ADMINISTRATIVE PROCEEDING
FILE NO. 3-543

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

BALANCED PROGRAMS, LTD. (8-10459)
31-41 BROADWAY
ASTORIA, NEW YORK
CHARLES S. SPERRAZZA

INITIAL DECISION

Samuel Binder
Hearing Examiner

Washington, D.C.

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BEFORE: Samuel Binder, Hearing Examiner

APPEARANCES: Neil Goldman, Mortimer Gerber, and Charles Snow on behalf of the Division of Trading and Markets, Securities and Exchange Commission.

Richard L. Dorff, Attorney for Respondents, 485 Fifth Avenue, New York, New York.

The issues presented in this private proceeding instituted by the Commission on March 7, 1966 pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") are whether the broker-dealer registration of Balanced Programs, Ltd. ("Balanced Programs") should be revoked; whether it should be expelled or suspended from membership in the National Association of Securities Dealers, Inc. ("NASD"); and whether Charles S. Sperrazza ("Sperrazza") its president, controlling stockholder and a director should be barred from association with a broker or dealer.

The order for proceedings alleges that during the period from about January 15, 1962 to January 31, 1963 Balanced Programs and Sperrazza willfully violated the registration provisions of the Securities Act of 1933 ("Securities Act")[1/] and certain of the anti-fraud provisions under the Securities Act and the Exchange Act[2/] in the offer and sale of Balanced Programs 5% $100 par value (non-voting cumulative) preferred stock ("Balanced Programs preferred

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1/ The registration provisions alleged to have been violated are Sections 5(a) and (c) of the Securities Act which in pertinent part make it unlawful to use the mails or the facilities of interstate commerce to sell or offer to sell or offer to buy a security unless a registration statement is in effect as to such security or unless an exemption from registration is available.

2/ The antifraud provisions alleged to have been violated are Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder. The composite effect of these provisions, as applicable here, is to make unlawful the use of the mails or of any interstate instrumentality to effectuate securities transactions by means of false or misleading statements of material facts, or any act or course of business which operates as a fraud upon customers, or of any other deceptive or fraudulent devices.

stock"), which was the only issue of securities offered to the public by the respondents.

(a) Violations of Sections 5(a) and 5(c) of the Securities Act.

No registration statement was ever filed with the Commission under the Securities Act with respect to the preferred stock or any other security of Balanced Programs. However, between January 15, 1962 and January 31, 1963 Balanced Programs offered an issue of its preferred stock to the public. In this connection Balanced Programs and Sperrazza sold 295 shares of Balanced Programs' preferred stock 3/ to nine residents of the State of New York and 20 shares of such stock to Mr. and Mrs. Albert Lisi (the Lisis) residents of the State of New Jersey. The respondents received $100 per share making a total of $31,500 received for such stock from the purchasers.

3/ A brief description of the preferred stock and its position in the corporate structure is helpful to an understanding of the representations made by Sperrazza in the sale of this security. Under its Articles of Incorporation Balanced Programs was authorized to issue 4,000 shares of stock, consisting of 1,000 shares of preferred stock, 2,000 shares of Class A common stock, and 1,000 shares of Class B common stock. The Certificate of Incorporation provided that as and when declared by the Board of Directors the holders of the preferred stock were "entitled to cumulative dividends thereon at the rate of 5% per annum on the par value thereof in priority to the payment of dividends on the common shares. After dividends at the aforesaid rate have been set aside for the holders of preferred shares, all remaining profits shall be distributed among the holders of common shares exclusively." Each share of preferred stock was convertible one year after issuance into one share of Class B common stock, a non-voting stock. The only class of securities authorized under the Articles of Incorporation which had voting rights was the Class A common stock. According to registrant's filing on Form BD filed on April 2, 1962, Sperrazza owned 95% of the Class A common stock.

The respondents claimed an exemption from registration under the Securities Act on the following bases. Firstly, they claimed that an exemption from registration was available to them for the sales made to the nine residents of the State of New York pursuant to Section 3(11), secondly, they asserted that an exemption from registration pursuant to Section 4(2) of the Securities Act was available for the stock sold to the Lisis and thirdly, the respondents contended that the offering of the preferred stock in its entirety was "exempted in that it was not a public offering." The latter contention appears to be inconsistent with respondents' argument to the effect that part of the offering was exempt under Section 3(a)(11) and that part of the offering was exempt pursuant to Section 4(2) of the Securities Act particularly because the claim of exemption under Section 3(a)(11) imports a sale involving a public offering limited to a state while the claim of exemption under Section 4(2) of the Act imports that there was no public offering at all and relates to a particular transaction.

Respondents' claims were contested by the Division of Trading and Markets ("Division") and are at issue here and they will be considered seriatim.

An exemption under Section 3(a)(11) of the Securities Act is available only if the entire securities issue is offered and sold to, and comes to rest exclusively in the hands of residents of the state in which the issuer is incorporated. It is well established

that if any part of the issue is offered and sold to a non-resident, the exemption is unavailable for all securities forming a part of the issue, including those sold to residents.[4/]

The respondents made a single continuous offering of its preferred stock between January 15, 1962 and January 31, 1963. There was no claim by the respondents that more than one issue of securities was involved in its offering of securities. The stock sold to the Lisis was part of the same issue as was sold to the public pursuant to Section 3(a)(11). It cannot under the facts in this record be considered a separate or different issue of securities.

The Commission has held that "it is clear that the private offering exemption in Section 4(1) cannot be available for a portion of a 'single' offering."[5/]

4/ Capital Funds, Inc. Sec. Exch. Act Rel. No. 7398 (August 20, 1964); Securities Act Rel. No. 4434 (December 6, 1961); S.E.C. v. Hillsborough Investment Corp., 173 F. Supp. 86 (D. N.H., 1958); Hillsborough Investment Corp. v. S.E.C., 276 F.2d 665 (C.A. 1, 1960).

5/ Herbert R. May, 27 S.E.C. 814, 819-20 (1948); Crowell-Collier Publishing Company, Securities Act Rel. No. 3825 (1957) 5; Op. Gen. Counsel, Securities Act Rel. No. 2029. Prior to amendment of the Securities Act in 1954, the "private offering" exemption was contained in the second clause of Section 4(1). See also Securities Act Release No. 3825 (August 12, 1957) relating to Crowell-Collier Publishing Company where the Commission pointed out that "It has been the Commission's position that an issuer or an underwriter may not separate parts of a series of related transactions comprising an issue of securities and thereby seek to establish that a particular part is a private transaction if the whole involves a public offering of securities."

Under these circumstances no exemption from registration was available under Sections 3(a)(11) or 4(2) or any other section under the Securities Act for the offering of Balanced Programs securities made by the respondents.

The nub of respondents' argument in regard to the entire offering being exempt pursuant to Section 4(2) is that the respondents sold the stock to only 11 people and that "As to the character of of the persons to whom the stock was sold, the testimony has shown that the offerees were all either friends or relatives of Sperrazza or friends or relatives of people associated with the respondents. There was never any solicitation of the stock to the general public at any time."[6/]

Seven investor witnesses testified during the proceeding. With the exception of one investor witness, who was Mrs. Sperrazza's hairdresser, none of the witnesses was even acquainted with Sperrazza prior to the time he solicited them to purchase Balanced Programs stock. Sperrazza first heard of Mr. and Mrs. Albert Lisi through a Mr. Nicholas Lisi, a brother of Albert Lisi, to whom Sperrazza had sold Balanced Programs stock but Sperrazza had never had met Mr. and Mrs. Albert Lisi until December 1962, at which time he saw them once and sold them 20 shares of preferred stock.

6/ See Respondents brief p. 15.

With the exception of the Lisis who are husband and wife, none of the investor witnesses were related to each other or Sperrazza and they had no common business or other relationship and none knew anything about the company or its stock until approached by Sperrazza.

In connection with another investor witness, Sperrazza testified that "it was very difficult for me to say too much to him because he didn't understand that much." The same witness also testified that he didn't "understand much English" and also that he didn't "understand much." Sperrazza sold this witness $5000 worth of preferred stock and paid one of Balanced Programs registered representatives $500 commission for the latter's assistance in negotiating that transaction.

Sperrazza heard about the other purchasers from his friends and acquaintances and then approached such investors to sell them Balanced Programs preferred stock. Sperrazza obtained the signature of each of the purchasers of stock to a document reading in part as follows:

> "In purchasing such shares of Balanced Programs, Ltd. preferred stock, I am not relying on any representations or other statements made to me, whether oral or written, and I realize that these shares are being sold as a speculation.
>
> "I am purchasing the aforesaid preferred shares of Balanced Programs, Ltd. for investment and not with a view to distribution."

The investor witnesses in this case were not well educated. None were articulate and none appeared to understand very much about Balanced Programs, the security which they had purchased from the respondents or the "investment letter" they had signed. The impression they received from Sperrazza was either that there were no restrictions on disposition of the stock or that he would refund the money they had invested in the stock upon request, and that they would share in the profits of Balanced Programs which was a good money-making corporation or that a purchase of the stock would assure them of getting rich in a short time.

Neither Balanced Programs nor Sperrazza can successfully base a claim to an exemption from registration under the Securities Act upon the mere acceptance at face value of representations by purchasers that they are taking for investment and such an issuer cannot disclaim responsibility for investigation and consideration of all relevant facts and circumstances pertinent to a determination that a transaction does not involve a public offering. 7/

The basic mandate of Congress as written into the Securities Act is that registration must occur before any security is offered or sold, unless there is involved either an exempt transaction or an exempt security. Congress and the courts have placed the burden of proof of an exemption upon the persons claiming such exemption.

7/ See Securities Act Release No. 3825 (August 12, 1957).

The Supreme Court pointed out in S.E.C. v. Ralston Purina Co., 346 U.S. 119, 125 (1953)

> "The natural way to interpret the private offering exemption is in light of the statutory purpose. Since exempt transactions are those as to which 'there is no practical need for [the bills] application', the applicability of Section 4(1) should turn on whether the particular class of persons affected needs the protection of the Act. An offering to those who are shown not to be able to fend for themselves is a transaction 'not involving any public offering.'"

Furthermore the court pointed out that

> "the focus of inquiry should be on the need of the offerees for the protections afforded by registration. . . ."

The offerees in this case were the victims of numerous false and misleading statements made by Sperrazza to them regarding Balanced Programs and its preferred stock. They needed the protections which would have been afforded them by registration. 8/ The purchasers in this case did not have access to the kind of information which registration would disclose.

No exemption from registration was available under the Securities Act for the offering of Balanced Programs preferred stock made by respondents.

8/ The respondents false and misleading representations are discussed hereinafter.

(b) Violations of the Antifraud Provisions Under the Securities Acts.

Balanced Programs, a New York corporation was organized on January 15, 1962. It became effectively registered as a broker-dealer with the Commission on February 26, 1962.

Prior to the effectiveness of Balanced Programs registration as a broker-dealer, Sperrazza made highly optimistic and highly misleading statements to four purchasers regarding the business and prospects of the company, and their ability to get their money back if they purchased Balanced Programs preferred stock. At the time he made such statements the company had no business history, its prospects were unknown, its stock was not seasoned, and there was no market for its securities. Balanced Programs stock was a highly speculative security.

Sperrazza also approached investor witnesses in September, October, and December 1962 and made false and misleading statements to persuade them to buy preferred stock. At such time, he had in his possession financial statements showing that the company had sustained substantial losses in its operations but he never disclosed such material facts to persons to whom he offered Balanced Programs stock.

The facts regarding the sales of preferred stock by Sperrazza in January and February, 1962 may be summarized as follows:

On January 26, 1962 Sperrazza recommended that Mrs. Adele Donhauser ("Donhauser"), a widow 61 years old, who appeared to have little education and to be wholly unsophisticated insofar as securities matters were concerned, buy Balanced Programs' stock. She testified that he told her that her stock "would go up in a short time", that the stock would pay at the rate of "5% to start with . . . and later on it would go up also; almost to 10%," and that at any time that she wanted her "money back there wouldn't be no trouble at all". She bought 30 shares for $3000.

Sperrazza also called on Attilio Lippi ("Lippi") on January 26, 1962 and strongly recommended that he purchase the preferred stock. Sperrazza stated to Mr. and Mrs. Lippi that he was starting a business and wanted Lippi to be a "partner" and he added that the business would make a good deal of money and that they would get rich in a short time. Lippi in testifying with regard to his purchase of securities conceded that he didn't "understand much". He appeared to have little understanding of the transaction in which he had engaged. Lippi bought 50 shares for $5000.[9/]

9/ At Sperrazza's request, Lippi gave him a check for $5000 on January 26, 1962 and Sperrazza assured Lippi that he would hold it for a few days until Lippi could withdraw funds from his savings account to deposit in his checking account so that the $5000 check could be paid. Sperrazza gave Lippi a receipt for $5000 at that time. Later Lippi went to his savings bank which made out a check for him on February 2, 1962 which he mailed to Sperrazza in substitution for the check he gave Sperrazza on January 26, 1962.

Sperrazza approached Angelo Roman ("Roman") who was a laborer for Pan American Airlines on February 12, 1962 and told him there was a "kind of corporation, Balanced Programs that will . . . make money", that "in the first year they will not pay interest . . . that thereafter it would pay 5% and that after two years", if he wanted to sell his shares the company would buy them.

Roman testified that Sperrazza during the course of his sales talk also told him "Don't worry Mr. Roman, you gonna make . . . you gonna be proud, because you gonna make money in that business."

Roman told Sperrazza he did not have money in his checking account to pay for 20 shares. Sperrazza persuaded him to make out a check for $2000 and told Roman he would hold it for a few days because Roman did not have enough money in his checking account to cover the check. He advised Roman to withdraw funds from his savings account to make good on the $2000 check Roman had given him, which Roman did.

Sperrazza never informed Roman of the kind of business in which Balanced Programs proposed to engage or anything else about the company.

Sperrazza approached Concetta Palazzolo Picudella ("Picudella") in February 1962. Sperrazza told Picudella that Balanced Programs was an insurance company and that it was a good investment. He also told her she would make a profit and could sell the stock back to the company after she had purchased it. Sperrazza reminded her

that she had bought mutual funds and that they had done well. He told her nothing else about Balanced Programs.

Ricudella testified that she was earning about $4000 a year in 1962.

When Sperrazza made the representations summarized hereinabove in January to Donhauser and Lippi, and in February to Roman and Ricudella, there was no reasonable or responsible basis for the making of such statements to these investors. As the Commission pointed out in Alexander Reid & Co., Inc., 40 S.E.C. 986, 990 (1962):

> "A broker-dealer in his dealings with customers impliedly represents that his opinions and predictions respecting a stock which he had undertaken to recommend are responsibly made on the basis of actual knowledge and careful consideration. Without such basis the opinions and predictions are fraudulent, . . ." 10/

In Heft, Kahn & Infante, Inc., Securities Exchange Act Release No. 7020, p. 4 (1963), the Commission also pointed out that:

> ". . . There is inherent in the dealer-customer relationship the implied relationship that the customer will be dealt with honestly and fairly and that representations respecting a stock which the dealer recommends are reasonably made on the basis of knowledge and careful consideration."

In view of the fact that Balanced Programs had not even embarked upon its broker-dealer business at the time Sperrazza made the statements to witnesses as recounted hereinabove, there was no basis whatever for his highly optimistic predictions of profits, the payment of dividends, or the return of the investment made by the purchasers in in the stock.

10/ See also Barnett & Co., Inc., 40 S.E.C. 1 (1960).

As of June 30, 1962 Balanced Programs had sustained a net loss of $7,790.37 and had sustained a net loss of $13,189.87 for its fiscal year ended January 31, 1963.

Balanced Programs filed financial statements with the Commission prepared by its accountants reflecting these financial facts. After having been advised by the company's accountants of the net losses in June 1962, Sperrazza sold stock again to Mr. Donhauser in October 1962, to Irene Conrad ("Conrad") in September 1962 and to the Lisis in December 1962. The facts in this connection may be summarized as follows:

In September 1962 Sperrazza visited Conrad, an investor witness. Mrs. Conrad had a number of insurance policies in which she had been investing for 20 years. Sperrazza advised her to turn in such policies and make certain investments which he was recommending. Among the investments which he recommended was Balanced Programs preferred stock. In this connection he told Mrs. Conrad that Balanced Programs was making money, that it would pay yearly interest on her investment and that if she wanted to dispose of her stock in Balanced Programs, he would arrange for the sale of such securities.

In accordance with Sperrazza's advice to her, she cashed in her insurance policies, purchased a new insurance policy from Sperrazza, a few shares of "Franklin Investment Program" and 25 shares of preferred stock at $100 per share. Mrs. Conrad is a "car hop" and operates with her husband a small grocery store. Their entire income in 1962 and 1963 was approximately $140 a week.

In October 1962, Sperrazza visited Mrs. Donhauser a second time and advised her to buy additional shares of Balanced Programs preferred stock. In this connection he advised her to cash in a 20-year endownment policy in the face amount of $20,000 which she had had with the New York Life Insurance Company for a number of years to obtain the money to acquire additional shares of preferred stock. At that time Sperrazza told her that Balanced Programs was doing very well, that it would pay 5% and at a later date it would go up to 10%, and that she could get the money back which she was investing in the stock at any time that she wanted it back.

Mrs. Donhauser cashed in her insurance policy and obtained $4400, withdrew additional money from her savings account and deposited these funds in her checking account and gave Sperrazza $7000 for 70 additional shares of preferred stock.

In December 1962 Sperrazza approached the Lisis and recommended that they invest their money in Balanced Programs preferred stock, advised Mr. Lisi to cash in his insurance policies in order to make the purchase because Balanced Programs was a better investment than his insurance policies, that Balanced Programs was a money-making operation and that he wanted to share a good opportunity with the Lisis.

He represented that the investors in Balanced Programs would all get rich. He also advised the Lisis that he would repurchase their preferred stock if the Lisis wanted to sell it. The Lisis

cashed in their insurance policies with the Metroplitan Life Insurance Company to raise the money to buy Balanced Programs preferred stock. Thereafter Mr. Lisi gave Balanced Programs a check for $2000 and the Lisis got 20 shares of preferred stock.

The representations made in September 1962 to Conrad, in October 1962 to Mrs. Donhauser, and in December 1962 to the Lisis were grossly false and misleading and known to Sperrazza to be utterly false and misleading at the time he made them, particularly in view of the financial statements received by Balanced Programs reflecting the company's substantial losses in its operations as at June, 1962. In addition the financial statements for Balanced Programs fiscal year ended January 31, 1963 reflected that the company's financial condition continued to deteriorate after June of 1962.

Sperrazza was a witness on his own behalf and denied making every false and misleading statement attributed to him by each of the investor witnesses. However, it was proved beyond a shadow of a doubt that when he persuaded Conrad, Donhauser and the Lisis to invest in Balanced Programs' stock in September, October, and December 1962, Sperrazza not only knew that Balanced Programs had been losing money in its operations from its inception and did not advise them of this highly material fact but led them to believe, among other things, that Balanced Programs was making a great deal of money, and was a safe investment.

Sperrazza also denied, among other things, that he made any of the misleading representations attributed to him by Picudella. According to Sperrazza the facts in this connection were that he had been having

discussions about Balanced Programs with a friend and that Mrs. Picudella overheard these conversations, while she was dressing his wife's hair, and thereafter came "flying into the house" one night in February 1962 and said "'Okay, I will give you 2,000 and my sister will give a thousand' and that was the end of the conversation"about Balanced Programs and he thereafter delivered 20 shares of preferred stock to her for $2000.

It appeared however, that Sperrazza had testified during the course of an investigation made by the Division prior to the formal hearing on this matter. At that time Sperrazza was asked whether he went into detail in discussing Balanced Programs with Mrs. Picudella and his answer was in the affirmative. This, of course, was contrary to what Sperrazza had testified to during the formal proceeding.

The investor witnesses appeared to be very gullible and some of them did not appear to understand English very well. None of them appeared to understand that the stock they were buying was highly speculative or that a document they had signed purported to restrict them in the disposition of the stock. Such misunderstanding on their part was brought about by Sperrazza's misrepresentations at the time he sold the securities to these witnesses. Nor were they informed by Sperrazza about Balanced Programs of its financial condition at the time he offered the preferred stock to them.

On the other hand, Sperrazza appeared to be a glib,fast-talking, sharp individual, apparently far superior in intelligence to the purchasers of the securities.

The testimony of the investor witnesses is credited by the Hearing Examiner and Sperrazza's testimony is not credited.

(c) Public Interest

Balanced Programs in its brief under the heading "Facts in Mitigation" refers to the fact that the company made only one sale to non-residents of New York. This was a sale to the Lisis, residents of New Jersey, made in December 1962 a time when Balanced Programs financial condition had from the time of its incorporation in January 1962 become increasingly worse and Sperrazza's representations to these purchasers to induce them to buy the stock were grossly false and misleading, and he knew they were grossly false and misleading when he made his sales talk to the Lisis. In addition, a violation of the registration provisions under the Securities Act is a very serious matter..

The evasion of the registration requirements cannot be considered a mere "technical violation".[11/] When such a violation is accompanied by representations made to investors which are grossly false and misleading the sanction which should be imposed, should be related to the seriousness of the offense. Here there was no basis for a claim of exemption from registration and Sperrazza's representation were grossly false and misleading.

11/ U.S. v. Doyle (S.D.N.Y.) Docket No. 29750 (Federal Securities Law Reports CCH ¶91547)

Accordingly, it is ordered that the registration of Balanced Programs, Ltd. as a broker-dealer be and hereby is revoked; that Balanced Programs, Ltd. be and hereby is expelled rrom broker membership in the National Association of Securities Dealers Inc. and that Charles S. Sperrazza be and hereby is barred from being associated with a broker-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 fifteen 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 14(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.

Samuel Binder
Hearing Examiner

Washington, D.C.
November 17, 1966