme. We have considered these factors and the further contention that certain "warning signals" seem more significant from the vantage point of hindsight than at the time of the events. Nevertheless, taking into account the extended period of time during which the group operated at K Co., the failure to set up any system for the retention of mail which would assure perusal by responsible management, and, even more importantly, the failure to investigate unusual and questionable circumstances, we conclude, as indicated earlier, that K Co. and Kamen must be found responsible for failing to supervise the members of the group with a view to preventing their violations.

K Co. and Kamen argue that in any event the sanctions imposed upon them by the examiner are unduly severe. Among other things, they stress that they were not guilty of any intentional wrong and their conduct was not as blameworthy as that of the dealers who engaged in the Jerome trades; that no member of the public was injured; that neither K Co. nor Kamen has ever been subject to charges of misconduct; that two general partners, in addition to Kamen, now actively participate in the supervision of registered representatives and other employees; and that new procedures, including formal procedures for review by a partner of all incoming and outgoing mail, have been adopted to prevent the possibility of future violations; and they assert that they have already suffered greatly from adverse publicity. Most of these factors were considered by the examiner in assessing the sanctions against K Co. and Kamen. Absent them, more serious action looking towards revocation might well have been called for. Under the circumstances, we think the penalties which he imposed are appropriate in the public interest. 11/

10/ The president of a broker-dealer customer of the department testified that when he wrote a letter to K Co., attention of Ross, confirming the receipt of instructions regarding a matched trade in Jerome stock given to him by Ross, he received a telephone call from Ross telling him not to write letters with respect to these trades and to destroy the letter he had already written. The record further shows that Ross and Ginsburg were frequently in Cirlin's office, which was in the same building, and that Ross was often there for hours at a time and made numerous long-distance calls on Cirlin's telephone.

11/ Several important factors serve to distinguish this case from that of Reuben Rose & Co., Inc., Securities Exchange Act Release No. 7964 issued today, where we set aside disciplinary action by the NASD. Among other things, the group operated their scheme at Rose Co. for only about a month before that firm discharged Herman on its own initiative and the group transferred operations to K Co. In contrast the scheme was in operation for about six months while members of the group were at K Co., and their employment was finally terminated there only as a result of an investigation conducted by this Commission, not because of any independent review of their operations on the part of Kamen. At Rose Co., general supervision of the firm's operations was in the hands of an executive committee and did not as at K Co., rest with one individual, a deficiency which K Co. appears now to have remedied. Other points of difference between the two cases include the fact that the listed business brought in at Rose Co. by Herman's activities was a much smaller percentage of total business and never reached significant proportions until January 1963, the very month Herman was discharged, whereas at K Co. the listed business produced by the group exceeded 55% of K Co.'s total commissions during the six month period. Reuben Rose, president of Rose Co., periodically inspected certain of Herman's records and found nothing to arouse his suspicions, and there were no letters produced in that case which would have disclosed (Continued)

Responsibility of Cirlin Associates, Cirlin and Barrabee

In the period May 6 to July 5, 1963, approximately 88 circuits of contrived transactions in Jerome stock began and ended at Cirlin Associates, and as noted above, the final 34 circuits effected thereafter began at Cirlin Associates and ended at the dummy corporations, Rybyl and Fenli, which did not make payment. Cirlin Associates bought and resold a total of about 120,000 shares of Jerome stock in the circuit transactions, and made a profit generally of 1/8 of a point per share on each matched pair of purchase and sale transactions or a total of about $15,000.

Cirlin Associates and Cirlin contend that they were in the same position as other over-the-counter broker-dealers who received directed transactions in Jerome stock, and that like such other broker-dealers they merely followed the instructions of the group and were not aware of any fraudulent scheme. Whatever may be the position of the other participating broker-dealers however, it is clear that Cirlin Associates, Cirlin and Barrabee were much more deeply involved in the group's operations. Cirlin Associates became registered with the Commission as a broker-dealer in March 1963. Cirlin and Barrabee were its only officers and employees; Cirlin, who owned all the stock, was president and Barrabee was vice-president and secretary. Cirlin Associates did not have much business to start with and there is nothing in the record to explain its massive activity in the contrived Jerome stock transactions other than that it was a part of the group's scheme and operation.

As the hearing examiner found, the role played by Cirlin Associates obviously constituted a necessary and integral part of the conspiracy, a role of which Cirlin could not remain ignorant. From their vantage point at the hub of the many continuing circuits of Jerome stock during May, June and July 1963, Cirlin Associates, Cirlin and Barrabee could see that the ever-increasing prices were arbitrarily set by Herman and Ross, and that these individuals controlled the supply of the stock. Moreover, Cirlin had been informed by Ross of the reciprocal business arrangements, involving the use of the Jerome stock, with broker-dealers furnishing listed business. In addition, Ross and Herman gave Cirlin 2,500 shares of Jerome stock, to be used as he saw fit, and on instructions from Herman and Ross, Cirlin Associates received the 7,400 shares of Jerome stock which came from the Swiss bank accounts and fed these shares into the circuits. Further, members of the group, particularly Ross, were frequently in the office of Cirlin Associates, sometimes for hours at a time, and used Cirlin Associates' facilities to make long-distance and even trans-atlantic telephone calls and to send wires to Europe.

Cirlin Associates consistently avoided the necessity of paying for Jerome shares it purchased by issuing delivery instructions to the broker-dealers from whom it purchased and to whom it sold. In view of the volume of transactions in Jerome stock which the group funnelled through Cirlin Associates, Cirlin devised two mimeographed forms. One such form instructed a broker-dealer who sold to Cirlin to deliver the stock against payment to another broker-dealer to whom Cirlin Associates had resold the stock. The other form instructed the broker-dealer who bought the stock from Cirlin Associates to receive the stock from the first broker-dealer, and to pay him the amount Cirlin Associates was obligated to pay and remit direct to Cirlin Associates the credit balance which represented its profit on the matched purchase and sale.

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11 contd./

the contrived transactions in Jerome stock had they been seen by management, in contrast to the situation in the instant case where the record contains a number of letters which were sent to K Co. and which would have alerted Kamen to the scheme had he seen them.

Contrary to the position of other broker-dealers participating in the Jerome stock transactions, the profits to Cirlin Associates far exceeded the amount of commissions on listed business furnished by Cirlin Associates to K Co. 12/ These profits as well as the 2,500 shares of Jerome stock given it by Ross and Herman were obviously compensation for the vital function being served by Cirlin Associates in distributing the reciprocal business to other broker-dealers.

The inference is compelling that Cirlin Associates, Cirlin and Barrabee were full fledged participants with knowledge of the fraudulent scheme. 13/ At the very least, they deliberately closed their eyes to facts they had a duty to see. 14/ We conclude, as did the examiner, that Cirlin Associates, Cirlin and Barrabee, 15/ willfully aided and abetted the 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 by the members of the group. 16/

In addition, we find, as did the hearing examiner, that Cirlin Associates, aided and abetted by Cirlin and Barrabee, willfully violated Section 17(a) of the Exchange Act and Rule 17 CFR 240.17a-5 thereunder, in that it failed to file a report of its financial condition as of a date not less than one nor more than five months after its registration became effective. 17/

12/ K Co.'s books showed gross commissions of less than $600 received on listed business obtained from Cirlin Associates, Cirlin and Barrabee, and Cirlin estimated that they furnished K Co. listed business aggregating about $600 in gross commissions, although at another point he estimated such gross commissions at between $2,000 and $3,000. In any event, and even if we deduct from Cirlin Associates' gross profit of about $15,000 on the circuit transactions $1,310 which Cirlin stated he had paid to other broker-dealers at the instruction of Ross, these profits would far outweigh the commissions on listed business supplied by Cirlin Associates, Cirlin and Barrabee.

13/ Cf. Theodore A. Landau, 40 S.E.C. 1119, 1124 (1962); Halsey, Stuart & Co., Inc., 30 S.E.C. 106, 112 (1949).

14/ See United States v. Benjamin, 328 F.2d 854, 862 (C. A. 2, 1964), cert. den. 377 U.S. 953.

15/ Barrabee appeared by counsel on the first day of hearings, but on the second day such counsel stated he was withdrawing from the case and Barrabee did not appear or otherwise participate thereafter. The Hearing examiner concluded that Barrabee had defaulted under Rule 6(e) of our Rules of Practice. Barrabee did not file a petition for review of the hearing examiner's findings against him, and under our Rules of Practice the hearing examiner's initial decision will become final as to him.

16/ See Securities Exchange Act Release No. 7688 (August 27, 1965).

17/ Cirlin Associates and Cirlin argued that the fact that this Commission obtained an injunction against them constituted an "election" which bars us, under the doctrines of double jeopardy and res judicata, from taking any action against them in these administrative proceedings based on the same activities. That injunction, entered with the consent of the Cirlins, who neither admitted nor denied the allegations

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In view of the nature of their involvement in the scheme, we conclude, as did the hearing examiner, that it is in the public interest to deny Cirlin Associates' request for withdrawal of its broker-dealer registration, to revoke that registration, and to bar Cirlin and Barrabee from being associated with a broker or dealer.

An appropriate order will issue. 18/

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

Orval L. DuBois
Secretary

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17 contd./

of the complaint, permanently enjoined them from violations of the anti-fraud provisions of the securities acts in connection with the purchase, offer or sale of Jerome stock. (U.S.D.C. S.D.N.Y., Civil Action File No. 63-2331, August 13, 1965). However, the Exchange Act provides several parallel and compatible procedures for the achievement of its objectives, and the use of more than one avenue is permissible. The injunctive and administrative remedies we have pursued in this case are designed to serve different purposes, one to restrain further sale of Jerome stock in violation of the anti-fraud provisions of the securities acts, and the other to determine whether the Cirlins should be barred from or restricted in their activities in the securities business. An injunction rather than being a barrier to administrative action, is made an express and distinct ground for further remedial action under Sections 15(b)(5)(C) and 15(b)(7) of the Exchange Act. A. G. Bellin Securities Corp., 39 S.E.C. 178, 186 (1959); see also Lile & Co., Inc., Securities Exchange Act Release No. 7644, p. 7 (July 9, 1965).

18/ We have considered the initial decision of the hearing examiner and the exceptions thereto, and to whatever extent such exceptions involve issues which are relevant and material to the decision of this case, we have by our Findings and Opinion herein ruled upon them. We hereby expressly sustain such exceptions to the extent that they are in accord with the views set forth herein, and we expressly overrule them to the extent that they are inconsistent with such views.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
September 29, 1966

In the Matters of KAMEN & COMPANY 50 Broadway New York, New York and ABRAHAM KAMEN File No. 8-4175 FREDERICK CIRLIN ASSOCIATES, INC. 50 Broadway New York, New York and FREDERICK CIRLIN BRIAN FREDERICK BARRABEE File No. 8-11319 Securities Exchange Act of 1934 - Sections 15(b), 15A and 19(a)(3)	ORDER REVOKING BROKER-DEALER REGISTRATION, SUSPENDING FROM NATIONAL SECURITIES EXCHANGES AND REGISTERED SECURITIES ASSOCIATION, AND BARRING AND SUSPENDING FROM ASSOCIATION WITH BROKER-DEALERS

Proceedings having been instituted pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 to determine what if any remedial action is appropriate in the public interest with respect to Kamen & Company, Frederick Cirlin Associates, Inc., Abraham Kamen, Frederick Cirlin and Brian Frederick Barrabee;

Hearings having been held after appropriate notice, the hearing examiner having filed an initial decision, petitions for review thereof having been granted, and oral argument having been heard;

The Commission having this day issued its Findings and Opinion; on the basis of said Findings and Opinion

IT IS ORDERED that withdrawal of the registration as a broker and dealer of Frederick Cirlin Associates, Inc. be, and it hereby is, denied, and that such registration be, and it hereby is, revoked; that Kamen & Company be, and it hereby is, suspended from the New York Stock Exchange, the American Stock Exchange and the National Association of Securities Dealers, Inc. for 10 business days; that Frederick Cirlin and Brian Frederick Barrabee be, and they hereby are, barred from being associated with any broker or dealer; and that Abraham Kamen be, and he hereby is, suspended from being associated with any broker or dealer for 90 days. The suspensions of Kamen & Company and Abraham Kamen shall be effective at the opening of business on October 3, 1966.

By the Commission.

Orval L. DuBois
Secretary