ADMINISTRATIVE PROCEEDING
FILE NO. 3-5282

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
BULLINGTON-SCHAS & CO., INC., EDWARD J. BLUMENFELD, and A. DULANEY TIPTON, JR.	:

INITIAL DECISION

Irving Sommer
Administrative Law Judge

Washington, D.C.
September 11, 1978

ADMINISTRATIVE PROCEEDING
FILE NO. 3-5282

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
BULLINGTON-SCHAS & CO. INC., EDWARD J. BLUMENFELD, and A. DULANEY TIPTON, JR.	:	INITIAL DECISION

APPEARANCES: William M. Gotten, Esq. for Bullington-Schas & Co. Inc., and A. Dulaney Tipton, Jr.

Jerry B. Martin, Esq. for Edward J. Blumenfeld

Pamela B. Threadgill, Esq. and

James E. Long, Esq. Atlanta Regional Office, for the Division of Enforcement

BEFORE: Irving Sommer, Administrative Law Judge

This is a public proceeding instituted by Commission order (Order) of August 30, 1977, pursuant to Section 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act), to determine whether the above-named respondents committed various charged violations of the Securities Act of 1933 (Securities Act) and the Exchange Act and regulations thereunder, as alleged by the Division of Enforcement (Division), and the remedial action, if any, that might be appropriate in the public interest.

In substance, the Division alleges that respondent, Bullington-Schas & Co. (Registrant) wilfully violated and A. Dulaney Tipton, Jr. (Tipton) wilfully aided and abetted violations of Section 15(b) of the Exchange Act and Rule 15b3-1 thereunder in that Registrant failed to promptly file with the Commission an amendment on Form BD reflecting that Edward J. Blumenfeld (Blumenfeld), a salesman for Registrant was enjoined by the United States District Court for the Western District of Tennessee on September 13, 1973 from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

The Division further alleges that respondent Blumenfeld while employed at Shelby Bond Service Corporation (Shelby) during the period January 1975 through June 1975, wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by certain conduct and by making false and misleading statements

concerning securities that he was selling.

The Division further alleges that on September 13, 1973, Blumenfeld was permanently enjoined from further violations of Section 17(a) of the Securities Act and 10(b) of the Exchange Act and Rule 10b-5 thereunder by the United States District Court for the Western District of Tennessee, and that Blumenfeld was again enjoined (preliminary injunction) by the same Court from further violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder on May 27, 1977.

Respondents appeared through counsel, who participated throughout the hearing. As part of post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings thereof were made by the parties.

The findings and conclusions herein are based upon the evidence as determined from the record and upon observation of the witnesses.

Findings of Fact and Law

The Respondents

Respondent Bullington-Schas & Co. Inc. (Registrant) is a Tennessee Corporation with its office located in Memphis, Tennessee, and has been registered as a broker-dealer under the Securities Exchange Act since January 17, 1973. Registrant is a member of the National Association of Securities Dealers, Inc (NASD), the Cincinnati Stock Exchange and the Philadel-

phia-Baltimore-Washington Stock Exchange.

A Dulaney Tipton, Jr. (Tipton) became associated with Registrant as a salesman in 1959. Later he became a partner, and after the firm became incorporated in 1972, was elected President, a position he still holds. Both Tipton and Mrs. Juanita B. Cox (the other principal in the firm) comprise "the compliance division and most every other division within the firm." 1/

Edward Joseph Blumenfeld (Blumenfeld) has been employed in the securities business since 1969. He has worked for the following companies: A Duncan Williams & Associates, Municipal Securities Inc., Herman Bensdorf & Company, Investors Associates of America, Bob Hawks & Associates, and Carter & Company. He was employed at Shelby Bond Service (Shelby) from May 1974 through August 1975. Blumenfeld has been employed by the Registrant as a securities salesman.

Violations

Rule 15b3-1

Rule 15b3-1 requires a registered broker-dealer to "promptly file an amendment on Form BD correcting" information in its application for registration as a broker-dealer or in any amendment thereto when any of the information set forth in its application or previous amendments thereto

---

1/ Tr. 251

becomes inaccurate. The record establishes that registrant failed until January 29, 1976 to file a Form BD amendment that disclosed that it had associated with it a person (Blumenfeld) who had been permanently enjoined from further violating the Federal securities laws. This event, which registrant was required by Rule 15b3-1 to disclose promptly, occurred approximately five months prior to January 29, 1976, the filing date of registrant's Form BD amendment. Respondent alleges that the date the amendment must be filed is governed by Rule 15b3-1(a) [2/] which effective October 1, 1975 required "every broker or dealer whose registration is effective, or whose application is pending" to file no later than 120 days after October 1, 1975 an amendment to the application a complete Form BD. Respondent's reliance on this section is misplaced. The BD form was modified to reflect certain changes effected by the Securities Act Amendments of 1975. However, as a broker-dealer, registrant was required under Rule 15b3-1(b) to "promptly file an amendment or Form BD" where information contained "in any application for registration" or "any amendment thereto becomes inaccurate."

[2/] 17 CFR 240. 15b3-1(a)

Inasmuch as there is no justification in the record for registrant's delay in filing its Form BD amendment, registrant must be found to have failed to promptly file the required amendment.

Respondent Tipton contends that failure to file an amendment to the registration was not intentional, and that this information had been filed with other agencies. He further contends such other filings "belies any accusation of wilful aiding and abetting". His allegation is without merit. I find by a preponderance of the evidence that Tipton wilfully [3/] aided and abetted [4/] a violation by registrant of Section 15(b) of the Exchange Act and Rule 15b3-1 thereunder. As stated previously, Tipton was president of registrant during the time at issue and still is in office. During that time registrant failed to file an amended Form BD promptly as required which defect

---

3/ As the Court of Appeals for the Second Circuit observed in Tager v. Securities and Exchange Commission, 344 F. 2d at 8 quoted with approval in Lipper v. Securities and Exchange Commission, 547 F.2d at 180: "It has uniformly been held that 'wilfully' in this context means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the Rules or Acts."

4/ The record establishes that Tipton knew that Blumenfeld was enjoined and did not report it. He worked closely with the other officer in the firm who is designated Compliance officer, and let this vital information remain unreported contrary to Rule 15b3-1. As the Commission stated in H.C. Keister & Company, 43 S.E.C. 164, 169 (1966): "A finding that a person is an aider and abettor is established by a showing that he performed acts which he knows or has reason to know will contribute to the carrying out of the wrongful conduct."

See also Barraco & Company, 44 S.E.C. 539, 541 (1971); Weston and Company, Inc. 44 S.E.C. 692, 694-5 (1971).

was not corrected for approximately five months. As the Commission stated in Richards C. Spangler, Inc., Securities Exchange Act Release No. 12104 (February 12, 1976), 8 SEC Docket 1257, 1265:

> "A corporate broker-dealer's president is responsible for seeing to it that the firm complies with all applicable requirements. And he retains that responsibility unless and until he reasonably delegates a particular function to another in the firm and neither knows nor has reason to believe that such other person's performance is deficient".

Fraud in Securities Transactions by Blumenfeld

Section II B of the Order alleges that during the period from about January 1975 through June 1975 while employed at Shelby Respondent Blumenfeld wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 [5/] thereunder in connection

---

5/ 15 U.S.C. 78j-(b); 17 CRF 240. 10b-5
Rule 10b-5 provides as follows:

Rule 10b-5: Employment of Manipulative and Deceptive Devices

It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange

1) to employ any device, scheme or artifice to defraud

2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

with his purchasing, selling and effecting transactions in municipal bonds by employing directly and indirectly devices, schemes and artifices to defraud and by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading. As part of the aforesaid conduct Respondent Blumenfeld made untrue statements and omissions including but not limited to:

a) that the purchase of certain securities offered would be a safe investment, when, in fact, such investment was highly speculative;

b) that the financial condition of certain issuers was good when, in fact, no basis existed for such statement;

c) failed to disclose that the prices at which securities were offered to customers were not reasonably related to the then current market price for such securities;

d) failed to disclose that certain securities offered were a highly speculative investment;

e) failed to disclose that the lessees of certain industrial development revenue bond issues involved start-up corporations with no earnings history and very few assets;

f) failed to disclose that the issuers of certain bonds were experiencing severe financial difficulties adversely affecting the liklihood of their continued payment of interest and principal;

g) failed to disclose the charging of excessive mark-ups to customers.

Shelby Bond Service Corporation was the archetype of a "boiler room" operation. Gathered together in a small room were a host of salesmen, each furnished with his own long distance WATS line, selling municipal bonds to unknown purchasers. The salesmen had little or no training, and engaged in "cold calls" to prospective buyers culling various directories for prospects. The salesmen worked on very high commissions (up to 50%), and business was conducted in a carnival atmosphere of sales contests with additional money and personal prizes available to the most prolific salesmen. One salesman testified that while at Shelby, as a further incentive to the salesmen, money was taped to the wall, as a prize to be gathered up. In its memorandum opinion accompanying the issuance of a preliminary injunction from violating the securities laws issued against Shelby, Blumenfeld and others the Court found that new salesmen at Shelby were instructed in perfecting "their sales pitches by offering various 'bond stories' and suggesting ways to improve upon bond stories the salesmen thought up themselves. A 'bond story' is a fictitious story concerning the circumstances surrounding the acquisition of bonds by the security dealer which is intended to lead the investor to believe that he can acquire a safe investment at a bargain price. --- The use of bond

stories was a common, accepted practice at Shelby Bond.[6]"

Blumenfeld was part and parcel of this operation. He worked in Shelby's office, which was clearly a "boiler room", and he knew this to be so, not only from the open and notorious fraudulent activities going on around him" [7] but from his previous experience in the securities business. In September 1973, Blumenfeld signed a consent injunction [8] arising out of an action brought by the Commission against him and other respondents in the U.S. District Court for the Western District of Tennessee, [9] which permanently enjoined them from further violations of the Securities Act and Exchange Act provisions charged in the complaint. The Commission had charged that the violative conduct, among others, consisted of employment by the respondents of classic "boiler room" or "high pressure" sales methods to sell securities.

---

[6] S.E.C. v. Shelby Bond Service Corporation, et al. (D.C. W.D. Tenn.) Civil Action No. 77-2236. - Gov't Exhibit #'5.

[7] Court memorandum opinion, Gov't Exhibit 5, supra.

[8] He neither admitted or denied the allegations in the injunction complaint.

[9] S.E.C. v. Investors Associates of America Inc, Edmond J. Blumenfeld, et al, Civil Action No. 72-367 - Gov't Exhibit #2.

The record clearly and convincingly establishes that Blumenfeld was engaged in the sale of highly speculative municipal bonds by means of a high-pressure campaign which involved the repeated use of the same basic fraudulent representations and predictions. Blumenfeld variously told two customer witnesses that Washington County Utlity District Revenue Bonds (WCUD) were "good," "that it was a utility bond and it would be paid," "they were a good buy," that "its something good," and that it was a safe investment.

The optimistic statements made by Blumenfeld with respect to WCUD bonds had no reasonable basis and were fraudulent. Blumefeld furnished customers with no financial information about WCUD, and in fact he had no current financial information at the time his false predictions and representations were made. Blumenfeld did not inform his customers that the utility district had four divisions, two of which were experiencing financial troubles, and about his difficulty in receiving information about the district. He failed to tell them that the divisions issued bonds separately, and gave them the distinct impression that the district itself singly issued securities.

He alleged an attempt to obtain financial information, yet although he received none, continued to sell the district securities. If he had been more diligent and checked with the State of Tennessee authorities, Blumenfeld would have ascertained that the district was operating at a loss, that

audits for the fiscal year ending June 30, 1973 and June 30, 1974 showed the presence of serious financial problems, and that at least two of the four divisions of the district were insolvent. Moreover, a consolidated statement of operations for the entire district showed a net loss before depreciation and amortization of over $100,000.

He had the effrontery to send one investor a brochure describing a bond issue that was not related to the series of bonds he was selling, which brochure was outdated and belonged to a division of the district not related to his sales effort, which of course was entirely worthless to the customer.

As a professional in the securities business, Blumenfeld was under a duty to investigate and to see to it that his recommendations had a reasonable basis. 10/

10/ As the Court of Appeals for the Second Circuit said in Richard J. Buck & Co., 43 S.E.C., 43 SEC 998 (1968):

> "Brokers and salesmen are under a duty to investigate, and their violation of this duty brings them within the term "wilfull" in the Exchange Act. Thus a salesman cannot deliberately ignore that which he has a duty to know and recklessly state facts about matters of which he is ignorant. He must analyze sales literature and must not blindly accept recommendations made therein.
>
> ***
>
> In summary, the standards--are strict. He cannot recommend a security unless there is adequate reasonable basis for such recommendation. He must disclose facts which he knows are those which are reasonably ascertainable. By his recommendations he implies that a reasonable investigation has been made and that his recommendation rests on the conclusion based on such investigation. Where the salesman lacks essential information, he should disclose this as well as the risks which arise from his lack of information."

That reasonable basis was lacking here. Other than being told that the district bonds were good by the paying agent and another party he contacted (accepting their oral statements blindly), and an alleged attempt to obtain financial information which never arrived, as a professional securities salesman he knew he had no concrete information about the financial status of the utility district, and yet he enthusiastically from his "boiler room" stall continued to pursue prospective customers to invest therein. Worse yet, he knew of financial difficulties present in the district, 11/ and should have been aware that something was amiss which required him to investigate the situation closely. Blumenfeld had a duty to make diligent inquiry into all aspects of the finances and background of the municipal securities he was recommending to his customers. 12/ He failed to do so.

Further indigative of the "boiler room" atmosphere at Shelby and Blumenfeld's role therein is his sale of some Alabama industrial revenue bonds for which he won a watch as a prize. He admitted that his entire knowledge of these

---

11/ Blumenfeld had knowledge that the CATV division was in financial straits.

12/ Walston & Co. Inc., 43 SEC 508 (1967)

bonds was limited to what his superiors told him. 13/ Thusly he was told the price, maturity date, interest etc, but absolutely nothing else concerning the financial status of the bond, the financial background of the issuer, history etc. His recommendation was "unjustified by the information at his disposal." 14/

The Commission has consistently stated that a salesman cannot recommend securities without making diligent inquiry, and without having reliable financial data. 15/ Here he had no financial information on the Alabama bonds, and as discussed previously had no concrete financial data on the Washington County Utility District. Having no current financial data in both instances, Blumenfeld could not by any stretch of the imagination have possibly had an adequate

---

13/ Testimony before the SEC on February 11, 1977, Exhibit #51. p. 28

Q. When you sold that bond, you said you had never sold it before. What did you know about the bond in order to sell it?

A. Exactly what Max told me about it, you know.

Q. Which was?

A. He said it was a good bond, it had always paid, it was a good company___ __

14/ Irving Friedman et al., 43 S.E.C. 314, 320 (1967)

15/ Willard G. Berge et al., Securities Exchange Act Release No. 12486 (September 30, 1976); Richard C. Spangler Inc., Securities Exchange Act Release No. 12104 (February 12, 1976), 8 SEC Docket 1257, 1264; Cortlandt Investing Co. 43 S.E.C. 998, 1009 (1968), aff'd sub. nom. Hanly v. S.E.C. 415 F. 2d 589 (C.A. 2, 1969).

basis for recommending any of these bonds, a fact prospective customers were not made aware of.

Blumenfeld admits that the record may show "he did not know all he could possible know about each bond or group of bonds he sold to customers," and that if he had spent more time researching his customers "could have been better advised." He strongly urges that he never intentionally misrepresented any security to a customer. This claim is spurious. Blumenfeld was selling securities of which he was in total ignorance. His conduct and his participation in these boiler room activites was totally fraudulent. His further contention that he dealt with sophisticated customers who knew they were dealing in speculative securities is equally meritless. "The fact that a customer is a sophisticated investor or usually deals in speculative securities cannot excuse fraudulent representations made to him." 16/

On the basis of the foregoing I find that Blumenfeld wilfully violated the anti-fraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

I further conclude that the Division has not proved by clear and convincing evidence that Blumenfeld violated the charge made in Section II B(e) of the Order for Proceedings

---

16/ R. Baruch & Co, 43 S.E.C. 13, 19 (1966)

and this charge is dismissed. 17/

Excessive Mark-ups

The record shows that during the period January 1 to December 31, 1975 Shelby in 325 retail sales of bonds charged mark-ups ranging from 5% to 60% or greater. More specifically 102 sales had a mark-up between 5-9.9%; 145 sales between 10-14.9%, 44 sales between 15-29,9%, 28 sales between 30-59.9%, and 8 sales at 60% mark-up or greater. 18/ As to Blumenfeld the record is clear and convincing that he was personally involved in excessive mark-ups of securities which operated as a fraud on his customers. Thusly during the period January through June 1975 Blumenfeld engaged in 19 sales of securities at mark-ups ranging from 7.1% to 50%; one sale was at a mark-up of 133%. At least eight of these sales were consummated on the same day Shelby acquired the securities. Blumenfeld knew and was an active participant in this boiler room operation, and he personally affected sales of bonds to unwary investors who were unaware of the unconscionable mark-up involved. As the Court said in Charles Hughes & Co. v. SEC, 139 F. 2d 434, 437: "___ the failure to reveal the mark-up pocketed by the firm was both an omission to state a material fact and a fraudulent device." Blumenfeld

---

17/ That he had "failed to disclose that the lessees of certain industrial developments revenue bond issues involved start-up corporations with no earnings history and very few assets."

18/ Gov't Exhibit 22

alleges there are no quotations from "the blue list showing what other dealers were offering the same bonds" for. The Commission has "repeatedly held that in the absence of countervailing evidence or usual circumstances, contemporary prices paid by a dealer in actual transactions with other dealers are the best evidence of the current market price. 19/ Under the circumstances herein established the prices paid by Shelby were representative of the prevailing price, and it is further clear and convincing that the sales by Shelby and Blumenfeld were not reasonably related to the prevailing market price. On the basis of the foregoing, I find that Blumenfeld wilfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Public Interest

The remaining issue concerns the remedial action which is appropriate in the public interest with respect to respondents. The Division urges that the Registrant and Tipton be censured, and that Blumenfeld be barred from association with any broker or dealer.

19/ See e.g. Gateway Stock and Bond Inc., 43 S.E.C. 191, 193 (1966), and cases there cited.

The registrant failed to file an amendment to its form BD registration for approximately five months. In pleading that no sanction is required, Registrant and Tipton point out a previous unblemished record, and that the information concerning Blumenfeld was filed with three different agencies, to wit, the NASD, Division of Securities, and the Municipal Securities Board of the State of Tennessee, attesting to their desire to fully report all changes, and that they were not attempting to deceive any authorities.

Registrant alleges that the entire municipal bond field was in flux as a result of the 1975 Amendments, and that they mistakenly thought they had 120 days to file an amended registration according to their reading of Rule 15b3-1. I was impressed by the candidness and veracity of both officers of the registrant. The record does not convey any deliberate intent on their part to violate the law. They recognize their error in judgment and vouchsafe that same will not re-occur. Under the circumstances herein, I cannot find it is either necessary or appropriate in the public interest to impose a sanction on registrant or Tipton.

As to Blumenfeld the record reflects conduct demonstrating a gross indifference and callousness to his obligations as a security salesman. He was completely aware of the boiler room techniques carried on at Shelby and was a partner in such activities, which operated as a

fraud on investors. In determining the sanction to be imposed in the public interest I also have considered the prior injunctions issued against Blumenfeld, and the course of conduct he pursued as described by the moving papers in the consent injunction, and the courts memorandum opinion in the preliminary injunction described previously.

The evidence as a whole shows Blumenfeld to have a marked insensitivity to the obligations of fair dealing borne by professionals in the securities business, and make it in my view inconsistent with the public interest to permit his continuance in the securities business. 21/

Accordingly, IT IS ORDERED:

1) The proceedings against Bullington-Schas & Co, Inc., and A. Dulaney Tipton, Jr. are hereby discontinued;

2) Edward A Blumenfeld be, and hereby is barred from association with any broker or dealer.

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

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after

---

21/ All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with the initial decision, they are accepted.

All pending motions not specifically responded to herein are denied.

service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c) determines on its own initiative to review the initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

Irving Sommer
Administrative Law Judge

Washington, D.C.
September 11, 1978