ADMINISTRATIVE PROCEEDING
FILE NO. 3-609

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
CHARLES P. LAWRENCE Auburn New Hampshire

INITIAL DECISION

James G. Ewell
Hearing Examiner

Washington, D. C.
December 30, 1966

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BEFORE: James G. Ewell, Hearing Examiner

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

Sumner H. Woodrow, Esq. of Boston, Massachusetts
for Charles P. Lawrence, respondent.

These are public proceedings instituted by order of the Commission dated April 21, 1966 pursuant to applicable provisions of the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act), to determine what remedial action, if any, pursuant to Section 15(b)(7) of the Exchange Act,[1/] is appropriate in the public interest in respect of Charles P. Lawrence (respondent), by reason of alleged violations of certain anti-fraud provisions of the above-mentioned statutes.

The Order for Proceedings (Order) alleges in substance that respondent, during the period from or about February 1, 1965 to December 1, 1965, willfully violated the anti-fraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act together with Rule 10b-5 thereunder[2/] in that said Lawrence made use of the mails and instrumentalities of interstate commerce in connection with the offer, sale and purchase of a certain security, namely the common stock of Seastores, Inc. (Seastores) and in connection therewith perpetrated a scheme to defraud the purchaser thereof by engaging in the following:

1/ Section 15(b)(7) of the Exchange Act as here pertinent provides in substance that the Commission, after appropriate notice and opportunity for hearing, by order may censure any person, or bar or suspend for a period not exceeding twelve months, any person from being associated with a broker or dealer, if the Commission finds that such action is in the public interest and that such person has willfully violated any provision of the Federal Securities Acts or of any rule or regulation thereunder or is subject to any disciplinary order by reason thereof.

2/ The composite effect of the anti-fraud provisions referred to above as applicable here is to make unlawful the use of the mails or means of interstate commerce in connection with the purchase offer or sale of any security by the use of a device to defraud, an untrue or misleading statement of a material fact, or any act, practice, or course of business which operates or would operate as a fraud or deceit upon a customer.

1. Represented to said purchaser that he was offering and selling securities of Seastores for the issuer thereof when in fact he had no authority to do so;

2. Appropriated the moneys paid by the customer aforesaid for Seastores shares to his own use;

3. Failed to honor a guarantee to said purchaser against loss;

4. Made false and misleading statements and omissions of material facts concerning:

(a) investment by respondent in Seastores stock,

(b) an impending public offering by Seastores,

(c) prospects of increased value of Seastores stock, and the sale or lease of a site for a motel,

(d) prospects of Seastores' obtaining a franchise for a widely known pleasure boat.

After appropriate notice a public hearing was held before the undersigned in the regional office of the Commission in Boston, Massachusetts, from August 22 to August 25, 1966, inclusive. Upon conclusion of the hearing proposed findings and briefs were submitted by counsel on both sides and these have been carefully considered. On the basis of the record as thus constituted and from observation of the witnesses the undersigned makes the following findings:

BASIC FACTS

At all times here relevant and since about February 1, 1965 Charles P. Lawrence (Lawrence) has been employed by Dewey Johnson & Co., a registered over-the-counter broker-dealer with a principal office in New York City. Early in 1965 said broker-dealer employed Lawrence as a securities salesman and manager of its branch office in Boston, Massachusetts. Prior to such employment, the record shows that Lawrence had been in the securities business since 1953 and was president of Eastern Investment Corporation, a registered broker-dealer with offices in Boston from about 1958 until 1963 when said company became involved in certain difficulties which resulted in appointment by a Federal court of a receiver and discontinuance of its broker-dealer operations.

Following these untoward events Lawrence sought other employment and became associated with Dewey Johnson & Co., as described above. While thus engaged, and in or about December 1964, Lawrence was introduced to one John Rogers Penn by his son-in-law, David Goodwin, an aviator employed by Penn to give flying lessons. Penn had initially engaged Goodwin at a salary of $100 a week to teach him to fly an airplane which Penn had recently purchased. Some time later, and as a result of these activities, Penn organized a corporation to engage in chartered airplane service to members of the public. Approximately half of the company's stock was issued to Goodwin in consideration of a promissory note for $3,500.00 and in contemplation of the latter's services in the development and operation of the business the plans for which however never materialized.

Shortly after meeting Penn, Lawrence, who by that time had become

associated with Dewey Johnson & Co., solicited Penn to open a trading and investment account with the firm, which Penn agreed to do, and shortly thereafter turned over to Lawrence and the company approximately $35,000 in securities. Penn then proceeded to effect numerous securities transactions through Lawrence and substantially increased the holdings in his account which reached a value of about $90,000 by the end of the year.

During the latter part of February 1965 the record shows, through the testimony of Penn who testified at length at the hearing, that Lawrence approached him for a personal loan in the neighborhood of $10,000 stating that he, Lawrence, had incurred heavy financial obligations as a result of the difficulties mentioned above in which his former broker-dealer business had become involved. Penn, however, refused to make the loan but continued to do business with Lawrence through his trading account with Dewey Johnson & Co.

Prior to his acquaintance with Penn, the record shows that Lawrence had acted for several years as broker for one Elizabeth Tilden Barber, owner of a corporation which operated a marina in West Dennis, Cape Cod, together with a store handling marine supplies. The business was conducted under the name of Seastores Incorporated and had been operated and managed by Mrs. Barber as sole owner during the past four or five years.

The capitalization of the corporation consisted of 100 shares of common stock outstanding and all held by Mrs. Barber. During the four-year period ending with calendar year 1965, the company had operated at a

substantial loss. The accumulated deficit at the end of 1962 had reached a total of $25,117.25. The operating losses up to that time were also substantial and for 1962 amounted to $8,026.40. In 1963 a net loss of $8,411.45 increased the deficit to $33,528.70. In 1964, however, operating results improved somewhat and showed a net loss of only $729.17 - but rose again in 1965 to $4,853.04, increasing the deficit to $39,110.91. [See financial statements in evidence as Division Exhibits Nos. 1 through 4(a) inclusive.][1/] In any event, the financial history of the business for the four-year period described was unfavorable so that Mrs. Barber, who testified at the hearing, decided to dispose of the business entirely if possible, or, if not, of a sufficient interest therein to bring in outside capital and some assistance in the management of the business which she confessed had developed problems with which she had not been able to cope successfully. In fact, the record shows that Mrs. Barber had found it necessary to advance approximately $62,000 to Seastores out of a personal trust fund to enable the company to meet its obligations.

As previously stated, Mrs. Barber had been a client of Lawrence who had handled a number of securities transactions for her during the operation of his former broker-dealer firm, and had also become aware of Mrs. Barber's difficulties in the management of the marina. As a result, Lawrence undertook to assist Mrs. Barber by seeking a buyer for the

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1/ Division's exhibits will hereinafter be designated "DX"; respondent's exhibits "RX"; and references to the transcript by R. and the page number.

business, or in the alternative, financial backing for development of certain plans for expansion, which will be referred to more fully below. Meanwhile, having made the acquaintance of Penn and learning of his substantial means, Lawrence proposed to the latter that he purchase a controlling interest in Seastores and furnished Penn with some, if not all, of the financial statements referred to above. Penn, however, indicated that he was not interested because of other commitments, particularly a real estate development in the Virgin Islands, and the matter was dropped at that time. Penn continued, however, to trade actively in securities through Lawrence. He also made substantial loans to David Goodwin, Lawrence's son-in-law, who, like Lawrence, was also in financial difficulties although not for the same reasons. These advances had reached a total of about $12,000 when Penn insisted on having them secured by a mortgage on Goodwin's home.

Not being successful in his efforts to sell a controlling interest in Seastores to Penn nor to obtain a $10,000 personal loan for himself from Penn, Lawrence conceived the idea of seeking a $5,000 loan which he represented was needed to complete an investment of $25,000 in Seastores for which he himself had made a commitment. Lawrence further represented that he had already advanced $20,000 toward this investment and required an additional $5,000 to make good his total commitment to Mrs. Barber, which he said had been made to enable Seastores to purchase a mechanical hoist designed to lift the larger type of pleasure boats out of the water for repairs and other services.

In view of Penn's lack of interest in the previous proposal to invest in Seastores or to loan him $10,000 as mentioned above, Lawrence, as an inducement for Penn to loan him the lesser sum of $5,000, told Penn that Mrs. Barber had plans under way to recapitalize Seastores by increasing the authorized common stock from 100 to 10,000 shares at a total valuation of $250,00 or $25.00 per share and that, upon completion of these arrangements, negotiations were in process for a public offering through Dewey Johnson & Co. at a price that would be based on the valuation mentioned, which he believed to be the book value of the shares, taking into account the estimated value of an option (held by Seastores but not yet exercised) to purchase the leased land upon which the marina was located, at a price of $125,000.

Lawrence further told Penn that if he would make the $5,000 loan he would repay it within 90 days and, in any event, in gratitude for the favor, would make Penn a gift of 500 shares of Seastores, representing half of what he expected to receive from Mrs. Barber as compensation for his services in assisting in her plans for recapitalizing and financing Seastores. Upon receiving Penn's acceptance the agreement was confirmed in a handwritten note, dated March 7, 1965, delivered to Penn by Goodwin who picked up the check for Lawrence. Said note reads in part as follows, sic, (See DX-7): 1/

1/ Only the first page of the above note was produced at the hearing, the second page appearing to be lost and unaccounted for.

"John = 3-7-65

With reference to the $5,000 check, please be advised that the following is my understanding:

(1) The $5000 is a loan to me and is repayable in 90 days.

(2) For the favor - I am willing to give you 1/2 of the shares which I will receive. I estimate but cannot guarantee that these shares (500) should have a value of $12,500. However, these shares probably will not be salable until this summer.

I have asked Dave to phone me Monday morn if these. . . ."

Upon receipt of the check for $5,000 from Penn, which is dated March 5, 1966, Lawrence deposited the same in his account with the Merchants National Bank at Manchester, New Hampshire. The record shows, however, that when the note became due ninety days later Lawrence was unable to make payment and requested Penn to extend the due date an additional ninety days and gave Penn a check for $100 representing payment of interest.

Upon the expiration of the extended due date of the note Lawrence again failed to make payment and also had failed to deliver any shares of Seastores stock - informing Penn that arrangements for the proposed public offering had not been completed. He assured him, however, that negotiations for the public offering were still under way and had not been abandoned - adding with enthusiasm that Mrs. Barber's new plans for the marina included a shopping center, restaurant and a motel, at a total cost in the neighborhood of a million dollars. Lawrence also stated that the Holiday Inns Company, which operates a nationwide chain of motels, had evinced an interest in the location and plans for expansion.

Meanwhile, the relationship between Penn and Goodwin underwent marked deterioration with the result that Goodwin during the summer of 1965 sought and obtained employment with one of the commercial airlines. Goodwin's actions in this regard angered Penn who, by this time, had advanced Goodwin, as above noted, a total of more than $12,000 with which to pay off his debts. While there was no direct relationship between the advances to Goodwin and the $5,000 loan to Lawrence, the possibility of sustaining substantial losses in the transactions described caused Penn to place both claims in the hands of his attorney for collection; to complain to officials of the Boston Regional Office of the Commission regarding Lawrence, and also to seek redress through Dewey Johnson & Co. by whom Lawrence, as previously mentioned, was employed as a registered representative in charge of its Boston branch office. As a result of these measures an agreement of settlement was reached in the early fall of 1965 providing for payment by Lawrence of a total of $6,300 representing $5,000 in repayment of the loan, $1,000 as attorney's fee and $300 interest. The sum of $3,000 was paid upon signing of the settlement agreement and the balance of $3,300, although made payable at the rate of $25 per month, was paid in full within about three months thereafter out of Lawrence's subsequent earnings with Dewey Johnson & Co. The record also shows that Dewey Johnson & Co. had advanced to Lawrence the initial payment of $3,000 and that Lawrence is still employed by the firm although the Boston office is no longer active except as a mailing address.

With the foregoing facts as background the issues raised by the order for proceedings will now be discussed.

FINDINGS OF ULTIMATE FACTS AND CONCLUSIONS OF LAW

At the outset it should be stated that the record shows, and it is not disputed, that the proposed recapitalization of Seastores never took place. In fact, it never went beyond the talk stage, so that the shares of stock which Lawrence represented he could deliver to Penn had actually never been issued or authorized and indeed were not even in existence at the time of his agreement to do so. The record further shows that Lawrence, although fully aware of the situation described - since he was the principal author and promotor of the plan for recapitalization and expansion of the Seastores operation - did not disclose to Penn the completely inchoate state of such plans. Such representations were of course obviously misleading and false and were made on several occasions, namely, when he approached Penn for a personal loan of $10,000 and, again, in connection with the 90-day loan for $5,000 which was coupled with the promise of delivery of 500 shares of Seastores, to which he stated he was already entitled, with the further representation that the stock would be saleable or marketable sometime during the summer of 1965 (although not guaranteed). [illegible], the letter agreement of March 7 heretofore quoted deceitfully stated that the stock would not be saleable until the summer of 1965 in order to create the inference that it would be saleable at that time. The latter representation was equally unfounded and false at the time, and was made for the obvious purpose, of course, of inducing Penn to make the loan and to allay his previously expressed misgivings by affording this assurance of additional benefits.

In addition to the foregoing Penn testified that in Lawrence's solicitations, both in connection with his approach for a $10,000 loan,

and, again, with regard to the $5,000 loan, Lawrence expressed great enthusiasm for Seastores as a good investment. In his first conversations with Penn regarding Seastores Lawrence suggested that he purchase a 51% interest in the corporation for $400,000, which Penn immediately turned down stating that he was not interested at the time because he was heavily involved in a real estate development in the Virgin Islands.

The representation that Seastores would be a good investment was without any reasonable basis since, as already noted, the company had been operating at substantial losses during the past four years, had experienced a large accumulated deficit and was clearly in need of refinancing. This was established through the testimony not only of Mrs. Barber but also of Harold Roberts, the public accountant who prepared the financial statements which were placed in evidence as DX-1 thru 4(a) inclusive.

Thus, Lawrence not only misrepresented the financial condition of Seastores but also coupled his offer of 500 shares with a precise statement of their alleged value. The actual language used, as shown in DX-7, supra, was: "I estimate but cannot guarantee that these shares should have a value of $12,500."[1/] Thus, while it is true the statement of value is characterized as an estimate coupled with the caveat that it was not guaranteed, the figures used were nevertheless obviously intended as a reasonable assurance of the value given and were clearly

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1/ Underscore added.

misleading --particularly since they were used in regard to a security that was not only unseasoned but, in this case, not even in existence except as a potential and a very uncertain one at that - as Lawrence well knew.

Besides these representations Lawrence admitted in his testimony he had informed Penn that his employer, Dewey Johnson & Co., was about to underwrite the public offering of Seastores stock. And again, although it is true that Andrew Johnson, a member of the firm, testified that the matter had been under discussion with Lawrence, he was also emphatic in stating that the proposal never went beyond the talk stage. In fact, Johnson said that while he had been requested to visit the Seastores marina he did not do so at that time as he had already inspected the property about five years previously and was acquainted with the layout. He also stated that according to his recollection he had not previously been impressed with the potentialities of the operation principally because the marina was located on the upstream side of the Bass River, thus requiring customers' boats to pass under a bridge that Johnson considered to be so low as to provide access only for very small craft. At any rate, Johnson further asserted that the proposed underwriting never reached a point where any actual figures were set down or even considered so that, again, Lawrence's assurance to Penn that a public offering was imminent was without a factual or reasonable basis.

The Commission and the courts have repeatedly held that representations made without a reasonable basis in securities transactions are fraudulent and violate the anti-fraud provisions of the Federal

securities acts. Thus in Mac Robbins & Co., Inc., S.E.A. Release No. 6846 (July 11, 1962) the Commission summarized the rule as follows, citing numerous cases:

> ". . .the making of representations to prospective purchasers without a reasonable basis, couched in terms of either opinion or fact and designed to induce purchases, is contrary to the basic obligation of fair dealing borne by those who engage in the sale of securities to the public."

Cf. also Alexander Reid & Co., Inc., 40 S.E.C. 986 (1962).

On this point it should also be noted that Lawrence's representation of a value of $25 per share for the 500 shares referred to in his letter agreement of March 7, 1965 was equally without a reasonable basis since the record shows it was founded, as previously mentioned, principally upon the estimated value of an unexercised option to purchase the leased land upon which the marina was located - such valuation not even being supported by an appraisal, nor footnoted in the financial statements. The valuation was therefore entirely speculative and could hardly have afforded a sound basis for establishing even the book value of the stock. The statement attributing a value of $25 per share to the Seastores stock was without a reasonable basis and falls squarely within the interdiction of the above-cited cases.

In this area it should also be mentioned that respondent's Exhibit (RX-1), dated November 12, 1964, is an agreement wherein Mrs. Barber engaged Lawrence to sell the entire Seastores operation for a

commission of 5% or, in the event of "reorganization" (recapitalization) and the sale of shares, that his compensation would be 1,000 shares. A copy of this agreement is attached as an Appendix hereto.

While this agreement appears to give some color of right to Lawrence's claim to 1,000 Seastores shares, if and when the same should become available, it still leaves the matter in the uncertain limbo of the future, which in this case never materialized and is therefore deemed insufficient to form a reasonable basis for the offer or sale of securities that were a mere phantom at that time. Moreover, such agreement is essentially irrelevant to the issues here since the foregoing findings are based on the determination, as more particularly set forth below, that the note agreement itself was a security within the meaning of the Securities Act and the Exchange Act and formed a substantial, if not the greater part, of the consideration for the transaction and the fraudulent representations made to effect consummation of the deal.

For the purpose of improving the financial picture of Seastores, respondent also introduced testimony showing that during 1965 Mrs. Barber had built new docking facilities at a cost which, when capitalized, reduced the net loss for the period from $4,853.04 to $721.44. See RX-7. However, cross-examination of Frederick Elashoff, public accountant who prepared these figures, revealed that they had been reconstructed from records which also included labor and materials for repairs and other expenses which admittedly were properly charged to expense rather than to

a capital account. The testimony further developed that the allocations of cost were not precise but were largely the result of estimates derived from consultation with Mrs. Barber and various employees. Under these circumstances the undersigned is of the view that allocation of such costs to a capital account was too speculative and inexact to be relied on for the purpose of changing the income figures for the period in a specific sum; and in any event do not change significantly the overall financial picture which still reflected after the proposed adjustment, the relatively large accumulated deficit of $34,979.31. At most, this adjustment shows only some improvement in current earnings which, again, is not deemed significant, vis-a-vis, the unfavorable results of the past four years already referred to.

Finally, Lawrence's statement that he himself had already invested $20,000 in Seastores to enable Mrs. Barber to purchase a hoist for large boats and needed $5,000 to complete his commitment to her was without the slightest basis in fact, for Mrs. Barber stated that Lawrence had not only not made any investment in Seastores or remitted any moneys to her out of the proceeds of the $5,000 advance from Penn or otherwise, but had actually borrowed $4,000 from her during about the same period; also, that said loan of $4,000 had not been repaid in whole or in part up to the time of the hearing. This representation by Lawrence was, of

course, patently false. In addition, Lawrence mentioned to Penn that Holiday Inns Corp. which operates a nation-wide chain of motels, had indicated an interest in constructing a motel on the Seastores site. But, again, Mrs. Barber stated that she had never discussed such a proposal with any of the officials of Holiday Inns and respondent himself introduced no evidence to substantiate this assertion which was misleading and obviously designed to impress Penn with the big potential of the plans for expansion of the marina.[1/]

The next issue to be determined is whether the transaction for the

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1/ The Order also charges that Lawrence falsely told Penn that Seastores had obtained a franchise for a widely known pleasure boat. In this regard, the record shows that Seastores in fact had had a franchise for a small boat marketed by the Chris-Craft Corporation through its Corsair Division. Moreover, Mrs. Barber testified that in the spring of 1965 - which would have coincided roughly with Lawrence's 90-day loan and purchase agreement with Penn - she had succeeded in negotiations for a franchise to sell the large Chris-Craft cruiser and by May or June of that year had one or two of these boats at the marina. Under these circumstances the charge in the Order, aforesaid, that Lawrence's representation was false or without a reasonable basis, is not sustained. No adverse finding is therefore made in this respect.

90-day loan and the promised delivery of 500 shares of Seastores constituted a sale of a security within the meaning of the applicable provisions of the Securities Act and the Exchange Act. But before reaching this point the question arises whether the transaction here actually involved a security inasmuch as the 500 shares aforesaid were not even in existence at the time of the offer when the false and misleading representations were made. However, on this point it is immaterial that the proffered shares were not then physically in existence, since the Commission and the courts have repeatedly held that a promissory note or any evidence of indebtedness is a "security," within the meaning of Section 2(1) of the Securities Act[1/] so that the loan agreement itself between Lawrence and Penn is a security irrespective of the inchoate status of the shares of stock involved. The decisions of the Commission and the courts have also held that the offer of a security is a "sale" within the meaning of the Securities Act. Indeed, a relatively recent case, Securities and Exchange Commission v. Addison, 194 F. Supp. 709 (1961) deals with both aspects of the question here and in fact, even refers to a "package transaction"

1/ Section (1) of the Securities Act provides in pertinent part:

> "The term security means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement . . .investment contract. . .or, in general any instrument commonly known as a 'security'. . ."

involving a purported "gift" of a security as part of the consideration for the deal as in the case at bar. In the Addison case the court held at p. 722:

> "The terms "sale," "sell," "offer to sell," "offer for sale," and "offer" are also broadly defined to include ingenious methods employed to obtain money from members of the public to finance ventures. For example, Section 2(3) of the Securities Act of 1933, 15 U.S.C.A. § 77b(3) defines the terms "sale" and "sell" to include "every contract of sale or disposition of a security, or interest in a security, for value;" and the terms "offer to sell," "offer for sale," and "offer" are defined therein to include "every attempt or offer to dispose of * * *, a security or interest in a security, for value." The definition continues by stating - "Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value." This means, for example, that a package transaction which includes a sale of a horse for $100 and a gift of a security to the purchaser nevertheless constitutes an offer and sale of the security for value within the meaning of the Securities Act of 1933. The giving of the personal loan notes, evidences of indebtedness, certificates of interest or participation in profit-sharing agreements and investment contracts whether as a gift out of gratitude for, or in consideration or exchange of, the personal loans of money or services of labor rendered, constitute sales of securities because either way it amounts to a disposition or giving of a security for value. Llanos v. United States, supra; Securities and Exchange Commission v. Vanco, supra; United States v. Riedel, 7 Cir., 1942, 126 F.2d 81." (underscoring added) 1/

1/ The above case was followed in Whitlow & Associates, Ltd. v. Intermountain Brokers, Inc., 252 F. Supp. 943 (1966) where the court stated in pertinent part at p. 947:

> [3] Defendant takes the position that a promissory note is not a security within the meaning of these sections. A leading case on this question is Llanos v. United States (9 Cir. 1953) 206 F.2d 852, 853-854, certiorari denied, 346 U.S. 923, 74 S.Ct. 310, 98 L. Ed. 417, in which the Court said:
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> > "Appellants * * * argue that promissory notes are not securities within the meaning of Section 2(1) of the Act. * * *

(Continued on next page.)

On the basis of the foregoing authorities the anti-fraud provisions hereinabove referred to are deemed applicable to the 90-day note agreement, since said transaction involved a security and was effected by means of false and misleading representations and omissions of

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"* * *

"* * * In defining the word 'security' in Section 2(1) of the Act, Congress intended to include all interstate transactions which were the legitimate subject of its regulation and the section should not be construed narrowly (citations omitted)."

After quoting the form of the promissory note there involved, the Court further said, at page 854:

"This instrument is clearly an 'evidence of indebtedness.' and as such falls within the statutory definition of securities. United States v. Monjar, 3 Cir., 147 F.2d 916, 920, certiorari denied, 325 U.S. 859, 65 S.Ct. 1191, 89 L.Ed. 1979."

The Llanos case was followed in S.E.C. v. Vanco, Inc., (D.N.J. 1958) 166 F. Supp. 422, 423 in which the Court held:

"* * * A note has also been judicially determined to be a security. Llanos v. United States, 9 Cir., 206 F.2d 852; United States v. Monjar, 3 Cir., 147 F. 2d 916; S.E.C. v. C.M. Joiner Leasing Corp., 320 U.S. 344, 64 S.Ct. 120, 88 L.Ed. 88. And the issuance of a promissory note constitutes a sale under the Act. Llanos v. United States, supra; Bogy v. United States, 6 Cir., 96 F.2d 734; S.E.C. v. Crude Oil Corp., 7 Cir., 93 F. 2d 844."; (underscoring added)

and more recently Llanos was followed in S.E.C. v. Addison (N. D. Texas 1961), 194 F.Supp. 709, in which the Court said, at page 721:

"The personal loan notes issued and delivered to the lenders are securities. The definition of the term 'security' includes 'any note.' * * *"

material facts. The examiner is therefore compelled to find that Lawrence willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act together with Rule 10b-5 thereunder.[1/] Having so found, the next question to be determined is what remedial action should be taken in the public interest. Before proceeding with the discussion of this issue, however, it should be noted that the record shows that when Lawrence deposited Penn's check for the proceeds of the $5,000 note agreement in his account with the Merchants National Bank at Manchester, New Hampshire it was transported by an agency of said bank via Eastern Airlines to New York City for clearance. The facilities of a public carrier engaged in interstate commerce were therefore used and the jurisdictional requirements of both the Securities Act and the Exchange Act are fully satisfied.

The Public Interest

Turning again to a determination of what sanction, if any, would be appropriate in the public interest, the record shows that the violations set forth in the foregoing are serious and deliberate inasmuch

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1/ The Commission has consistently held that in order to establish willfulness as that term is applied under Section 15(b) of the Exchange Act it is only necessary to prove that a person charged with a duty was aware of what he was doing and it is not necessary for him to have been aware of the legal consequences of his acts. Hughes v. S.E.C., 174 F. 2d 969, 977 (C.A.D.C. 1958); Thompson Ross Securities Co., 6 S.E.C. 1111, 1122 (1940); Carl M. Loeb Rhoades & Co., S.E.A. Release No. 5870 (Feb. 9, 1959); Whitehall Corp., S.E.A. Release No. 5667 (April 2, 1958). See also recent opinion in Gearhart & Otis, Securities Exchange Act Release No. 7329, dated June 2, 1964.

as Lawrence has had more than ten years experience in the securities business and had been a principal in a registered broker-dealer firm. On the other hand, there is no evidence that Lawrence has been involved in any other violations of law; and, although the broker-dealer firm of which he had been president had become involved, as previously noted, in serious difficulties requiring the appointment of a receiver, the precise nature of whatever if any violations existed has not been established in this record.[1/] Under such circumstances it can only be assumed that other violations of the securities laws by Lawrence or his former firm have not yet been proven or that the degree of his responsibility has not been fully determined. In this regard it must be also recognized, of course, that if his former broker-dealer firm should at some later time be found to have violated the securities laws during its past operations Lawrence would probably be chargeable as a principal with vicarious responsibility in some degree at least, despite his assertion that the firm's troubles had been brought about by the machinations of an associate whom he did not name - which still leaves the matter fraught with uncertainty.

In any event, the record shows that the Receiver for Eastern Investment Corp., Lawrence's former firm, was appointed on April 15, 1963, about three years prior to institution of these proceedings on April 21, 1966 so that ample time appears to have elapsed for the production of evidence of Lawrence's culpability if such were available. Moreover,

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1/ In the above regard the record shows that the broker-dealer registration of Eastern Investment Corporation was cancelled by the Commission on July 16, 1965 rather than revoked.

counsel for the Division stated at p. 543 of the record that there are presently no disciplinary proceedings pending against Lawrence except those with which we are presently concerned. Therefore, in view of the uncertain state of the record in this aspect it is not deemed feasible to make any determination regarding the impact of Lawrence's past difficulties upon the issue of what remedial sanction should be imposed here.

On the other hand, it is believed appropriate in this area to take into account the fact that Lawrence's violations in this case arose under the stress of serious financial difficulties stemming from his former broker-dealer operations; also, that Lawrence testified he was in the process of paying and had already paid off substantial sums to creditors of his former firm. In addition, the record shows that the $5,000 note agreement with Penn has been paid in full with interest, together with an attorney's fee of $1,000, and was so paid well in advance of the final due date under the terms of settlement. Furthermore, although the violations found here cannot be condoned, the fact remains that Lawrence is well past middle age and if the full sanction of an unlimited bar from the securities business should be imposed it would probably result in undue hardship - since it is well known that under modern industrial conditions it is often extremely difficult for one to secure employment so late in life in new or different fields.

Moreover, the testimony is not challenged that Lawrence has been and still is engaged in paying off the obligations of his former firm - rather than to seek the shield of bankruptcy. In these circum-

stances what more should the law ask of a wrongdoer of first offense than that he do his utmost to make amends? Has he not paid Penn in full and paid to others large sums he might have kept for himself had he chosen the role of the bankrupt? So now, should he not in all fairness and compassion be given another chance - under proper supervision - rather than be cut off, perchance, from the very means to make amends or to rehabilitate himself?

Thus, taking all of the circumstances into account it is believed that an order suspending Lawrence from employment by or association with a broker-dealer for a period of six months would be an appropriate sanction here and also satisfy the public interest - with the proviso however that, upon expiration of the six-month suspension, his future employment in the securities business shall be in a non-supervisory capacity and under appropriate supervision in compliance with the Commission's usual requirements in that regard.

Accordingly, IT IS ORDERED that Charles P. Lawrence, respondent herein, be and the same hereby is suspended from employment by or association with a broker or dealer for a period of six months following the effective date of this order, and under the terms and conditions set forth in the preceding paragraph.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice. It should be further noted that pursuant to said Rule, this initial decision shall become the final decision of the Commission as to all parties unless, pursuant to Rule 17(b) of said

Rules, any party shall file a petition for review thereof within fifteen days after service upon him of said decision; or, unless the Commission, pursuant to Rule 17(c) of said Rules of Practice, determines on its own initiative to review this initial decision.

Additionally, Rule 17(f) supra further provides that if any party shall timely file a petition for review or the Commission takes action to review this initial decision as to any party, the same shall not become final as to that party.

The proposed findings and conclusions of law submitted by the parties are affirmed insofar as they are consistent with the foregoing and are otherwise denied.

James G. Ewell.

James G. Ewell
Hearing Examiner

Washington, D. C.
December 30, 1966

Appendix

November 12, 1964
Boston, Mass.

AGREEMENT

It is mutually agreed that Elizabeth Tilton Barber as of this date engages the services of Charles P. Lawrence to act as agent in the sale of all or part of her ownership in Sea Stores, Inc. - a business located at West Dennis, Massachusetts. Should property be sold outright the rate of commission should be (over and above an option on said premises) five per cent (5%). In the event of reorganization including the sale of shares - compensation shall be (1000) one thousand shares.

Signed Elizabeth Tilton Barber

Charles P. Lawrence

Witness

COPY