ADMINISTRATIVE PROCEEDING
FILE NO. 3-5435

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

FIRST PITTSBURGH SECURITIES CORPORATION :
SALVATORE F. GESWALDO :
DONALD R. KOHL
CARL B. BENSON :
BERNARD H. GOLLING
CHARLES KRZYWICKI :

[FIL]ED
JAN 16 1979
[SECURITIES & EXCHANGE] COMMISS[ION]

INITIAL DECISION

January 16, 1979
Washington, D.C.

David J. Markun
Administrative Law Judge

ADMINISTRATIVE PROCEEDING
FILE NO. 3-5435

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

:

FIRST PITTSBURGH SECURITIES CORPORATION
SALVATORE F. GESWALDO :
DONALD R. KOHL
CARL B. BENSON
BERNARD H. GOLLING :
CHARLES KRZYWICKI

APPEARANCES: John L. Hunter, Stanley M. Hecht, and Therese L. Miller, attorneys, Washington Regional Office, for the Division of Enforcement.

Gerald N. Ziskind, Esq., of Pittsburgh, Pennsylvania, for Respondents First Pittsburgh Securities Corporation, Salvatore F. Geswaldo, and Charles Krzywicki.

David R. Cashman, of Cauley, Birsic & Conflenti, Pittsburgh, Pennsylvania, for Respondents Donald R. Kohl and Carl B. Benson.

Anthony P. Picadio, of Tucker Arensberg Very & Ferguson, Pittsburgh, Pennsylvania, for Respondent Bernard H. Golling.

BEFORE: David J. Markun
Administrative Law Judge.

I

THE PROCEEDING

This public proceeding was instituted by an Order of the Commission on April 17, 1978, amended October 13, 1978 ("Order"), pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 [1/] to determine whether one corporate broker-dealer respondent and various individual respondents wilfully violated or wilfully aided and abetted violations of the registration requirements of Sections 5(a) and 5(c) of the Securities Act of 1933 [2/] ("Securities Act") and the antifraud provisions of Section 17(a) of the Securities Act [3/] and Section 10(b) of the Exchange Act [4/] and Rule 10b-5 thereunder [5/] in connection with the offer and sale of savings certificates and promissory notes of Fidelity Loan and Investment Corporation (FLIC debt securities), options to convert FLIC debt securities into the stock of GEBCO Investment Corporation (GEBCO options), and limited partnership interests in the Meadowlands Inn Limited Partnership (MILP interests), and the remedial action, if any, that might be appropriate in the public interest.

The Order also includes charges that the broker-dealer respondent, wilfully aided and abetted by three individual respondents, failed to record sales of FLIC debt securities,

---

1/ 15 U.S.C. §78o (b); 15 U.S.C. § 78s (h).
2/ 15 U.S.C. §77e (a), 77e(c)
3/ 15 U.S.C. §77q (a).
4/ 15 U.S.C. §78j (b).
5/ 17 C.F.C. 240.10b-5

GEBCO options, and MILP interests on its books and records in wilful violation of Section 17(a) of the Exchange Act [6/] and Rules 17a-3 and 17a-4 thereunder. [7/]

In addition, the Order charges that the broker-dealer firm, wilfully aided and abetted by two of the individual respondents, charged its customers excessive and unreasonable markups in its principal transactions with retail customers in wilful violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Lastly, the Order alleges as an additional basis for the imposition of sanctions the entry of various specified orders of temporary and permanent injunction entered by the United States District Court for the Western District of Pennsylvania against various of the respondents in this proceeding on the basis of their activities in connection with the offer and sale of FLIC debt securities and MILP interests. [8/]

6/ 15 U.S.C. 78q (a).

7/ 17 C.F.C. 240.17a-3, 240.17a-4.

8/ On February 10, 1977, the United States District Court for the Western District of Pennsylvania entered an order temporarily enjoining registrant from engaging in acts in violation of Sections 5(a) and 5(c) of the Securities Act with respect to the offer and sale of FLIC securities and MILP interests. On April 12, 1977, the same Court entered an order permanently enjoining Edward B. Boyer from engaging in acts, practices and courses of conduct in violation of Sections 5(a), 5(c) and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder with respect to the offer, purchase and sale of FLIC securities, MILP interests or any other securities. By order dated September 20, 1978, the District Court permanently enjoined Respondents First

(CONTINUED)

One named respondent, Edward B. Boyer, entered into a settlement agreement with the Commission; 9/ accordingly, such findings as will necessarily be made herein respecting Mr. Boyer in light of his involvement in activities that are the subject of charges against the remaining respondents, will have no application to him.

The five-day evidentiary hearing was held in Pittsburgh, Pennsylvania. All parties have been represented by counsel throughout the proceeding. Proposed findings of fact and conclusions of law and supporting briefs have been filed by the parties pursuant to 17 C.F.R. §201.16 of the Commission's Rules of Practice.

The findings and conclusions herein are based upon the record and upon observation of the demeanor of the various witnesses. The standard of proof applied to the antifraud charges is that requiring proof by clear and convincing

---

8/ (CONTINUED)

Pittsburgh, Geswaldo, Golling, and Kohl "from engaging in acts, practices, and courses of business which constitute and will constitute violations of" Sections 5(a) and 5(c) of the Securities Act, Section 17(a) of the Securities Act, or Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in connection with offers, sales, purchases, etc. of FLIC savings certificates or promissory notes, limited partnership interests of MILP, "or any other securities." Respondent Benson was similarly enjoined except that language appertaining to him did not refer to interests in MILP.

Official notice is taken that the time for appeal from these orders of the District Court has expired, making the injunctive orders final.

9/ Securities Exchange Act Release No. 14968, July 17, 1978.

evidence.[10/] As to the remaining charges, the preponderance of the evidence standard of proof is applied.

10/ The Court of Appeals for the District of Columbia Circuit has held that in an administrative proceeding brought by the Commission to determine whether a broker-dealer and its president had violated antifraud provisions of the federal securities laws and in which the sanction in question involved "an expulsion or a substantial suspension order" the "clear and convincing" standard of proof rather than the long-standing "preponderance of evidence" standard of proof should have been applied. Collins Securities Corporation v. S.E.C., 562 F. 2d 820, decided Aug. 12, 1977, as amended on denial of request for rehearing September 23, 1977. Although a petition for certiorari from the Supreme Court was not filed in Collins, the Commission has continued to assert in other proceedings that the preponderance of the evidence standard is legally sufficient in all administrative proceedings under the securities laws, e.g. Charles W. Steadman v. S.E.C., No. 77-2415, currently pending in the Court of Appeals for the Fifth Circuit, an appeal from the Commission's decision in Steadman Securities Corporation, et al., Investment Company Act of 1940 Release No. 9830, June 29, 1977, 12 SEC Docket 1041, July 12, 1977. In the Steadman appeal the Commission urges that Collins conflicts with an earlier decision of that same circuit (Abbett, Sommer & Co., Inc. v. Securities and Exchange Commission, ['70-'71] Fed. Sec. L. Rep. [CCH] ¶ 92,813 (1970), cert. den. 401 U.S. 974 (1971)); with decisions of the Court of Appeals for the Second Circuit (De Mammos v. S.E.C., C.A. 2, No. 31469 (Oct. 13, 1967), affirming James De Mammos, 43 S.E.C. 333 (1967); Wright v. S.E.C., 112 F. 2d 89 (C.A. 2, 1940); and with a long line of the Commission's decisions (Richard C. Spangler, Inc., Securities Exchange Act Release No. 12104, 8 SEC Docket 1257 (February 12, 1976), remanded on other grounds sub nom. Nassar and Co. v. Securities and Exchange Commission, ['77-'78] Fed. Sec. L. Rep. [CCH] ¶96,185 (C.A. D.C., October 3, 1977); Sidney Leavitt, Securities Exchange Act Release No. 10013, 1 SEC Docket 1 (February 22, 1973); M.V. Gray Investment, Inc., 44 S.E.C. 567, 575 (1971); In re Norman Pollisky, 42 S.E.C. 458, 459-460 (1967); Underhill Securities Corp., 42 S.E.C. 689, 695 (1965); White and Weld, 3 S.E.C. 466, 539-540 (1938).) In view of the conflict among the Circuits on this point and in light of the forums available on any appeal that may be taken, it is concluded that the more appropriate course is to apply the "clear and convincing" standard of proof as respects fraud charges.

II

FINDINGS OF FACT AND LAW

A. The Respondents; Background Concerning Relationships of Respondents to Issuers of Securities Sold and their Related Companies.

Respondent First Pittsburgh Securities Corporation ("First Pittsburgh" or "registrant"), a Pennsylvania corporation, has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act since May 11, 1972. It is a member of the National Association of Securities Dealers, Inc. and of the Philadelphia Stock Exchange.

First Pittsburgh was formed after Edward B. Boyer [11/] in early 1972 approached Respondent Salvatore F. Geswaldo, then engaged as a registered representative at Reynolds Securities, Inc., with a proposal for formation of a broker-dealer firm as a wholly-owned subsidiary of GEBCO, [12/] which Boyer had incorporated in Pennsylvania in 1970. As of 1974 GEBCO was the parent and holding company of a number of wholly-owned subsidiaries including, among others: Plaza Development Corporation ("Plaza") and Creative Development Corporation ("Creative"), both incorporated in Pennsylvania in 1970; Fidelity Loan and Investment Corporation ("FLIC"), chartered under Pennsylvania law as a small loan company, and acquired by GEBCO in 1972; and First Pittsburgh.

11/ See footnote 9 above and text relevant thereto.

12/ The record indicates that the name GEBCO is a contraction formed from the names Geswaldo and Boyer. It is not clear, however, whether Geswaldo had any association with GEBCO prior to formation of First Pittsburgh.

When First Pittsburgh was formed in April, 1972, Boyer was its treasurer and Respondent Donald R. Kohl, who had worked at Reynolds Securities, Inc. as a securities salesman along with Geswaldo, served on an interim basis as president until July, by which time Geswaldo had terminated his relationship with Reynolds Securities Inc. and took over as president of First Pittsburgh. Subsequently, Respondent Carl B. Benson, a longtime friend of Geswaldo's with no prior experience in the securities industry, and Respondent Bernard H. Golling, who was hired by Geswaldo from another securities firm, joined First Pittsburgh as securities salesmen in August 1972 and July 1973, respectively.

Controlling interest in GEBCO in 1972 was held by Boyer, president, and Geswaldo, vice-president, who together held the bulk of outstanding GEBCO stock. First Pittsburgh continued as a wholly-owned subsidiary of GEBCO until it was "spun off" in February 1975, at which time GEBCO shareholders received First Pittsburgh stock on a pro rata basis.

Respondent Geswaldo has continued as president of First Pittsburgh from July 1972 to the present. He has been registered with the NASD as a registered representative since January 1960 and as a principal since about July 1972. In addition to the duties inherent in his office of president, Geswaldo, in terms of direction of effort, has been active primarily in the area of trading and in some supervision and direction of registered representatives.

Geswaldo was vice-president of GEBCO and FLIC from about July 1972 to August 9, 1976, and was a substantial stockholder in GEBCO. After the latter date he continued to own about 20% of GEBCO's stock and continued as such to have a substantial interest in the management of its affairs. Thus, in February of 1977, he signed GEBCO's petition for reorganization under Chapter X of the Federal bankruptcy laws as "acting vice president."

In addition to his brief, interim period as president of First Pittsburgh when it first began business, Respondent Donald R. Kohl was employed as an NASD registered securities salesman with First Pittsburgh from April 1972 to September 1977. Within that period he owned from 1 to 10% of the stock of First Pittsburgh. He was registered as a principal with the NASD but did not function as such at First Pittsburgh with the exception of the period during his brief, interim stint as president.

Beginning in the fall of 1976, at a time when Boyer was in Florida and after Geswaldo had resigned as vice president of GEBCO in order to devote more attention to the affairs of First Pittsburgh, Respondent Kohl together with Respondent Benson assumed primary responsibility for the management of GEBCO and its subsidiaries, including the raising of new investor equity capital in substantial amounts that was needed if the financial condition of GEBCO was going to be stabilized

and the need for reorganization proceedings was to be averted.

Respondent Carl B. Benson was registered with the NASD as a registered representative from the commencement of his employment with First Pittsburgh in the fall of 1972, where he functioned as a securities salesman until September, 1977. Within that period he owned from 1 to 10% of the stock of First Pittsburgh.

As previously noted, Benson and Kohl in the fall of 1976 assumed primary responsibility for managing and attempting to obtain additional equity financing for GEBCO and its subsidiaries.

Respondent Bernard H. Golling has been registered with the NASD as a registered representative since approximately July 1969. He was employed as a securities salesman with First Pittsburgh from about August 1973 to September 1977. Within that period he was the beneficial owner of from 5 to 10% of the common stock of First Pittsburgh.

Respondent Charles Krzywicki has been a licensed principal and the operations manager of First Pittsburgh during the period January 1973 to the present. Within that period he has been the secretary-treasurer of First Pittsburgh and the beneficial owner of between one and five percent of its stock. His duties included maintenance and supervision of the maintenance of First Pittsburgh's books and records. He is charged only with wilfully aiding and abetting the alleged violations by registrant of requirements for keeping certain books and records.

Former Respondent Edward B. Boyer [13/] has been at various material times vice-president, secretary-treasurer, a director, and the beneficial owner of between seventy-five and one hundred percent of the common stock of First Pittsburgh. From approximately April 1972 to June 1977 Boyer, and from approximately June 1972 to the present, Geswaldo, have been in direct or indirect control of First Pittsburgh. Boyer has been a licensed principal with the firm from its formation in April 1972 but did not take an active part in its operation or management in view of his preoccupation with the affairs of GEBCO and various of its subsidiaries.

Boyer has been at relevant times president, an officer, a director, and a controlling person of GEBCO and its affiliates, which he organized or acquired. During 1976 and early 1977, Boyer resided in Florida, but through phone calls and correspondence he nevertheless took an active part in the management of, and in efforts to refinance, the financially-troubled GEBCO complex.

B. <u>Offer and Sale of Unregistered Securities</u>.

Between April 1974 and June 1975 GEBCO syndicated the Meadowlands Inn Limited Partnership ("MILP") pursuant to a claimed private offering exemption under Section 4(2) of the Securities Act. [14/] MILP involved offers and sales of 20 limited

---

13/ See footnote 9 above and text relevant thereto.

14/ 15 U.S.C. § 77d(2).

partnership interests at $25,000 each, for a total of $500,000 to be raised. It was structured with Plaza, a GEBCO subsidiary, as the 49% general partner of the partnership and with Creative, another wholly-owned subsidiary of GEBCO, as MILP's sublessee-management agent. The Meadowlands Hilton Inn and MILP operated under GEBCO's control following completion of the syndication.

Respondents Geswaldo, Kohl, and Golling made offers and sales of MILP interests to certain of their customers at First Pittsburgh, and they used the telephone and mails to offer to sell, to sell, and to deliver these securities to investors. Geswaldo sold $112,500 worth of MILP interests to four investors; Kohl sold $37,500 worth to one investor; and Golling sold $25,000 worth to one investor. Sales by these three respondents thus accounted for 35% of the funds to be raised under the MILP offering.

The sales were made by these respondents pursuant to Boyer's payment of a commission of 4% of the gross sales price. The record does not indicate that First Pittsburgh shared these commissions or that the sales were handled as First Pittsburgh transactions. However, First Pittsburgh offices, telephones and other facilities were utilized in the effectuation of these sales. Moreover, and perhaps of equal or greater importance, the status of the purchasers as First Pittsburgh customers gave the individual respondents

access to them as potential customers. The purchasers were generally not told that these sales of MILP interests were being handled as other than transactions through First Pittsburgh.

There is no dispute about the fact that the MILP interests are securities nor is there dispute about the fact that they were not registered under the Securities Act. The involved respondents urge the interests were exempt from registration as a private offering under Section 4(2) of the Securities Act, claiming that all sales were made to sophisticated investors who received "full disclosure".

The record establishes that the involved respondents have failed to carry their burden of establishing entitlement to the claimed exemption, which entitlement must be established not on conclusory statements of the respondents but upon evidence that is clear and exact and that comprehends all the purchasers or offerees. Lively v. Hirschfeld, 440 F. 2d 631, 632-3 (C.A. 10, 1971).

Only one MILP investor, E.F.G., testified at the hearing, at the call of the Division. This investor was solicited to buy an MILP partnership interest by Respondent Kohl, who mailed the customer an "MILP Confidential Memorandum" and a Hilton brochure. Later E.F.G. called Kohl about language in the MILP Memorandum indicating purchasers should have a net worth exclusive of home, furnishings, and auto of at least $250,000,

and told him he did not have such net worth. Kohl assured him it would be all right for him to invest, without asking E.F.G. what his actual net worth was. In fact, it was only about half of the indicated amount. Kohl also failed to ask the investor other questions that would have determined whether he was in fact a "sophisticated" investor, another of the criteria set forth for determining suitability in the Confidential Memorandum. Such inquiry would have shown, as the record establishes, that E.F.G. was not in fact a sophisticated investor or one having access to the kind of information concerning the MILP interests that would make a registration statement not important to him. Relying on Kohl's assurance of his eligibility to purchase, E.F.G. executed before a notary public without reading it a document reciting his net worth to be in excess of $250,000 and that he was a sophisticated investor.

In April of 1975 Kohl solicited and sold E.F.G. another one-half unit of the MILP interests. Although by June of 1975 Kohl was well aware of GEBCO's shaky financial condition [15/] and E.F.G. called him to inquire about why his MILP interests were not paying him anything, Kohl made no proper disclosure of the facts as he knew them nor did he re-evaluate the suitability of MILP interests as a holding in E.F.G.'s portfolio.

15/ This point concerning his knowledge of GEBCO's financial condition, as well as that of Geswaldo's, Benson's, and Golling's, is developed further at later points herein.

The involved respondents did not call other offerees or purchasers of MILP interests to testify nor did they otherwise establish entitlement to a Section 4(2) exemption under the criteria set forth in Lively, above.

Finally, if the testimony of the respondents who sold MILP interests is to be credited, they themselves did not possess reliable financial information and other relevant data concerning GEBCO and its subsidiaries adequate to make a judgement on the value of MILP interests. If they, who were close to and had access to Boyer, did not have such information, it is difficult to comprehend how the purchasers of MILP interests could have had such information. There is no evidence in the record that they had access to information concerning GEBCO and its subsidiaries such as would have made registration of the MILP interests unimportant to them.

From approximately 1973 to January 1977, Respondents Geswaldo, Kohl, Benson and Golling, along with others, offered and sold to public investors subordinated debentures, otherwise referred to as "savings" or "thrift" certificates, and promissory notes of Fidelity Loan and Investment Corporation ("FLIC debt securities"); on occasion, sales of FLIC savings certificates were coupled with options to convert these securities into GEBCO stock ("GEBCO options"). [16] The mails

---

16/ In February 1977 GEBCO and its subsidiaries, including FLIC, filed a petition for reorganization under Chapter X of the federal bankruptcy laws as a result of which redemptions of and interest payments on FLIC debt securities ceased.

and the telephone were used by these respondents to offer to sell, to sell, and to deliver these securities to investors.

As of January 1977 outstanding FLIC saving certificates were held by 125 public investors, representing proceeds of $1,167,267. Of that amount, $898,289 worth (76.96%) was held by 76 investors who had securities accounts at First Pittsburgh. Seventy-five of such 76 customers purchased their FLIC savings certificates through Respondents Geswaldo, Kohl, Benson, and Golling.

As of January 1977 there were also outstanding FLIC promissory notes held by eight public investors representing proceeds of $60,000. Two of these made purchases in the aggregate amount of $30,000 through one or more of the four individual respondents. Thus, 77 of the 78 purchasers of FLIC debt securities who were customers of First Pittsburgh made their purchases through Respondents Geswaldo, Kohl, Benson, and Golling.

The great bulk of FLIC debt securities sales after September 1973 were made by Respondents Geswaldo, Kohl, Benson and Golling, and of such sales subsequent to September 1975, representing some $600,000 worth, virtually all were made by these four named respondents.

Sales of FLIC debt securities and GEBCO options made by Respondents Geswaldo, Kohl, Benson, and Golling were not treated as, nor were they, transactions of First Pittsburgh. The firm re-

ceived no commissions or other compensation reflecting these transactions nor did it reflect them on its purchase and sales blotters. The firm did not issue confirmations, or otherwise treat the sales as First Pittsburgh transactions. The Division did not establish by a preponderance of evidence that these were in fact, as it contends, transactions of First Pittsburgh.

However, it is clear that the extensive sales of FLIC debt securities and occasional sales of GEBCO options by the four respondents who were also registered representatives of First Pittsburgh were made possible by the access to potential customers that their status as securities salesmen at First Pittsburgh gave them. Many of such purchasers regarded FLIC investments as just another item in their investment portfolios and were likely unaware that they were not First Pittsburgh transactions. 17/

Moreover, the offices, telephones, and other facilities of First Pittsburgh were utilized by the four individual respondents in making the sales of FLIC debt securities and GEBCO options.

17/ Transfers of funds from customer accounts for the purchase of FLIC securities were reflected on First Pittsburgh's records, and customers signed authorizations for such transfers.

On September 23, 1975, Boyer, faced with an acute and mounting need to generate money for operation of the Meadowlands Hilton Inn and to take care of unpaid construction bills and other expenses, entered into an agreement with Respondents Geswaldo, Kohl, Benson, and Golling (the "investment group") under which the group was to receive a controlling block of Boyer's GEBCO stock if the investment group met certain conditions, e.g. an early infusion of $40,000 and subsequent generation of prescribed monthly sums of cash through sales of FLIC debt securities and GEBCO options until December 21, 1976, at which time the escrowed Boyer GEBCO shares would be distributed to members of the investment group in proportion to the amounts of FLIC securities they had sold. 18/ The receipts from sales of FLIC securities were to be used to keep the GEBCO complex alive until operations of the Hilton Inn would improve enough to make the operation revenue producing. The investment group members, of course, eschewed any commissions in light of the arrangement for obtaining ownership interests in GEBCO.

During the period from September 6, 1974 to September 14, 1976, Respondents Geswaldo offered and sold some $143,198.25 worth of FLIC savings certificates to 24 purchasers who were

---

18/ The details of this agreement are spelled out more fully below in connection with consideration of the fraud charges.

customers of his at First Pittsburgh. Of this total amount, about $104,298.25 represented sales to 10 customers during the period October 2, 1975 to September 14, 1976. In addition, in October 1973, Geswaldo sold $20,000 worth of FLIC promissory notes to one customer at First Pittsburgh.

During the period from July 25, 1974 through July, 1976, Respondent Kohl sold approximately $376,765.28 worth of FLIC debt securities to 16 of his customers at First Pittsburgh. Of this amount, approximately $256,893.57 worth was sold to 11 customers during the period October 16, 1975 through July 1976.

During the period from November 26, 1974 to November 9, 1976, Respondent Benson sold some $176,188.64 worth of FLIC savings certificates to 21 of his customers at First Pittsburgh. Of this total, $138,055.86 worth represented sales to 18 customers during the period October 3, 1975 to November 9, 1976. In addition, Benson in May 1976 sold $10,000 worth of FLIC promissory notes to a customer of his at First Pittsburgh.

During the period January 2, 1975 to September 7, 1976, Respondent Golling offered and sold some $148,369.75 worth of FLIC debt securities to 18 customers of his at First Pittsburgh. Of this amount, $95,869.75 represented sales to 13 customers during the period November 20, 1975 to September 7, 1976.

It is clear that the FLIC debt securities and GEBCO options are securities within the meaning of Section 2(1) of the Securities Act, 15 U.S.C. 77b(1), and the involved respondents do not contend otherwise. The record establishes that FLIC debt securities and GEBCO options have never been registered with the Commission and the involved respondents do not contend otherwise.

Instead, these respondents urge that the FLIC debt securities had been sold for a considerable time before they began offering and selling them and they argue that they had a right to rely on Boyer's assurances or actions (and, as to Respondents Kohl, Benson, and Golling, upon Geswaldo's assurances 19/ or actions) to infer that FLIC debt securities and GEBCO options were in some way exempt from the registration requirement. 20/ Contentions by securities salesmen that they were entitled to rely upon assurances by other company officers as to the absence of need for registration were rejected in

---

19/ The record does not show that any selling respondent actually sought or obtained specific assurances from either Boyer or Geswaldo as to the availability of an exemption and the basis thereof.

20/ The intra-state exemption is not available because a number of sales were made to persons outside Pennsylvania.

Feeney v. S.E.C., 564 F. 2d 260,262 (C.A. 8, 1977) where the court stated in pertinent part:

> This court has recently recognized that ignoring the obvious need for further inquiry and reckless indifference to suspicious facts will support a finding of a violation of Section 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§77e(a) and 77(e)c. Wasson v. SEC, 558 F.2d 879,887 (8th Cir. 1977).

The facts presented in the instant proceeding present an even stronger case than those in Feeney for requiring each selling respondent to make his own reasonable investigation to determine the registration status of the securities. Thus, here, Geswaldo was the vice president of GEBCO, Geswaldo and Golling were both shareholders of GEBCO, and on September 23, 1975, Geswaldo, Kohl, Boyer, and Golling became part of an investor group that stood to acquire a controlling block of Boyer's GEBCO shares if they were successful in selling enough FLIC debt securities to keep GEBCO from bankruptcy. Moreover, when they became a part of the investor group, each member thereof became aware of the fact that revenues generated by FLIC were to be used in a fundamentally different way from how they had been employed theretofore. Certainly the selling respondents, by the time they became members of the "investor group," if not before, became duty bound to make reasonable inquiry concerning the registration status of

FLIC debt securities and GEBCO options. In failing to do so they ignored, in the language of Feeney, above, ". . . the obvious need for further inquiry and [demonstrated] reckless indifference to suspicious facts that will support a finding of a violation of Section 5(a) and 5(c). . . ."

On the facts found above, it is further found that First Pittsburgh wilfully aided and abetted wilful violations of the registration requirements of Sections 5(a) and 5(c) of the Securities Act by Respondents Geswaldo, Kohl, Benson, and Golling in the offer and sale of MILP interests, FLIC debt securities, and GEBCO options in that First Pittsburgh, through Geswaldo, its president, and Boyer, an officer and major shareholder, knew or should have known that the violations were occurring, and knew that First Pittsburgh was facilitating and furthering in a material way the making of the offers and sales that constituted the violations. 21/

C. Fraud in the Sale of Securities.

The record establishes by clear and convincing evidence that Respondents Geswaldo, Kohl, Benson, and Golling flagrantly violated the antifraud provisions of Section 17(a) of the Securities

---

21/ Securities and Exchange Commission v. Barraco, 438 F.2d 97,99 (C.A. 10, 1971); Securities and Exchange Commission v. Management Dynamics, Inc., 515 F.2d 801, 811 (C.A.2, 1975).

Act and of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in their sales of FLIC debt securities and GEBCO options.

Because the nature of such violations changed appreciably, indeed dramatically, with the formation on September 23, 1975, by these four respondents of the "investor group," referred to earlier herein, designed to promote and foster the sale of such securities under an arrangement with Boyer that would have given the investor group a controlling block of Boyer's GEBCO stock after a prescribed period and upon meeting certain conditions, it is necessary to set forth in somewhat greater detail than has been done heretofore the terms and conditions affecting the investor group and the circumstances leading to its formation.

On April 30, 1975, after the February "spin-off" of First Pittsburgh from GEBCO, Boyer wrote Geswaldo a confidential memorandum dealing with the question of whether First Pittsburgh should invite its registered representatives to acquire an ownership position in the firm, a subject the two of them had previously discussed. In the memo Boyer stated his opposition to the suggestion, stating, among other things, that <u>First Pittsburgh</u> did not need the money. Boyer contrasted First Pittsburgh's financial condition with that of GEBCO and

its affiliates, stating that "... the present financial situation of the Gebco companies is such, that the only area that may be in existence next year is First Pittsburgh." 22/ Boyer went on to write, ibid:

> First and foremost, when we did need money in Gebco, we made an offer, and it was not received by the brokers. I was willing to take in a partner then — because I needed the money — I do not need it now in First Pittsburgh, so I do not want partners now. It is that simple.

But by September, 1975, GEBCO and its subsidiaries were in such desperate financial straights that Boyer decided to offer certain registered representatives of First Pittsburgh a substantial ownership interest in GEBCO (not in the registrant), in a desperate effort to avert the imminent financial collapse of GEBCO. The schem he devised had certain aspects of ingenuity-- unfortunately, it also incorporated necessary elements of fraud by making present holders and subsequent purchasers of FLIC debt securities and GEBCO options unknowing or unwitting risk bearers of a GEBCO collapse.

In various memoranda and in a face-to-face meeting at GEBCO's offices (located in the same small building in which First Pittsburgh was located), Boyer explained to Geswaldo,

---

22/ Division's Exh. 87. The Division's exhibits are numbered; those of the respondents are lettered.

Kohl, Benson, and Golling the precarious financial condition of GEBCO and his plan for working out its survival.

Boyer explained that through an attorney he had worked out long-term payout arrangements with all construction creditors of the Hilton Inn whereby some $140,000 overdue the creditors would be paid at the rate of $2,000 per week to assure a complete payout by December 31, 1976. Entering into this arrangement was necessary, Boyer said, to keep the creditors from filing suit and thus bringing "the entire company down."

Even apart from the unpaid construction costs, the Hilton Inn's operations were not generating quite enough cash flow. Its bank account was generally overdrawn in an amount of some $35,000, though because of the "float" of checks and cash deposits, it was showing a cash balance of about $10,000, Boyer explained. The immediate need, then, was for an infusion of capital in the amount of $40,000 in order to "stabilize" the bank account and the generation of additional cash until the end of 1976 sufficient to pay off the unpaid construction costs at the rate of $8,000 per month together with any other GEBCO obligations that might become due that could not be met out of current operations. In addition, the capital to be generated by other than operation of the Hilton Inn would also be utilized to redeem FLIC debt securities and to meet the interest payments thereon.

The additional cash was to come from an accelerated campaign to sell FLIC debt securities, GEBCO options and perhaps GEBCO stock apart from an option arrangement. The selling campaign was to be conducted by Geswaldo, Kohl, Benson, and Golling, the "investor group," who would operate without commission or other direct compensation in return for receiving a pro rata (depending upon the success of each individual's efforts in raising or contributing cash) distribution of shares in a controlling block of 132,882 GEBCO shares owned by Boyer and escrowed for the purpose. At the time, Boyer owned 219,614 shares of GEBCO stock, representing some 67% of the 325,000 outstanding GEBCO shares.

Each member of the investor group signed the agreement with Boyer dated September 23, 1975 (Exh. 74) formalizing the arrangement, and the members of the investor group also entered into an agreement of the same date among themselves providing for the distribution of the escrowed GEBCO shares following successful completion of the terms of the agreement with Boyer.

Both agreements contemplated that additional members might be taken into the investor group, but evidently no one else joined.

The agreement with Boyer came into effect by October 13, 1975, by which time Geswaldo had provided the necessary infusion of a minimum of $40,000 within the prescribed 30 days. When

the agreement thus came into effect, the investor group acquired the immediate right to vote the escrowed shares of GEBCO stock, and Boyer came under an obligation not to incur any new or additional obligations without the concurrence of the investor group.

The agreement between Boyer and the investor group included a provision that the percentage of his ownership of GEBCO stock should not be diluted without his consent. In an October 13, 1975 memo to the investor group, Boyer gave blanket consent so that GEBCO options and GEBCO stock could be sold if the investor group so desired.

As already noted, the additional cash needed to keep the Hilton Inn, and GEBCO generally, solvent until operations of the Inn would, if successful, generate enough cash so as no longer to require outside "infusion" of cash, was to come primarily from sales of FLIC debt securities. This meant that FLIC would no longer invest proceeds so as to make a profit but would instead be making unsecured, interest-free intercompany loans to GEBCO or its subsidiaries. Thus, as already noted, sales of FLIC debt securities would have to be relied upon, among other things, to redeem FLIC debt securities when they became due and to pay interest thereon. The investor group was of course well aware of how this would operate.

This involved elements of a Ponzi-type scheme, since the plan would only work if increasing sales of FLIC debt securities could be generated. 23/

The record establishes that for the fiscal years ending June 30, 1975 and June 30, 1976, and as of February 1977, GEBCO and its subsidiaries, including FLIC, were insolvent, in that these companies were unable to pay their debts as they matured absent further sales of FLIC debt securities or borrowing or the infusion of further equity capital in some form. Moreover, their current liabilities exceeded their current assets at those times.

For the fiscal year ending June 30, 1975, GEBCO's total consolidated assets amounted to $1,309,533, its total consolidated liabilities amounted to $1,613,770, its total consolidated income amounted to $1,297,884, its total consolidated expenses amounted to $1,757,633, its consolidated net loss amounted to $459,748, its retained earnings amounted to a negative ("()") $624,769, and its total equity amounted to ($304,237). For the fiscal year ending June 30, 1975, FLIC's total consolidated assets amounted to $601,767, its total consolidated liabilities amounted to $733,761 (of which $689,397 consisted of outstanding FLIC debt securities),

---

23/ There is no indication in the record that sales of GEBCO options or of GEBCO stock reached any significant amounts.

its total consolidated income amounted to $42,486, its total consolidated expenses amounted to $121,293, its consolidated net loss amounted to $78,807, its retained earnings amounted to ($180,737), and its total equity amounted to ($131,944). For the fiscal year ending June 30, 1975, Creative's total assets amounted to $49,385, its total liabilities amounted to $313,099, its total income amounted to $1,051,718, its total expenses amounted to $1,288,904, its net loss amounted to $237,185, its retained earnings amounted to ($264,713), and its total equity amounted to ($263,713).

For the fiscal year ending June 30, 1976, GEBCO's total consolidated assets amounted to $1,514,139, its total consolidated liabilities amounted to $2,222,052, its total consolidated income amounted to $1,300,766 (of which $1,276,665 consisted of that of Creative, the manager of MILP), its total consolidated expenses amounted to $1,719,315 (of which $1,486,198 consisted of that of Creative), its consolidated net loss amounted to $418,548, its consolidated retained earnings amounted to ($1,022,234), and its total equity amounted to ($707,913). For the fiscal year ending June 30, 1976, FLIC's total consolidated assets amounted to $1,039,804 (of which approximately $940,000 consisted of unsecured loans receivable from related GEBCO companies and individuals), its total consolidated liabilities amounted to $1,283,875 (of which $1,228,206 consisted of outstanding FLIC debt securities), its

total consolidated income amounted to $4,082, its total consolidated expenses amounted to $116,158 (of which $107,487 consisted of interest payments to holders of outstanding FLIC debt securities), its consolidated net loss amounted to $112,076, its consolidated retained earnings amounted to ($292,814), and its total equity amounted to ($244,071). For the fiscal year ending June 30, 1976, Creative's total assets amounted to $120,279, its total liabilities amounted to $593,526, its total income amounted to $1,276,665, its total expenses amounted to $1,486,198, its net loss amounted to $209,533, its retained earnings amounted to ($474,247), and its total equity amounted to ($473,247).

For the fiscal year ending June 30, 1976, GEBCO had virtually no business purpose other than acting as a holding company for its subsidiaries, and virtually all of GEBCO's financial activity (on a consolidated basis) amounted to management of the Meadowlands Hilton Inn through its subsidiary Creative, sales of FLIC debt securities and dispositions of the proceeds through unsecured, undocumented interest-free loans to related companies and individuals (used primarily to support the operations of the Meadowlands Hilton Inn) and interest payments on and redemptions of outstanding FLIC debt securities.

As respects sales of FLIC debt securities prior to their formation of the "investor group" in September, 1975, the record is clear that Respondents Geswaldo, Kohl, Benson, and Golling failed utterly to conduct a reasonable investigation into FLIC and its parent and sister companies, as they were obligated to do, and in the absence of which respondents had no adequate and reasonable basis for recommending [24] the securities to their customers. Hanly v. Securities and Exchange Commission, 415 F.2d 589, 595-597 (C.A. 2d, 1969). To the same effect, see also Feeney v. Securities and Exchange Commission, 564 F.2d 260,262 (C.A. 8th, 1977). A reasonable investigation would have disclosed that during much of this period there were no financial statements available with respect to FLIC or its affiliates upon which a recommendation could be based. One or two of the individual respondents did from time to time ask for such financial statements but were always put off by Boyer who claimed they were not yet available or that the accountants had not yet prepared them. The selling respondents failed to disclose to FLIC purchasers during this period that financial data regarding FLIC and its affiliates were not available and that they had

---

24/ All or substantially all of these sales by the involved respondents were solicited sales, i.e. sales made after the respondents had recommended purchase of the securities to their customers.

no adequate basis for recommending the FLIC debt securities.

The four selling individual respondents during this period also failed to disclose other material facts to the purchasers of FLIC debt securities. Thus, they failed to disclose that until February 1975, First Pittsburgh and FLIC were both subsidiaries of GEBCO. They also failed to disclose the material facts that Boyer and Geswaldo were officers of both GEBCO and First Pittsburgh and substantial stockholders of GEBCO and, after First Pittsburgh's spin-off from GEBCO in February, 1975, of First Pittsburgh.

Geswaldo admitted in testimony and Benson stipulated that they told FLIC debt security purchasers during the pre-September 1975 period that the investments were "safe." The record establishes that during the same period Kohl told at least some of his customers the investment was "safe", and that Golling recommended the investment and represented it as "sound" because it was backed up by real estate worth a great deal. There was no basis in fact for these representations, and none of the four selling respondents had a basis for reasonably believing they had a basis for recommending the stock, and much less for representing it as "safe" or "sound."

In these respects Geswaldo says he relied upon representations by Boyer, and Kohl, Benson, and Golling claim they relied upon representations by both Boyer and Geswaldo. As

to the claim of reliance upon Geswaldo, it is relevant that the transactions involved were not transactions of First Pittsburgh, of which Geswaldo was president and where he supervised registered representatives. In any event, the teaching of the Hanly and Feeney cases, above, is that individual salesmen are responsible for making their own reasonable investigations and for their representations as to the safety or soundness of a security, particularly where there are warning flags flying such as, here, the absence of any meaningful financial statements or data concerning FLIC or its affiliates as well as other circumstances.

The reckless indifference manifested by these selling respondents in recommending securities and in representing them as "safe" or "sound" without having made reasonable inquiry to ascertain the facts in the face of warning flags meets the scienter requirement of Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976). 25/

With the formation of the investor group on September 23, 1975, and the concurrent agreement with Boyer for potential acquisition of a controlling block of GEBCO stock, the fraud of Respondents Geswaldo, Kohl, Benson, and Golling with

---

25/ Nelson v. Serwold, 576 F.2d 1332, 1337 (C.A. 9, 1978). See footnote 28.

respect to the sale of FLIC debt securities and GEBCO options took on even more serious and aggravated characteristics and dimensions.

The four respondents were now acting in concert. The successful endeavors of each stood to benefit the others. Thus, when Geswaldo satisfied the initial requirement to make the agreement with Boyer effective by putting up $40,000 within 30 days, the other three benefited. Likewise, unless the four of them in the aggregate could continue to meet the conditions of the agreement with Boyer by the selling of sufficient FLIC debt securities until December 31, 1976, there would be no division among the four respondents of the escrowed block of Boyer's 132,882 shares of GEBCO stock. Thus the success of each of the four in selling FLIC securities worked, at least potentially, to benefit all four.

Moreover, the investor group agreement and the agreement with Boyer inherently and necessarily involved the commission of fraud against purchasers of FLIC debt securities. The existence and nature of the two agreements and the reasons for their coming into existence were all highly material facts that should have been disclosed to potential purchasers of FLIC debt securities. Yet, it was entirely clear that if such disclosure had been made to potential purchasers the plan for acquisition by the four respondents of GEBCO stock had no

possibility of success. There was a tacit, but very clearly apprehended, understanding among the four that the requisite disclosure to potential customers could not be made, as indeed it was not. Thus, "each of the individual respondents knowingly joined or participated in a common undertaking that he knew or should have known was fraudulent." Haight & Co., Inc., 44 S.E.C. 481, 497 (1971). 26/

Although the four respondents were now well aware that GEBCO and its subsidiaries were insolvent, in danger of financial collapse, and in a financial sense living from hand to mouth, they disclosed none of this to purchasers of FLIC debt securities to whom they recommended the securities. Neither did they disclose that proceeds from the sale of FLIC debt securities would be loaned interest-free to support the Meadowlands Hilton Inn's operations and that, since FLIC would therefore have essentially no income producing activity, proceeds of new sales of FLIC debt securities would also have to be used and be depended upon to pay interest on and to redeem previously issued as well as subsequently issued FLIC debt securities. Again, they failed to disclose the highly material fact of the investor group and of its agreement with Boyer, under which the investor group stood to acquire a

---

26/ Where a scheme to defraud is shared by two or more it becomes action in concert or, in the criminal context, a conspiracy. James De Mammos et al., 43 S.E.C. 333, 336-7 (1967); Blue v. U.S. 138 F.2d. 351, 358,360 (C.A. 6, 1943) cert. denied 322 U.S. 736; Oliver v. U.S., 121 F.2d. 245, 249 (C.A. 10, 1941), cert. denied, 314 U.S. 66.

controlling block of GEBCO stock and that it had already acquired the right to vote that stock. Certainly a potential customer would very much want to know that his securities salesman had such a strong incentive for promoting sales of the security.

Investors in FLIC debt securities were also not told of what offices Boyer and Geswaldo held in, or what other contractual relationship they had with, GEBCO and First Pittsburgh and what stock holdings they held therein, also material information, or that after a certain point Boyer left to reside in Florida in part because of occurrences that cast doubt upon his honesty and integrity.

Members of the investor group did their best to induce prior purchasers of FLIC debt securities desiring to redeem them when they came due to keep their money in such securities by purchasing new certificates or notes, and the record shows a number of cases in which these efforts were successful. Of course, the customers were not told any of the myriad of material facts that would have been sure to kill any desire to reinvest in FLIC debt securities.

As already noted herein, sales of FLIC debt securities by members of the investor group increased markedly after they entered into the agreement with Boyer in September of 1975. This could not have happened if the investor group had disclosed the material facts mentioned above or other such information disclosed in the record.

Respondents contend that they reasonably believed, on the basis of representations by Boyer, that FLIC either owned or was backed by the Hilton Inn and other real properties whose values exceeded the indebtedness arising from sales of FLIC debt securities. They contend they were therefore justified in representing the FLIC debt securities as "safe", or "sound" or as "backed up" by the Hilton Inn and other properties, or any combination of these representations.

This contention misses the mark for a variety of reasons. To begin with, FLIC itself owned no real estate and its assets consisted almost entirely of unsecured, undocumented interest-free loans to GEBCO or its affiliates and to individuals. While it was true that MILP owned 51% of the Meadowlands Hilton Inn, the land upon which it was situated was in fact owned by an unrelated entity. The record does not satisfactorily establish the value of the Inn or of other (relatively minor) properties that GEBCO or its affiliates owned. However, this is essentially irrelevant since it is clear from the record that before such properties could have been utilized to repay indebtedness to FLIC they would have to have been liquidated, since they had already been used to the hilt in terms of using them as security for borrowing.

None of these material facts were disclosed by the investment group members to purchasers of FLIC debt securities. Accordingly, respondents' defense, predicated upon an asserted good faith belief in the adequacy of the real estate backing up the FLIC debt securities, is totally without merit, even apart from respondents' wholesale failure to disclose numerous other material facts, as found above.

On the facts found herein it is clear that the fraud committed by members of the investment group in the sale of FLIC debt securities and GEBCO options [27/] was deliberate, knowing, and intentional, done with an intent to deceive and defraud both by active misrepresentation and by denying purchasers the material information they were entitled to have. The scienter requirement of Hochfelder, supra, if applicable, [28/] is clearly met by the findings herein.

27/ The alleged fraud in connection with the sale of MILP interests is not established by clear and convincing evidence.

28/ The Commission does not regard the Hochfelder scienter requirement as applicable to administrative proceedings initiated by it, whether bought under Section 10(b) of the Exchange Act or under Section 17 (a) of the Securities Act. As to Section 17(a), three circuits have held scienter inapplicable in proceedings thereunder, though the circuits are not uniform. S.E.C. v. Coven, 581 F.2d 1020, 1025-1027 (C.A. 2, 1978); S.E.C. v. World Radio Mission, Inc., 544 F.2d 535, 541 n. 10 (C.A. 1, 1976); S.E.C. v. American Realty Trust, (C.A. 4, 11-17-78) 480 SRLR F-1, CCH Federal Securities Law Reporter, Current, ¶96, 605, p. 94,584; contra, Sanders v. John Nuveen & Co., Inc., 554 F.2d 790, (C.A. 7, 1977).

The record also establishes by clear and convincing evidence that Respondent First Pittsburgh wilfully aided and abetted the wilful violations of the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder found herein to have been committed by Geswaldo, Kohl, Benson, and Golling in the sale of FLIC debt securities and GEBCO options. Boyer and Geswaldo, both officers and major shareholders of First Pittsburgh, were well aware that the fraudulent violations were occurring and were further well aware that First Pittsburgh, by affording the violators access to its customers under circumstances found herein, and by allowing the violators to utilize the telephones, offices, and other facilities of First Pittsburgh in the perpetration of the fraudulent sales, was facilitating and furthering in a material and substantial way the effectuation of the fraud. 29/

D. Alleged Bookkeeping Violations.

The Division contends that Respondent First Pittsburgh wilfully violated and that Respondents Geswaldo and Krzywicki wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder in that

---

29/ Securities and Exchange Commission v. Barraco, 438 F.2d 97,99 (C.A. 10, 1971); Securities and Exchange Commission v. Management Dynamics, Inc., 515 F.2d 801, 811 (C.A. 2, 1975).

First Pittsburgh failed to make and keep certain required records concerning the transactions in FLIC debt securities and MILP interests that have been discussed herein.

Since the transactions involved have been found not to have been in fact or in law transactions of First Pittsburgh,[30/] there was no obligation on the part of the registrant to make or keep records relating to them. Accordingly, these books-and-record-keeping charges are dismissed.

E. Fraudulent Markups in Principal Transactions.

The record establishes by clear and convincing evidence that Respondents First Pittsburgh and Geswaldo wilfully violated the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by charging excessive and unreasonable markups in principal transactions with their customers.

In 1975, markups in approximately 50 percent of First Pittsburgh's principal transactions with retail customers exceeded the NASD's 5 percent markup guidelines. Between February and November of 1975, First Pittsburgh as principal

---

30/ The Division's argument that if these transactions were not those of First Pittsburgh then the individual respondents who engaged in them might be subject to liability as unregistered brokers or dealers under Section 15(a) of the Exchange Act has not been overlooked. However, since the Order includes no charge of such violations, no findings or conclusions on this point are warranted.

entered into some 130 transactions with retail customers in which it offered and sold the securities at markups ranging from 9.5 percent to 37.5 percent. These 130 transactions constituted about 5 percent of First Pittsburgh's total sales of securities as principal to retail customers during 1975.

First Pittsburgh's policy was to take a position in a security only if, in Geswaldo's judgment, the security had a reasonable chance of moving upward in the short term or at least did not present an appreciable risk of moving downward in the short term. This was coupled with a policy of generally selling the security on the day following the block purchases of a security and of rarely holding the securities beyond 48 hours of the time of purchase. Thus these policies involved an assessment on Geswaldo's part of what securities registrant would be able to sell off within his established time frame.

First Pittsburgh's block purchases were generally made at or near the "bid" quotations and its sales, generally next day, were at or close to the "ask" quotations.

First Pittsburgh's claim that it was entitled to use "ask" prices at the time of the sales in the transactions mentioned above as a basis for determining fair markups is invalid for the primary reason that the "ask" prices did not represent

actual transactions and therefore did not represent current market values of the securities.

In almost all of the 130 cases mentioned above, there were no transactions in the stock in the interdealer market on the days on which the sales occurred. As the Commission stated in Samuel B. Franklin & Co.,[31/] 38 S.E.C. 908, 911-12 (1959):

> ... in our opinion it is clear that while published quotations have been used as an indication of prevailing market prices in the absence of evidence to the contrary, the difference between a bid quotation, which generally represents the lowest price at which a dealer considers he may be able to induce other dealers to negotiate with him respecting his purchase of the security, and the asked quotation, which generally represents the high price at which a dealer considers he can induce negotiations for sale of his security, cannot properly be treated as a measure of what is a fair or reasonable mark-up over contemporaneous cost.

In the absence of such interdealer market transactions, the best evidence of prevailing market prices for the securities involved, for markup purposes, was First Pittsburgh's cost as incurred on the previous day.

Geswaldo and First Pittsburgh also urge they were entitled to apply more than a 5 percent markup because of the nature of the stocks they dealt in, i.e. low priced, presumably more volatile, and therefore more risky stocks. But such

---

31/ Affirmed, Samuel B. Franklin & Co., v. S.E.C., 290 F.2d 719 (C.A. 9, 1961), cert. denied, 368 U.S. 889 (1961).

circumstances cannot justify markups frequently ranging between 20 and 30 percent. 32/ See Financial Estate Planning, Securities Exchange Act Release No. 14984, July 21, 1978, 15 SEC Docket 352, August 8, 1978.

First Pittsburgh did not disclose its markups in these transactions unless, as happened only occasionally, a customer asked.

Geswaldo established and effectuated First Pittsburgh's policies regarding markups and thus participated with the registrant in the markup violations.

F. Conclusions of Law.

In general summary of the foregoing, it is concluded that during the periods found herein, the indicated respondents committed violations of the following provisions of law or rule, all as more particularly found above:

(1) Within the period January 1973 to January 1977 Respondents Geswaldo, Kohl, Benson, and Golling, through use of jurisdictional means, wilfully violated Sections 5(a) and

---

32/ Approximately 50 percent of these transactions were at markups at or above 20 percent, and the vast majority were at or above 15.4 percent. Almost all were at or in excess of 10.5 percent. The most serious example of this activity occurred when registrant purchased 64,900 shares of stock of Knogo Corp. (an over-the-counter issue) on April 7, 1975 at a price of $1 per share, and sold 62,800 of these shares on a principal basis to its retail customers in 33 transactions at a price of $1 3/8 per share on April 8, 1975, resulting in a 37.5 percent markup and a one day profit of approximately $23,500. Two individual retail sales transactions were for 10,000 and 11,300 shares, resulting in profits to registrant of $3,750 and approximately $3,800, respectively, on these transactions alone. On another occasion, a retail customer was charged a 20 percent markup by registrant for the purchase of securities (the stock of Beck-Arnley Corp.), while on that same day another broker-dealer purchased securities of the same issuer from registrant and was charged only a 5 percent markup.

5(c) of the Securities Act in that they offered, sold, and delivered after sale to members of the public FLIC debt securities, GEBCO options, and MILP interests [33/] when no registration statement was filed or in effect as to said securities pursuant to the Securities Act. Respondent First Pittsburgh wilfully aided and abetted such violations.

(2) Within the period January 1973 to January 1977, Respondents Geswaldo, Kohl, Benson, and Golling wilfully violated the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer and sale, by use of jurisdictional means, of FLIC debt securities and GEBCO options in that, among other things, these respondents had no reasonable basis for recommending such securities to their customers, made false and misleading statements to customers concerning the safety and soundness of the securities, and omitted to disclose highly material facts, such as the insolvency of issuers and their affiliates and other material financial data, as well as the fact that the respondents were members of an investor group that expected to profit handsomely by obtaining a controlling interest in

---

33/ Benson did not sell any MILP interests.

GEBCO from its promotion of the sales of the securities. First Pittsburgh wilfully aided and abetted these violations.

(3) During 1975 Respondents First Pittsburgh and Geswaldo wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by inducing customers to purchase, and, as principals, selling to such customers various securities at prices not reasonably related to the prevailing market price. They thereby charged markups that were excessive and unreasonable under all the circumstances disclosed by the record.

(4) In 1977 the United States District Court for the Western District of Pennsylvania entered an order preliminarily enjoining registrant from engaging in acts in violation of Section 5(a) and 5(c) of the Securities Act with respect to the offer and sale of FLIC debt securities and MILP interests. In 1978 the same Court enjoined Respondent First Pittsburgh and Respondents Geswaldo, Kohl, Benson, and Golling from violations of Sections 5(a) and 5(c) and Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder on the basis of allegations closely paralleling the registration and antifraud charges in the Order in the instant administrative proceeding. Under Section 15(b)(4)(C) of the Exchange Act the entry of such an injunctive order against respondents herein

constitutes a basis for imposition of sanctions in this administrative proceeding.

(5) Under Section 15(b)(4)(D) of the Exchange Act, wilful violations of the Securities Act and of the Exchange Act by any person associated with a broker-dealer (Geswaldo, Kohl, Benson, Golling) constitute bases for the imposition of sanctions against the broker-dealer (First Pittsburgh).

III

THE PUBLIC INTEREST

In determining what sanctions, if any, it is appropriate to apply in the public interest, it is necessary for the Commission, among other factors, to". . . weigh the effect of . . . action or inaction on the welfare of investors as a class and on standards of conduct in the securities business generally."[34/]

On most examinations of First Pittsburgh conducted by the NASD during the course of the firm's existence it was cited for various violations, e.g. Regulation T (involving improper extension of credit to customers), improper or inadequate supervision of employees, and failure to send copies of customers statements to various regulatory bodies.

34/ Arthur Lipper Corporation, Securities Exchange Act Release No. 11773 (October 24, 1975) 8 SEC Docket 273, 281. Although the reviewing Court in Arthur Lipper Corp. v. S.E.C., 547 F.2d 171, 184-5 (2d Cir. 1976) reduced the Commission's sanctions on its view of the facts, it recognized that deterrence of others from violations is a legitimate purpose in the imposition of sanctions.

Fines of from $100 to $900 were assessed against the firm. These were not merely "technical" violations as registrant and Geswaldo would have them characterized.

The fraud involved in the selling of FLIC debt securities and GEBCO options under the circumstances found herein was, in a word, outrageous. This wasn't a simple situation in which a salesman overtouts a stock to generate more in commission income. Rather, it was a situation in which the four individual respondents knowingly acted in concert to deceive and mislead the investors in a calculated campaign in order to attempt to earn a controlling block of stock in GEBCO for themselves, without giving any clue to the investors that this was their motivation. In doing so they exposed the investors to high, undisclosed, and unconscionable risk that has resulted in real and substantial harm to numerous customers. Whether or to what extent customers may eventually receive any reimbursement is in the realm of the unknown. Certainly there is no indication that respondents have offered to make any restitution or that they are able to do so.

First Pittsburgh played a critical role in the perpetration of that fraud, as found above. With Boyer and Geswaldo having had control of First Pittsburgh, with Geswaldo, Kohl, Boyer, and Golling as registered representatives of First Pittsburgh all having had access to their customers at the firm as potential purchasers of FLIC

debt securities and GEBCO options, with Geswaldo, Kohl, Benson, and Golling each having had an interest in GEBCO at one time or another within the relevant period, and with all four of them having been members of the investor group, it is clear that for purposes of imposing sanctions registrant must be treated as a full participant in the deplorable fraud. Registrant's argument that the violations were at best "technical" would be laughable if it did not relate to a situation so tragic.

Moreover, the fraud in the sale of FLIC debt securities and GEBCO options is materially aggravated by the fact that a number of the investors were persons of small or moderate incomes and savings, for whom this high risk investment simply was not suitable. A number were retired with limited means, or were saving for their childrens' education or to establish a "nest egg." One investor, a Korean-War veteran on nervous disability, who paid for his investment by using his life savings and borrowing some additional funds, presented perhaps the most lamentable example of inappropriate recommendation. Another investor, a retired widow, likewise invested all of her limited funds in these securities.

In further aggravation, the record shows a number of instances in which customers were induced to reinvest in FLIC securities when the time for redemption came up by high pressure tactics involving deliberate deception or failures

to disclose material facts which by then the selling respondents were fully aware of.

Registrant urges that a small firm (some 12 registered representatives and 3 other employees) should not be put out of business. But the controlling consideration must be the protection of the public. In light of the nature and number of the violations found herein, it is concluded that the existence of the outstanding injunctions issued by the United States District Court, augmented by the "short suspensions" suggested by some respondents, would not adequately protect the public against future violations, either by these respondents [35/] or by others.

Taking into account the nature and extent of the violations, the arguments of respondents as to mitigating circumstances, and the record as a whole, it is concluded that the sanctions ordered below for remedial and deterrent purposes are necessary and appropriate in the public interest.

IV

ORDER

Accordingly, IT IS ORDERED as follows:

(1) The registration of Respondent First Pittsburgh Securities Corporation as a broker-dealer under the Securities Exchange Act is hereby revoked and it is hereby expelled

---

35/ The insensitivity to their responsibilities as registered representatives demonstrated by the respondents as reflected by the fraud violations found herein offers no assurance that violations would not recur in the future if they and registrant were permitted to remain in the securities business.

from membership in the National Association of Securities Dealers, Inc. and in the Philadelphia Stock Exchange.

(2) Respondents Salvatore F. Geswaldo, Donald R. Kohl, Carl B. Benson, and Bernard H. Golling are hereby barred [36/] from being associated with any broker-dealer or with any member of the NASD or the Philadelphia Stock Exchange.

(3) The proceeding against Respondent Charles Krzywicki is hereby dismissed.

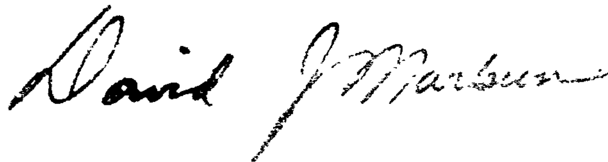
This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice, 17 CFR §201.17(f).

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party that has not, within fifteen (15) days after service of this initial decision upon him or it, 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 this initial decision as to him or it. If a party timely files a petition for review, or the

---

36/ It should be noted that a bar order does not preclude the person barred from making such application to the Commission in the future as may be warranted by the then-existing facts. Fink v. S.E.C. (C.A. 2, 1969), 417 F.2d 1058, 1060; Vanasco v. S.E.C. (C.A. 2d, 1968) 395 F.2d 349, 353.

Commission takes action to review as to a party, the initial decision shall not become final with respect to that party. 37/



David J. Markun
Administrative Law Judge

Washington, D.C.
January 16, 1979

37/ All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the findings, conclusions and views stated herein they have been accepted, and to the extent they are inconsistent therewith they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of various witnesses is not in accord with the findings herein it is not credited.