ADMINISTRATIVE PROCEEDING
FILE NO. 3-5098

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
DAYCON INVESTORS ASSOCIATES, INC.	:
JOSEPH P. D'ANGELO	:
	:

INITIAL DECISION

Washington, D.C.
November 5, 1976

Jerome K. Soffer
Administrative Law Judge

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JOSEPH P. D'ANGELO	:	
	:	

APPEARANCES: Lawrence J. Toscano, Jerome L. Merin and Kenneth I. Daniels, of the New York Regional Office of the Commission, for the Division of Enforcement.

Joseph P. D'Angelo, pro se, and as president of Daycon Investors Associates, Inc.

BEFORE: Jerome K. Soffer, Administrative Law Judge

By Order dated October 5, 1976, the Commission instituted these public proceedings pursuant to Sections 203(c)(2) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act).

The Order is based upon the filing as of August 23, 1976 of an application by Daycon Investors Associates, Inc. (applicant) for registration as an invesment adviser pursuant to Section 203(c)(1) of the Advisers Act.[1/] The Order alleges that applicant had previously filed a similar

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1/ The pertinent portions of the Advisers Act are as follows: "Section 203(c)(1): An investment adviser, or any person who presently contemplates becoming an investment adviser, may be registered by filing with the Commission an application for registration in such form and containing such of the following information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

* * *

(G) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e) of this section;

* * *

(2) Within 45 days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall --

(A) By Order, grant such registration; or

(B) Institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and it shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by Order, shall grant or deny such registration. * * *

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make a finding or if it finds that if the applicant were so registered, (continued)

application which was accepted for filing by the Commission as of June 16, 1976, but was withdrawn effective July 27, 1976; that Joseph P. D'Angelo has been president and treasurer of applicant since at least May 11, 1976

1/ (continued)
its registration would be subject to suspension or revocation under subsection (e) of this section.

Subsection (e) provides for sanctions against a registrant who:
(1) has wilfully made or caused to be made in any application for registration * * * any statement which was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

* * *

(3) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction when acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, * * * or from engaging in or continuing any conduct or practice in connection with any such acitivty or in connection with the purchase or sale of any security.

(4) has wilfully violated any provision of * * * this title * * *

Subsection (f) states, as follows: the Commission, by Order, shall censure or place limitations on the activities of any person associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding twelve months or bar any such person from being associated with an investment adviser, if the Commission finds on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act of omission enumerated in paragraph (1), (4) or (5) of subsection (e) of this section * * *, or is enjoined from any action, conduct or practice, specified in paragraph (3) of said subsection (e). * * *

Section 207 - Material Misstatements - It shall be unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

and is a person associated or seeking to become associated with an investment adviser; and that on September 29, 1970, D'Angelo was permanently enjoined against violation of the registration and antifraud provisions of the securities laws in connection with the offer and sale of the securities of Tycodyne Industries Corporation (Tycodyne) or any other securities. The Order further charges as a violation of section 207 of the Advisers Act that from at least May 11, 1976 to date, applicant and D'Angelo willfully violated the registration provisions of the Act in that they wilfully made or caused to be made untrue, false and misleading statements of material facts and omitted to state in such applications for registration material facts required to be stated in applications for registration filed with the Commission, more particularly the facts set forth above concerning the entry of the injunction against D'Angelo.

A hearing was ordered to determine the truth of the allegations and to enable respondents to establish any defense thereto, whether the application filed August 23, 1976 should be denied, and what, if any, remedial action is appropriate in the public interest. The Order further provided for an expedited schedule of procedures in order to comply with Section 203(c)(2)(B) of the Advisers Act.

Hearing was held in Buffalo, New York on October 20, 1976 at which respondents were represented in a pro se capacity by D'Angelo. The Division of Enforcement and the respondents severally filed Proposed Findings and Conclusions of Law and a Brief. In their answer, filed shortly prior to the hearing, respondents admit all of the allegations in the Order for

Proceedings except that they deny any wilful violation in the filing of the applications for registrations, or that they made untrue, false and misleading statements with respect thereto.

The findings and conclusions herein are based upon a preponderance of the evidence as determined from the record and upon observation of the demeanor of respondent D'Angelo, the one witness testifying on behalf of both the Division and the respondents.

Respondents

Applicant is a New York corporation, organized December 28, 1956. D'Angelo has been its president and secretary, as well as chairman of the board and a stockholder since its incorporation. The other officers, board members and stockholders comprise members of his immediate family, more particularly, five of his children.

The offices of applicant are located in Buffalo, New York, in a building also occupied by D'Angelo for the practices of his profession of dentistry, and as his personal residence. There are other tenants in the building which is owned by a corporation controlled by D'Angelo. Applicant employs two full-time secretarial personnel. Services are also rendered by D'Angelo and some of his children. It engaged in a number of varying activities, designated by different "divisions", including the distribution and manufacture of burglar alarm systems and related electronic devices, the management of rental real estate, financial management, the providing of graphic design and technical writing for trade publications, foreign sales and marketing services, the rendition of a business consulting service,

the arranging of mergers and acquisitions, and dealing in antique securities having historical value. Although applicant holds itself out to perform all of the described activities, it is not active in all of them at the present time. The proposal to register as an investment adviser would add one more function to its numerous endeavors.

D'Angelo, a practicing dentist, had been president of Tycodyne, a position he occupied for four years beginning in 1966 through 1970. It was this connection with Tycodyne that is basic to the issues involved in this proceeding. He was also a registered broker-dealer with the Commission for about 5 or 6 years commencing in 1956.

The Injunction

On September 29, 1970, a final judgment of permanent injunction was entered in the United States District Court for the Western District of New York (Civil Action No. 1970-421) against Tycodyne, D'Angelo, and one Raymond Dean, enjoining them from violating sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, and sections 10(b) and 12(g) of the Securities Exchange Act of 1934. The judgment resulted from a complaint filed by this Commission just two weeks earlier, on September 14, 1970, and was entered upon consents of all of the defendants executed on September 18. D'Angelo signed separately for Tycodyne, as its president and chairman of the board of directors, and for himself individually. The allegations contained in the Commission's complaint are not disclosed in this record but they were neither admitted nor denied by the defendants consenting to the injunction. The injunction, however, relates to sales of unregistered securities of

Tycodyne, the failure to register Tycodyne securities, and the sale of such securities by the use of fraudulent representations or omissions: concerning the subsidiary corporations allegedly owned by Tycodyne; the nature of products developed, marketed and manufactured; its financial condition, projections of future sales and conditions, and outstanding shares; and proposed operation of a gambling casino in Haiti by Tycodyne. During the course of that proceeding, all of the defendants including D'Angelo, were represented by an attorney, William Ruffa, who witnessed the signing of the consents.

The Registration Applications

Applicant had filed its first application for registration as an invesment adviser on Form ADV, dated May 8, 1976, which, after several intervening amendments thereto, was accepted for filing by the Commission as of June 16, 1976. The application form contains a direct request for information, in Item 16, Paragraph (c), as follows:

> 16. State whether the applicant or registrant, any person named in items 12, 13, 14, and 15 or any schedule thereunder, or any other person directly or indirectly controlling or controlled by the applicant or registrant, including any employee:
>
> * * *
>
> (c) is permanently or temporarily enjoined by order, judgment or decree of any court from acting as an investment adviser, underwriter, broker or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security. (underlining added).

This item calls for a "yes" or "no" answer by checking an appropriate box. In the first application, applicant checked a "no" answer, although D'Angelo is a person named in a schedule filed under Item 12. The instructions require that if Item 16(c) (or other related items) were answered in

the affirmative, the details of such answer should be set forth in a separate "Schedule E". No such schedule was filed. Moreover, in Schedule D of the application form, which calls for information concerning D'Angelo individually, an explanation is required with respect to any item in Paragraph 16 having a "yes" answer. None is stated.

In other words, in the first application filed with the Commission, which was prepared by D'Angelo's secretary at his direction, based upon information he supplied, there is no disclosure at any of the places where it normally should be of the fact that at one time he had been enjoined as previously described.

Thereafter, D'Angelo was advised by attorneys in the Division of Enforcement, specifically Lawrence Toscano and Kenneth Daniels, that the described application was inaccurate for failing to set forth the fact of the injunction and suggested that he withdraw that application and file a new one containing the omitted materials which would then give the staff an opportunity to review the matter.[2/] Accordingly, applicant withdrew the application by formal letter, and then filed another application which was received for filing by the Commission on August 23, 1976 and is the subject of this proceeding.

The second application contained the same negative answer to Item 16(c) and also omitted to give any details with respect to the injunction on

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2/ They suggested a refiling, rather than amendment, since the 45-day statutory limit for action as set forth in Section 203(c)(2) was just 5 days from expiring, and they wanted a new 45-day period to give them time to consider what action they would recommend be taken with respect to granting the application in view of the past injunction. Another 43 days elapsed between the refiling and the issuance of the Order herein.

Schedule D, relating to Dr. D'Angelo. However, there was appended a Schedule E, identified as "Consent Action by the Securities & Exchange Comm." This schedule, about a page and a third in length, contains an explanation beginning with the words, "I was president of a company, Tycodyne Industries Corporation, in which we were served a summons, File # Civ. 1970-421. This action was then terminated by a Consent Action by myself, Joseph P. D'Angelo, Tycodyne Industries Corporation, and Raymond C. Dean." This statement is followed by a number of self-serving paragraphs in which the applicant attempts to explain his actual innocence of any wrongdoing in connection with the Tycodyne actions relating to the sale of its stock. Copy of the Schedule is set forth in the appendix hereto.

Thereafter, the within Order for Public Proceedings was issued.

Position of the Parties

The Division contends that the registration herein should be denied and sanctions imposed against D'Angelo arising not only from the fact that an injunction was issued against him, but also from the filing of a false and misleading application for registration. D'Angelo and the applicant urge the granting of the registration because of the facts and circumstances surrounding the signing of the consent to the injunction, the situation that continued thereafter, and, finally, the filing of the first and second applications herein.

A

D'Angelo professes personal innocence of the activities involved in the injunction proceedings. The allegations concerning the sale by Tycodyne

of unregistered securities, the failure to register existing securities, and the fraudulent representations in the prospectus issued in connection with the sale of Tycodyne securities were all performed under the advice of house counsel, a Mr. Richard Johnson, who, it is alleged, was eventually made the subject of disbarment proceedings by reason of his conduct. Moreover, D'Angelo believed implicitly in the facts contained in the prospectus to the extent that he himself invested, either by stock purchase or loans, some $500,000 in Tycodyne, and prevailed upon close members of his family, such as his mother and children, to invest their monies in the securities, monies which were eventually lost. Consequently, he refused for many months to concede any wrongdoing during the investigatory phase of the injunction proceeding and resisted admitting personal responsibility in connection therewith.

D'Angelo points out that he executed his consent to the entry of an injunction under very difficult circumstances. For many years, he has suffered from an allergic form of asthma, which necessitates that he leave his Buffalo domicile about August 15 of each year and sojourn in pollen-free areas of Florida until the pollen season abates.[3/] It was during such a stay in 1970 that the many months of preliminary investigatory transactions concerning Tycodyne came to a head. Unknown to D'Angelo or his attorney, the Commission filed its complaint in the District Court in Buffalo on September 14. Immediately thereafter, the matter was picked up

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3/ If he remains in Buffalo, he is required to carry a tank of oxygen in his car, for example.

by the news media, including newspaper, radio and television, and widely disseminated. Members of D'Angelo's family, business associates, patients and friends, contacted him in Florida about the charges and he became quite upset. (His mother suffered a heart attack.) He thereupon made arrangements to go to New York and agreed to consent to an entry of a judgment in order to put an end to the notoriety he was receiving. He claims that he was assured by counsel for the Division, Mr. Ralph Kessler, and his own attorney[4/] that his involvement was purely as president of Tycodyne, that by consenting to the injunction, there would be no reflection on him personally and that there would be a finality to the matter. Hence, on September 18, 1970, he made a round trip between Florida and the Commission's New York City offices spending no more than 20 minutes at the latter place where he signed the consents. He claims to have been under sedation and unable to see too well. Upon his subsequent return to Buffalo, he read the charges contained in the complaint for the first time and, feeling that he was innocent of them, requested his counsel to take proceedings to set aside the injunction.[5/] However, he withdrew this request upon being advised that this procedure would be expensive, would

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4/ Respondents had requested of the Division that Mr. Kessler be made available at the hearing to verify the conversations and agreement between the parties, and to consent to the introduction of a recording made by D'Angelo of a telephone conversation had with Kessler during the early period. Kessler is no longer employed by the Division and an opportunity was afforded respondents at the hearing to subpoena him which respondents did not accept. Mr. Ruffa is said to be physically unable to testify due to physical disabilities accidentally incurred.

5/ In their brief, respondents make detailed references to the contents of the Complaint in the injunction action, and to explanation of the surrounding circumstances relating to the allegations therein. These matters have not been made part of the record herein and, hence, cannot be considered.

only stir up the notoriety once again, and that in any event, he was only being enjoined from future violations of law which he intended to obey anyway. He sent letters to the stockholders of Tycodyne expounding his belief in his own innocence, in the soundness of the company, and made the same allegations and statements which he has continued to make herein with respect to his lack of actual involvement in the illegal Tycodyne activities.

When D'Angelo submitted the first application on June 16, 1976 to register applicant as an investment adviser, he felt in his mind that the so-called "consent action", a term by which he constantly refers to the injunction issued against him, had no bearing on the filing. He has persisted in his belief that his involvement with Tycodyne was purely derivative rather than personal, and that the "consent action" would have finalized his responsibility with respect to such activities. He further alleges that Kessler had informed him the "consent action" would not affect his future dealings with the Commission, but merely "close the file". He asserts that consequently he did not then believe the injunction had any bearing upon applicant's registration as an investment adviser. Although he did at first question in his own mind the correct way to answer Item 16(c), the foregoing considerations impelled him to proceed as he did, without seeking advice from counsel or this Commission.

In preparing the filing of the second application, D'Angelo instructed his secretary to include the matter under the heading of "Consent Action" heretofore described and to make whatever changes were necessary in the body of the application, but otherwise to copy the same information as

previously filed. He contends that she inadvertently failed to check the appropriate box under Item 16(c) and he, relying upon his belief in her competence, submitted the application in its present form without reviewing whether or not she made the necessary changes, except to read over the matter in Schedule E, as set forth in the Appendix.

B

The thrust of the position taken by the Division in its proposed findings and brief appears to be that respondent's initial and current application forms are false and misleading with respect to the failure to disclose the existence of the injunction, that such failure was "wilful" and constitutes a violation of Section 207, and hence within the proscription of subdivision (4) of Section 203(e), and that such wilful violation of Section 207, calls for a denial of applicant's registration and that D'Angelo individually be barred. The Division urges that the explanation set forth in Schedule E of the current filing does not adequately or properly advise that there is an injunction in existence and contains misstatements of fact concerning D'Angelo's participation in the violations by Tycodyne.

While conceding that not every instance where an individual has been enjoined, without more, creates a sufficient basis for imposing sanctions, the Division contends that the violations embraced within the injunction decree, concerning the registration and antifraud provisions of the securities laws are of such severity as to call for the sanction sought herein under section 203(f).

Finally, the Division argues that D'Angelo's wilful failure to disclose the injunction in the initial application, his setting forth of misleading and untruthful statements in the second application, plus the claim that he was less than candid at the hearing, when considered in the light of the fiduciary capacity held by an investment adviser to his client, all further warrant the sanctions urged.

Discussion and Conclusions

The Advisers Act requires the registration of those who intend to serve as investment adviser by submitting an application containing the detailed information spelled out in the statute (Section 203). These requirements are based in recognition of the general purpose of the Advisers Act, and of the delicate fiduciary nature of an investment advisory relationship. S.E.C. v. Capital Gains Bureau, 375 U.S. 180, 191 (1963). Such registration involves the giving of full information about the applicant and its method of operation. See Fiduciary Council v. Wirtz, 383 F. 2d 203,205 (D.C. Cir.), Cert. Denied, 389 U.S. 1005 (1967).

Among the information required to be furnished is a statement as to whether the investment adviser or any person associated with him is subject to any disqualification which would be a basis for denial, suspension, or revocation of such registration under subdivision (e) of Section 203. One of the bases set forth therein includes the case of an associated person who is permanently enjoined by the judgment of a court in connection with the purchase or sale of any security. Since the investment adviser occupies a fiduciary capacity, the statutory requirement to disclose an injunction

of the type described is crucial to the operation of the Advisers Act and a blatant abuse thereof cannot be condoned. See Marketlines, Inc. v. S.E.C., 384 F. 2d, 264,267 (2d. Cir., 1967) Cert. Denied, 390 U.S. 947 (1968).

The statute requires that within 45 days of the filing of an application for registration, the Commission shall either grant such registration or institute proceedings to determine whether it should be denied. It is further provided that such registration should be granted if the Commission finds that the requirements of Section 203 are satisified, but that if it does not make such a finding the Commission shall deny such registration. In the alternative, the registration may be denied upon a finding that if the applicant were registered, its registration would be subject to suspension or revocation.

Consequently, the failure of the applicant to disclose in its first filing on May 8, 1976 that its president had been permanently enjoined by the U.S. District Court on September 29, 1970, as detailed heretofore, was a failure to comply with the statutory requirements as to the contents of its application and hence, prevents the Commission from finding that the same are satisfied. This, in turn, requires that the application must be denied, and thus there is no need to find alternative grounds for denial relating to subsection (e) of Section 203.

However, the Division gave applicant another bite of the apple by allowing it to withdraw the deficient application and to file a new one showing the existence of the injunction. Thereupon, applicant withdrew

its application, and filed the current one which was received as of August 23, 1976. Again there is the threshold question as to whether applicant has satisfied the statutory requirements, particularly as to whether the current application advises of the fact of the injunction against D'Angelo, an associated person. It is concluded that it does not.

First, there is failure to alert a reader of the application by the negative answer to Item 16(c), and the omission to mention the injunction on the information page relating to D'Angelo individually. These are the obvious places to look. But even assuming that these misstatements could be cured by a proper disclosure elsewhere, specifically the information furnished in Schedule E, the fact is that the reference to a "consent action" followed by many paragraphs of self-serving declarations do not adequately or sufficiently apprise a reader that an injunction had been issued against D'Angelo. The word "injunction" does not appear. The name of the court in which the proceeding was pending is omitted. Neither the allegations of the complaint, nor the contents of the injunction are summarized or even hinted at. Apart from whether there was an intent by D'Angelo to describe fully and fairly the injunction against him, the fact is that the contents of the Schedule, as seen in the annexed Appendix, do not do so. In sum, the current application as now before the Commission, like the one that preceded it, does not satisfy the requirements of Section 203 in that it fails to disclose that a person associated with applicant has been permanently enjoined by an order of a court of a competent jurisdiction from engaging in any conduct in connection with the purchase or sale of a security.

Consequently, the requested registration must be denied.[6/]

Public Interest

The Order for Proceedings herein also opens up to question the conduct of D'Angelo individually and whether remedial action, if any, against him is appropriate in the public interest pursuant to Section 203(f) of the Advisers Act.

Two grounds exist for the possible imposition of sanctions upon D'Angelo, a person who admittedly is seeking to become associated with an investment adviser. First is the fact of the existence of the injunction against him, and, secondly, is his conduct surrounding the filing as president of applicant, of an application for registration which fails to contain material facts required to be stated therein, i.e., the injunction against him. Clearly, his conduct in this regard is "wilful" as that term is understood in securities cases.[7/] However, in determining whether sanctions should be imposed and if so, to what extent, due regard must be given to all of the surrounding circumstances including the nature of the acts enjoined and the basis on which the injunction was entered by the Court. See New England Counsellor, 40 S.E.C., 303,306 (1960); and compare Robert F. Lynch, SEA Rel. No. 11737, (October 15, 1975), 8 S.E.C. Docket, 75,78; and Leo Glassman, SEA Rel. No. 11929 (December 16, 1975), 8 S.E.C.

6/ The grounds urged by the Division, in reliance upon Section 207, are superflous in this regard. They might require consideration were the application in prima facie compliance with the statutory requirements of full disclosure, perhaps grounded primarily in section 203(e)(1) relating to the attempted filing of a false application.

7/ A finding of wilfulness does not require a showing of an intention to violate the law; it is enough that the person charged intentionally commits the act constituting the violations. Hughes v. S.E.C., 174 F. 2d, 969,977 (2d. Cir. 1958); Tager v. S.E.C., 344 F. 2d 5,8 (2d. Cir. 1965); and Gearhart and Otis v. S.E.C., 348 F 2d., 975 (D.C. Cir. 1965).

Docket, 735,736.

Although neither the contents of the complaint in the injunction action nor the facts and circumstances of the underlying misconduct have been offered in this record, it appears from the recitals in the injunction that they involved the registration provisions and the antifraud provisions of the securities laws, usually relatively serious violations. It is not overlooked, however, that this injunction is now more than 6 years old. The situation in which D'Angelo found himself at the time he consented to the injunction, including his illness, the notoriety, and the time and other pressures upon him, do require careful consideration in mitigating the effect of the injunction. He and his family suffered severe financial losses because of their involvement in Tycodyne. It is not controverted that D'Angelo did not recognize and probably misunderstood the extent of his responsibility for the violations committed by Tycodyne. He did consider taking some steps to reverse his "consent action", particularly upon reading the complaint; but he took no action to set aside the injunction, choosing instead to plead his avoidance of personal guilt to other stockholders of Tycodyne and thereafter to anyone else.

Nevertheless, the time has long since passed for D'Angelo not to recognize that there is in fact an injunction issued against him by a Federal District Court Judge. He is a highly intelligent man, and apparently versed well enough in the law to appreciate what an injunction is. 8/ He is

8/ His handling of his defense in this proceeding and his preparation of the proposed findings and conclusions and brief submitted on his behalf, demonstrate his exceptional awareness of the particulars in all of these proceedings.

aware enough to understand that when he is called upon to disclose whether or not he has ever been enjoined, no matter what the circumstances, to give the correct answer before offering explanations and self-serving statements on his behalf. If he were not, and were unable to comprehend the simple demands of an application form for correct information, then a serious question is raised as to his fitness to function as an inves. adviser upon whom the public would rely before investing their resources. Even accepting his defense of "mental block" with respect to his involvement with Tycodyne, there is no justification for his failure to simply and directly state the facts of the injunction, particularly after having been alerted by Commission staff, when he resubmitted his application.

If his failure to correctly answer Section 16(c) and Schedule D of the application were an intentional device to deceive then D'Angelo should receive the severest sanction. If it were not so intentional then he has exhibited inexcusable carelessness. Moreover, the information later offered in Schedule E is devoid of meaningful details designating the action against him as an injunction or to alert the reader that one exists. Calling it a "consent action" is a transparent device to avoid the obvious. The time has long since passed for D'Angelo to continue fencing with reality. This does not mean that he cannot continue to give his understanding as to what happened with Tycodyne and the extent of his involvement therein. He must recognize that as an associated person with an investment adviser he must first and foremost be honest in his expressions and straightforward in his conduct. The investing public is entitled to nothing less. As noted by the Commission in Justin Stone Associates, Inc., 41 S.E.C., 717,723:

> The application for registration is a basic and vital part in our administration of the Act, and it is essential in the public interest that the information required by the application form be supplied completely and accurately. The application form obligates the applicant to verify that all statements contained in it are true, correct and complete to the best knowledge and belief of the person executing the form. An applicant for registration cannot shift responsibility for the truth and accuracy of the application to a clerical employee.

Accordingly, it is concluded that a sanction be imposed against D'Angelo in accordance with the provisions of Section 203(f) of the Adviers Act, not only by reason of the injunction heretofore issued against him, which by this time has assumed lesser importance (See Balbrook Securities Corporation, 42 S.E.C., 496,498 (1965)), but more importantly for his violation of Sections 203(e)(1) and 207 of the Advisers Act by wilfully omitting to state in the subject application a material fact which is required to be stated therein. Further consideration of all the surrounding circumstances justifies the conclusion that he be suspended for a period of six months from becoming associated with an investment adviser by reason thereof. 9/

ORDER

Under all the circumstances herein, IT IS ORDERED:

1. That the registration of Daycon Investors Associates, Inc. as an investment adviser under the Advisers Act be, and hereby is, denied.

2. That Joseph P. D'Angelo be, and he hereby is, suspended from becoming associated with an investment adviser for a period of six months

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9/ In their proposed findings and conclusions and briefs, the parties have requested the Administrative Law Judge to make findings of fact and have advanced arguments in support of their respective positions other than those heretofore set forth. All such requested findings of fact, conclusions, and arguments not specifically discussed herein have been fully considered and the Judge concludes that they are without merit or that further discussion is unnecessary in view of the findings herein.

following the effective date of this order.

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

The procedures set forth in said Rule 17(f) with respect to the filing of a petition for review and the effect of proceeding or not proceeding therewith, shall be in accordance with the times specified in the Order for Public Proceedings herein dated October 5, 1976. Subject to the procedures outlined in said order, the provisions of Rule 17(f) shall otherwise apply.

Jerome K. Soffer
Administrative Law Judge

Washington, D.C.
November 5, 1976

Schedule E of FORM ADV

(Continuation Sheet)

SEC. USE	
FILE NO. 801–	DOC. SEQ. NO.

Full name of Applicant or Registrant exactly as stated in Item 2 of Form ADV.

TYCON INVESTORS ASSOCIATES, INC.

Item of Form (identify)	Answer
CONSENT ACTION by the Securities & Exchange Comm.	I was President of a company, Tycodyne Industries Corporation, in which we were served a summons File #CIV 1970-421. This action was then terminated by a Consent Action by myself, Joseph P. D'Angelo, Tycodyne Industries Corporation and Raymond C. Dean. In order to put the record straight as far as my knowledge in this situation, please note the following: 1. I never sold not one share of Tycodyne stock from my personal account and all stock which was sold for the Tycodyne account was sold by Tycodyne. My only connection in this matter was that I was president during this period of time. 2. Tycodyne never represented that any of the stock sold was registered with the S.E.C. As a matter of fact, certificates issued by Tycodyne were stamped with a legend which stated that these shares were not registered with the S.E.C. Furthermore, Tycodyne required a statement, signed by the purchaser, in which he acknowledged that he clearly understood that the shares were not registered and not for immediate resale. 3. Any errors which the S.E.C. found in our financial and registration statements were due to our accounting procedures and personnel not being S.E.C. oriented. The entire S.E.C. complaint, as far as we were concerned, according to our attorney, Mr. William Ruffa, and the S.E.C. attorney, Mr. Ralph Kessler, was a technical one and was created by ill-advisement by our previous counsel. Tycodyne took exception to the item which referred to the Haitian gambling operation. We had correspondence, signed by Mr. Robert Edwards who represented that he was holding the gambling rights from the Haitian government and that these rights were assignable to Tycodyne. Prior to the Consent Action, Tycodyne, upon the advice of the S.E.C., terminated negotiations with Mr. Edwards after revealing to us the background of this judgment. As the S.E.C. recognizes, I neither admitted nor denied the allegations and in addition, I refused to sign the Consent Action because I felt I did nothing morally or legally wrong. I protested to the S.E.C., the use of the word "denied" in the Consent Action and was informed by both our attorney, William Ruffa, and the S.E.C. attorney, Ralph Kessler,

RECD S.E.C.

AUG 23 1976

Date as given in ITEM 9 of FORM ADV accompanying this Schedule.

July 30, 1976

If any item on this page is amended, you must answer in full all other items on this page and file with a completed and executed page one.

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hedule E of FORM ADV

(ation Sheet)

SEC USE	
FILE NO. 801-	DOC SEQ NO.

ll name of Applicant or Registrant exactly as stated in Item 2 of Form ADV.

AYCON INVESTORS ASSOCIATES, INC.

Item of Form (identify)	Answer
ONSENT ACTION y the Securities Exchange Comm (cont'd.)	that this was strictly a procedural word used in all such cases which were being resolved by a Consent Action. I repeatedly refused to sign the Consent Action, as worded by the S.E.C., because all of the allegations, in my mind, were not true or factual as related to any wrong doings by myself personally, nor were they done intentionally.

RECD S.E.C.

AUG 23 1976

RECD - S.E.C.

AUG 3 - 1976

Date as given in ITEM 3 of Form ADV accompanying this Schedule

July 30, 1976

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APPENDIX II