

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-4706

U. S. SECURITIES & EXCHANGE COMMISSION  
RECEIVED

JUN 25 1976

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :  
LAMB BROTHERS, INC. :  
(8-17965) :  
CLYDE C. LAMB, JR. :  
\_\_\_\_\_ :

INITIAL DECISION

Washington, D.C.  
June 25, 1976

Warren E. Blair  
Chief Administrative Law Judge



ADMINISTRATIVE PROCEEDING  
FILE NO. 3-4706

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Office of Administrative Law Judges

Date June 25, 1976

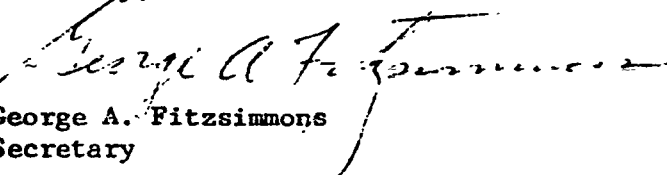
Re: Lamb Brothers, Inc., et al.

Dear Sirs:

Enclosed is the Initial Decision of Warren E. Blair, Chief Administrative Law Judge.

Your attention is directed to the Commission's Rules of Practice, and particularly to Rules 17, 18, 22 and 23, which pertain to petitions for review of initial decisions, briefs and the service and filing thereof.

Sincerely,

  
George A. Fitzsimmons  
Secretary

Enclosure

ADDRESSES:

Patrick J. Simpson, Esquire  
Rives, Bonyhadi & Drummond  
1400 Public Service Building  
920 Sixth Avenue  
Portland, Oregon 97204

Lane B. Emory, Esq.  
Gary A. Swenson, Esq.  
L-1501 (9-75) Seattle Regional Office  
3040 Federal Building  
915 Second Avenue  
Seattle, Washington 98174

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APPEARANCES: Lane B. Emory and Gary A. Swenson, of the Seattle  
Regional Office of the Commission, for the  
Division of Enforcement.

Patrick J. Simpson, of Rives, Bonyhadi & Drummond,  
for Lamb Brothers, Inc., and Clyde C. Lamb, Jr.

BEFORE: Warren E. Blair, Chief Administrative Law Judge

These public proceedings were instituted on June 26, 1975 by order of the Commission ("Order") pursuant to Sections 15(b) and 15A, as then in effect, of the Securities Exchange Act of 1934 ("Exchange Act"). The Order directed a public hearing be held to determine whether Lamb Brothers, Inc. ("registrant") and Clyde C. Lamb, Jr. ("Lamb") had engaged in the misconduct charged by the Division of Enforcement ("Division") and what, if any, remedial action would be appropriate in the public interest.

In substance, the Division alleged that the respondents were permanently enjoined on April 28, 1975 by the United States District Court for the District of Oregon from violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1 <sup>1/</sup> and 17a-5 <sup>2/</sup> thereunder in connection with registrant's business as a broker-dealer. The Division further alleged that registrant, wilfully aided and abetted by Lamb, wilfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 during the period from about about January 16, 1975 through about January 20, 1975 and wilfully violated Section 17(a) of the Exchange Act and Rule 17a-5 during the period from about December 3, 1974 through June 26, 1975.

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

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1/ Rule 15c3-1 ("Net Capital Rule") requires the maintenance of a minimum net capital by a broker-dealer. Section 15(c)(3) prohibits transactions by a broker-dealer unless its net capital meets the requirements of Rule 15c3-1.

2/ Rule 17a-5 requires registered broker-dealers to file reports of their financial condition with the Commission at the times specified in that rule.

Timely filings thereof were made by the parties.

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

#### RESPONDENTS

Registrant, an Oregon corporation having its principal place of business in Portland, Oregon, was incorporated in September, 1973, became registered as a broker-dealer under the Exchange Act on May 4, 1974, and a member of the National Association of Securities Dealers, Inc. ("NASD") on May 7, 1974.

Lamb has been president of registrant, one of its directors, and beneficial owner of all of its common stock since the firm's registration as a broker-dealer and has been an officer of registrant since its inception. From 1959 until the formation of registrant, Lamb was in the employ of a succession of securities firms, primarily as a salesman.

#### PERMANENT INJUNCTION

As a result of the Commission filing a complaint against registrant and Lamb, a permanent injunction was entered on April 28, 1975 by the United States District Court for the District of Oregon enjoining them from engaging in, or aiding or abetting, violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1 and 17a-5 thereunder.<sup>3/</sup>

In its Order of Permanent Injunction the Court found that registrant, aided and abetted by Lamb, effected securities transactions

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<sup>3/</sup> SEC v. Lamb Brothers, Inc., Civil Action No. 75-77 (D. Or., April 28, 1975).

on or about January 16, 1975 and January 20, 1975 in contravention of the requirements of Rule 15c3-1 in that on those dates the aggregate indebtedness of registrant to all other persons exceeded 800% of its net capital, and registrant failed to have and maintain net capital of not less than \$25,000. The Court also found that registrant, aided and abetted by Lamb, violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder in that registrant failed to file with the Commission the report of financial condition due on or about December 3, 1974 as required by that rule.

#### VIOLATIONS

##### Rule 15c3-1 ("Net Capital Rule")

Late in January, 1975, a securities compliance examiner from the Seattle Regional Office ("SRO") of the Commission had occasion to visit the offices of registrant, and having learned from Lamb that the firm had effected four securities transactions for its customers on January 16 and 20, 1975, asked Lamb for registrant's books and records. Upon being told that the books and records were in the possession of Joseph Carey, a certified public accountant whose firm did work for registrant, the SRO examiner repaired to the accountant's office. In response to his request for a recent trial balance taken from registrant's books, the SRO examiner received a copy of a trial balance dated December 31, 1974, the most recent Carey had.

Taking his information from the trial balance, the SRO examiner made a net capital computation pursuant to the provisions of Rule 15c3-1 which reflected that as of December 31, 1974, registrant had a net capital

deficit of \$7,199. He also determined, after taking into consideration the four customer transactions effected on January 16 and 20, 1975, that registrant's net capital deficit as of January 20, 1975 was \$6,998.<sup>4/</sup>

As in effect during January, 1975 the Net Capital Rule required a broker or dealer, unless an exception or exemption was otherwise available to it under the Rule, to have and maintain net capital, as defined by the Rule, of not less than \$25,000. Since the record establishes that registrant was required under the Net Capital Rule to have net capital of \$25,000,<sup>5/</sup> that registrant was not in compliance with that requirement in January, 1975, and that registrant engaged in business during the time that it was out of compliance with the Net Capital Rule, it is concluded that registrant, wilfully aided and abetted by Lamb, wilfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.

Respondents challenge the net capital computation of the SRO examiner, claiming that approximately \$20,500 on deposit in registrant's account in the First State Bank of Oregon was improperly disallowed, as was also the case with respect to the disallowance of a note with a maturity date of March 29, 1975 held by registrant and payable by Franklin P. Lamb,

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<sup>4/</sup> Registrant did not engage in business during the period following December 31, 1974 until January 16, 1975.

<sup>5/</sup> Respondents' view that registrant could do business with an adjusted net capital of \$5,000 as provided under Rule 15c3-1(a)(3) is not supported by the record inasmuch as registrant is shown to have carried accounts for its customers and have engaged in a general securities business at such times as it was active. In any event, registrant did not meet the lesser net capital requirement at the time it engaged in business in January, 1975.

a brother of Lamb, in the amount of \$67,617.49. Neither of those positions is found to have merit.

The facts relevant to the bank deposit are not in dispute. On October 20, 1974 the Oregon Corporation Commissioner acting under Oregon law <sup>6/</sup> and having ascertained (1) that registrant's capital was impaired, (2) that registrant's affairs were in unsound condition, (3) that registrant was unable to meet its obligations as they fell due, and (4) that a subordinated lender desired to withdraw his securities which if accomplished would place registrant in a deficit capital position, served notice upon registrant that the Commissioner was taking possession of all of its property, business, and assets. At the time of personal service of that notice upon Lamb by an agent of the Oregon Corporation Commission, Lamb and the agent discussed at some length the consequences of the Commissioner's action. Lamb was advised that he was to transact no business on behalf of registrant and that he would have no access to the bank accounts or other assets of the firm. The agent further explained that Lamb had 60 days within which to cure the firm's unsound condition or the firm would be liquidated.

At the time of the seizure by the Oregon Corporation Commissioner the First State Bank of Oregon carried registrant's checking account, which had a small balance, and held 10,000 shares of Reynolds stock securing a loan of about \$111,000 from the bank to registrant. The bank

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6/ Oregon Revised Statutes §59.265 (1967).



sold that stock prior to December 31, 1974 to protect its loan and on January 10, 1975 notified the Oregon Corporation Commissioner that the net amount of registrant's assets then held by the bank was \$20,542.79.

Respondents argue that registrant cured any alleged deficiency upon which the Oregon seizure was based and notified the Commissioner of that fact by letters dated December 27, 1974 and January 7, 1975. They further assert that at the expiration of the 60 day period specified in the Oregon statute the Commissioner had no legal right to retain the funds in the bank and that such funds were properly assets of registrant to be taken into account in registrant's net capital computation.

The flaw in that reasoning is obvious. Whether the \$20,542 held by the bank rightfully belonged to registrant on December 31, 1974 or later on January 16 and 20, 1975 is beside the point. Those funds were in the possession of the bank on the dates in question and because of its refusal to honor any withdrawal demand by respondents, were not readily available for use by registrant. Even assuming the correctness of respondents' claim that registrant was entitled to the \$20,542 prior to December 31, 1974, the most that can be said from the standpoint of registrant's net capital position is that registrant had an asset in the form of a debt owing to it by the bank. But since the bank would not honor respondents' demands against it, that asset was not readily convertible into cash and was consequently properly disallowed in the computation of registrant's net capital.

The note in the amount of \$67,617.49 was also properly disallowed by the SRO examiner. While it is true that there was no apparent defect on the face of the note, and that it had not yet matured on the dates in question and was negotiable, it was unsecured and without a market in which it could be readily converted into cash. Under those circumstances, there was no alternative to disallowing the entire note receivable as an asset in computing registrant's net capital under Rule 15c3-1. Without independent proof in support, Lamb's personal view that the note could be readily converted into at least \$4,500 cash cannot change that result.

Respondents' further argument that there is no reliable evidence of registrant's net capital position on January 16, 1975 is also rejected. The trial balance as of December 31, 1974 from which the SRO examiner derived his net capital computation as of December 31, 1974 was prepared by registrant's own bookkeeper and turned over to the examiner by the CPA familiar with registrant's books and records with the representation that the document was registrant's most recent trial balance. Those facts are uncontradicted and when taken with Lamb's testimony that registrant had not engaged in business after December 31, 1974 until January 16, 1975, are sufficient to establish by a preponderance of the evidence the adjusted net capital position of registrant at the time it recommenced doing business on January 16, 1975. <sup>7/</sup> True, it would have been better if a set of books

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<sup>7/</sup> In light of the SRO examiner's testimony that registrant's office furniture and fixtures had "a note against it" and that he "allowed it as a good asset," (Tr. 159), the Division's argument that the \$1,218 value ascribed to those assets should be disallowed is rejected. As to the other alleged deficiencies in the trial balance complained about by respondents, it is found that such complaints are not supported by the weight of the evidence.

and records with current postings had been available, but the record discloses that the SRO examiner used the best reliable evidence of registrant's financial condition at hand. Respondents can hardly at this late date complain that registrant's net capital position has not been determined from current books and records when it was they who did not make or keep registrant's books and records on a current basis.

Nor can respondents prevail in their contention that registrant's cancellation of the customer transactions of January 16 and 20, 1975, before the receipt of monies or securities relating to those transactions, averted the commission of the alleged net capital violations. Respondents' reliance upon the case of Adolph D. Silverman<sup>8/</sup> is misplaced. The Commission did, as noted by respondents, point out in Silverman, "A net capital violation entails the effecting of securities transactions with inadequate net capital."<sup>9/</sup> But the ruling in Silverman cannot save respondents here where registrant actually confirmed its customers' orders to purchase securities and, to fill those orders, placed and confirmed orders to purchase those securities from another securities firm. Those acts constituted doing business and "the effecting of securities transactions" by registrant. Later cancellation could not and did not expunge those securities transactions nor wipe out the violations committed by registrant in effecting those transactions while out of compliance

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<sup>8/</sup> Securities Exchange Act Release No. 10327 (1973), 2 SEC Docket Vol. 8, 261.

<sup>9/</sup> Id., 263.

with the Net Capital Rule.<sup>10/</sup> Further, it is clear, as the Division observes, that respondents, while registrant was experiencing a net capital deficiency, induced or attempted to induce the purchase of securities in contravention of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.<sup>11/</sup> Accordingly, it is found that registrant, wilfully aided and abetted by Lamb, wilfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.

Rule 17a-5

Having become registered as a broker-dealer on May 4, 1974 pursuant to Section 15 of the Exchange Act, registrant was subject to Rule 17a-5 which required registrant's first report of its financial condition to be as of a date not less than one nor more than five months after the effective date of its registration.<sup>12/</sup> Rule 17a-5 further required that registrant file that report not more than 60 days after the date of the report of financial condition.<sup>13/</sup>

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10/ Cf. Louisville Bond and Share Corp., 43 SEC 1033, 1035 (1969).

11/ See Lamb Testimony, Tr. 51:

- Q. Would you explain in as great detail as you can recall how you received those orders [on January 16 and 20, 1975] and what you did on behalf of the firm?
- A. We felt the market was recovering, which it was, and that customers --, not customers at the time, but people that we were close to, had decided to accept a conversational advice of mine that stocks like Weyerhaeuser, Texaco and Coca Cola Company could be bought. This was in early January.
- Q. Did customers then enter orders with you for those purchases?
- A. Yes.

. . . . .

12/ 17 CFR 240.17a-5(a)(1) and (2)(i).

13/ 17 CFR 240.17a-5(a)(2)(ii).

In contravention of the provisions of Rule 17a-5, registrant failed to file a timely and complete initial report of its financial condition. As stipulated by respondents,<sup>14/</sup> registrant for the first time submitted a report of its financial condition to the SRO on February 21, 1975. The report was not complete and registrant was so advised by the SRO by letter dated February 25, 1975. An amendment to the report, curing the defects mentioned by the SRO in its letter of February 25, was received by the SRO on April 28, 1975.

Respondents concede that registrant failed to file a timely report but place the blame for the lateness of the report, and the fact that it was unaudited and therefore not certified, solely upon their reliance upon Carey, registrant's CPA. However, the responsibility for registrant's compliance with the rules governing the conduct of broker-dealers was that of registrant and its president, Lamb, and reliance upon another, no matter how well-intentioned or misplaced, cannot relieve them of that burden.<sup>15/</sup> Accordingly, it is found that registrant, wilfully aided and abetted by Lamb, wilfully violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder.

PUBLIC INTEREST

Having found that respondents were permanently enjoined on April 28, 1975 by the United States District Court for the District

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<sup>14/</sup> DX 1, ¶13.

<sup>15/</sup> Cf. General Securities Corporation, Securities Exchange Act Release No. 12515, at 4 (June 3, 1976).

of Oregon from engaging in, or aiding or abetting, violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1 and 17a-5 thereunder,<sup>16/</sup> and that respondents wilfully violated and wilfully aided and abetted violations of those regulatory provisions of the Exchange Act and rules thereunder, it is necessary to consider the remedial action appropriate in the public interest.

The Division recommends a revocation of registrant's registration and a bar against Lamb's continuation in the securities business. In support of those recommendations, the Division points to Lamb's early knowledge of registrant's financial difficulties and respondents' net capital problems with the NASD, including its disciplinary action against respondents.<sup>17/</sup> The Division also refers to registrant's engaging in business without regard to an undertaking with the NASD not to do so and despite the seizure of registrant's assets and ban on further business by the Oregon Corporation Commissioner. As other aggravation, the Division charges respondents' actions were in "utter disregard for the Commission's rules" and that they forced the Commission to resort to injunctive action to protect the investing public.

Respondents demur to the Division's reference to the NASD proceeding, pointing out that a final order has not yet been entered, dispute the validity of the assumptions underlying the Oregon Corporation Commissioner's

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16/ SEC v. Lamb Brothers, Inc., supra.

17/ District Business Conduct Committee for District No. 1 v. Lamb Brothers, Inc. and Clyde C. Lamb, Jr., Complaint No. SEA-240, District No. 1 (Board of Governors, NASD, Sept. 22, 1975), now on appeal before the SEC, Adm. Prdgs. File No. 3-4789.

seizure, blame registrant's CPA for the Rule 17a-5 violation, and claim absence of any evidence of loss suffered by persons dealing with respondents or of any improprieties prior to September, 1974 in Lamb's 15-year history in the securities industry.

Upon careful consideration of the record and the arguments and contentions of the parties, it is concluded that in the public interest, registrant's registration as a broker-dealer should be revoked and that Lamb should be barred from association with a broker-dealer. Because it does not appear, however, that Lamb's re-entry in the securities business in a properly supervised position would endanger the public interest, Lamb should be allowed to apply for such re-entry at such time as he may wish to become associated with a broker-dealer in a non-principal and properly supervised capacity.

Contrary to respondents' views, the NASD proceedings are relevant in the public interest regardless of finality. The pleadings therein contain the answer of respondents in which they admit that registrant's net capital fell below the required \$25,000 on August 31, 1974 and September 11, 1974 and that on September 20, 1974 registrant issued a check drawn against insufficient funds to another NASD member. These admissions are strong indications of respondents' early indifference to proprietary responsibilities and Lamb's willingness to hazard the public's interest in order to remain in business. Further, respondents' failure to honor the undertaking with the NASD entered into on September 12, 1974, not to engage in business without satisfying the NASD that registrant had adequate net

capital, and registrant's resumption of business in the face of the ban imposed by the Oregon state authorities are additional evidence of that indifference. In brief, the record clearly establishes that registrant's business since its registration has been conducted by Lamb in a careless and inept manner and bodes fair to continue in similar fashion were registrant permitted to continue as a registered broker-dealer with Lamb at its helm. And respondents can find small comfort in the fact that their conduct has not resulted in losses to the public thus far. As succinctly put by the Court in the course of its affirmance of the Commission's revocation order at issue in Blaise D'Antoni & Associates, Inc. v. SEC:<sup>18/</sup>

The question is not whether actual injuries or losses were suffered by anyone. Hughes v. S.E.C. 1949, 85 U.S. App. D.C. 56, 174 F.2d 969. D'Antoni, Inc., improperly -- and willfully -- subjected its customers to undue financial risks by conducting its business in violation of this rule [15c3-1].

While the danger to the public is apparent in permitting Lamb to continue as a principal, his 15 years in the securities business prior to September, 1975 in supervised positions without a record of disciplinary action speak persuasively in favor of allowing him to return to the securities business in a supervised capacity.<sup>19/</sup>

Accordingly, IT IS ORDERED that the registration of Lamb Brothers, Inc., as a broker-dealer is revoked and the firm expelled from the National

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<sup>18/</sup> 289 F.2d 276, 277 (5th Cir. 1961).

<sup>19/</sup> 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 this initial decision, they are accepted.



Association of Securities Dealers, Inc.; and

FURTHER ORDERED that Clyde C. Lamb, Jr. is barred from association with any broker or dealer, except that at any time after the effective date of this order he may apply to the Commission for permission to become associated with a broker-dealer in a nonproprietary and nonsupervisory position wherein his activities would receive adequate supervision.

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 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 this 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.

  
Warren E. Blair  
Chief Administrative Law Judge

Washington, D.C.  
June 25, 1976