

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION  
November 5, 1965

In the Matter of	:
LINDER, BILOTTI & CO., INC.	:
c/o Kaufman, Stolzar & Kaufman	:
205 West 34th Street	:
New York, New York	:
File No. 8-9570	:
Securities Exchange Act of 1934 -	:
Sections 15(b) and 15A	:

FINDINGS,  
OPINION  
AND ORDER  
REVOKING  
BROKER-  
DEALER  
REGISTRATION

BROKER-DEALER PROCEEDINGS

Grounds for Revocation of Registration

Sale of Unregistered Securities

False and Misleading Statements in Sale of Securities

Excessive Mark-Ups

Excessive Trading

Violation of Net Capital Requirements

Where registered broker-dealer sold unregistered stock, sold such stock and its own subordinated notes by means of false and misleading statements, charged excessive mark-ups in sales of securities to customers, induced excessive trading in customers' accounts, and violated Commission's net capital rule, held, in the public interest to revoke registration.

APPEARANCES:

William Lerner, John P. Cione, Roberta S. Karmel, and Arthur F. Mathews, for the Division of Trading and Markets of the Commission.

Davis J. Stolzar, of Kaufman, Stolzar & Kaufman, for Linder, Bilotti & Co., Inc. and Armand Bilotti.

The issues presently before us in these proceedings are whether the registration as a broker and dealer of Linder, Bilotti & Co., Inc. ("registrant") should be revoked pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and, if so, whether Hyman S. Linder and Armand Bilotti are each a cause of such revocation. 1/ Following a hearing,

1/ The order for proceedings also raised the issue whether registrant should be expelled from the National Association of Securities Dealers, Inc. Thereafter, that Association terminated registrant's membership for failure to file an assessment report. Accordingly, that issue is no longer before us.

we temporarily suspended registrant's registration pending a final determination on the revocation issue. <sup>2/</sup> No additional evidence was introduced on that issue, and following the filing of proposed findings and briefs by the Division, registrant, and Bilotti, the hearing examiner recommended that registrant's registration be revoked and that Linder and Bilotti each be found a cause of such revocation. The Division filed a memorandum in support of the recommended decision, and registrant and Bilotti filed exceptions and a brief which did not call any new matter to our attention. On the basis of our independent review of the record and for the reasons stated in the detailed findings of fact and conclusions of law in our opinion on the suspension issue and in the hearing examiner's recommended decisions, we find that registrant, together with or aided and abetted by Linder and Bilotti, willfully violated:

1. The registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1933 and the anti-fraud provisions of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 15c1-2 thereunder.

From June through September 1963, respondents offered, sold and delivered class A common stock of Elite Theatrical Productions Ltd. ("Elite"), of which Linder and Bilotti were the promoters and officers, when no registration statement had been filed or was in effect as to such stock, and made materially false and misleading statements and predictions concerning the stock's future price and earnings, safety as an investment and listing on an exchange. No disclosure was made of Elite's lack of an experienced management, its adverse financial condition, and the speculative nature of the company's business. Moreover, in August 1962 and September 1963, in attempts to remedy registrant's deficient capital position, they offered and sold registrant's own subordinated 12% notes totaling \$55,000 to three of its customers who were elderly women, two of them widows, and who relied upon registrant for guidance in the handling of their accounts, and obtained a renewal of the August 1962 note when it became due in September 1963. In inducing the sales and the renewal, respondents made materially false and misleading statements as to registrant's financial condition, the safety of the investments in its notes, and the intended use of the proceeds. <sup>3/</sup>

2. Section 15(c)(1) of the Exchange Act and Rule 17 CFR 240.15c1-2 thereunder in that registrant charged excessive mark-ups and caused excessive activity in the accounts of three customers, two of whom were the widows referred to above, for its own gain and benefit and in disregard of the financial welfare or investment aims of such customers.

a. Registrant effected transactions in the account of Mrs. C from July 1962 to July 1963. In 38 transactions in which it sold securities to her during that period, it charged mark-ups over the prevailing market price ranging from 5% to 200%. <sup>4/</sup> Of about 61 securities purchased by

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<sup>2/</sup> Securities Exchange Act Release No. 7460 (November 13, 1964).

<sup>3/</sup> See Lile & Co., Inc., Securities Exchange Act Release No. 7644, p. 4 (July 9, 1965).

<sup>4/</sup> The market price used as a basis in calculating the mark-up in the sales to the three customers is the price at which registrant purchased the security involved on the same day the sale was effected, or, if no same-day purchase occurred, the price at which registrant made the most nearly contemporaneous purchase within three days before or after the sale. No other evidence of market price was introduced. In previous decisions (e.g., Naftalin & Co., Inc., Securities Exchange Act Release No. 7220, p. 4 (January 10, 1964)), we have used

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Mrs. C between July and November 1962, at least 32 were held in her account less than four months and at least 12 were held less than one month. In a number of instances, the same security was purchased, sold, and then repurchased within a four months' period. By July 1963 the securities in Mrs. C's account, which at the beginning had consisted mostly of securities of established companies, had been converted to stocks of registrant, Elite and one other company, having little or no market value, two subordinated promissory notes of registrant, each in the amount of \$20,000, and cash of about \$10,600. 5/

b. In the period May 1962 through August 1963, registrant charged another customer, Mrs. McA, mark-ups over prevailing market prices ranging from 5% to 100% in 43 principal transactions. 6/ In about 70 out of 80 sale transactions in Mrs. McA's account from May 1962 to September 1963, registrant sold securities which had been purchased during the previous six months. In two instances the same security was then repurchased within 13 days and six months, respectively, after the latest purchase prior to the sale. During the period, her portfolio, which initially consisted largely of securities of established companies, was converted to 5,000 shares of Elite stock and a subordinated promissory note of registrant in the amount of \$10,000.

c. In the period April through June 1963, registrant charged a third customer, Mrs. T, mark-ups over prevailing market prices ranging from 11% to 200% in seven principal transactions. 7/ In 10 instances, registrant sold securities in Mrs. T's account which had been purchased within the previous two months.

3. Section 15(c)(3) of the Exchange Act and Rule 17 CFR 240.15c3-1 thereunder in that, during the period from July 31, 1962 to May 31, 1963, registrant employed the mails and the facilities of interstate commerce to effect securities transactions, otherwise than on a national securities exchange, when it had net capital deficiencies, computed pursuant to the Rule, which amounted to \$1,369, \$3,522 and \$3,919 on July 31, 1962, November 9, 1962 and May 31, 1963, respectively.

4 Continued/

contemporaneous cost as a measure of prevailing market price where, as here, no countervailing evidence of market price was present in the record.

Of the 38 sales to Mrs. C, only two were at mark-ups under 10%. One was at 5% in a sale of 100 shares at 10 1/4, and the other was at 7.5% in a sale of 200 shares at 5-3/8. Nineteen of the sales were at mark-ups of 7.5% to 100% over same-day cost to registrant, 14 were at mark-ups of 5% to 200% over cost a day earlier or later, and 5 were at mark-ups of 18% to 57% over cost two or three days earlier or later.

5/ The securities initially held in Mrs. C's account were sold for a total of about \$67,700.

6/ Only four of the 43 sales were at mark-ups under 10%. These involved securities sold at 2-7/8 to 7-5/8 for total amounts ranging from \$662.50 to \$4,575. 33 sales were at mark-ups of 5% to 100% over same-day cost of the security to registrant, 9 were at mark-ups of 14.7% to 60% over the cost one day earlier or one day later, and one was at a mark-up of 12.5% over the cost two days later.

7/ Five sales were at mark-ups of 11% to 28% over same-day cost and two were at mark-ups of 14% and 200%, respectively, over cost a day earlier or later.

In view of the foregoing extensive and serious violations, we conclude, as did the hearing examiner, that it is in the public interest to revoke registrant's registration as a broker-dealer and that Linder and Bilotti should be found causes of such revocation. 8/

Accordingly, IT IS ORDERED, that the registration as a broker and dealer of Linder, Bilotti & Co., Inc., be, and it hereby is, revoked, and it is found that Hyman S. Linder and Armand Bilotti are each a cause of this order of revocation.

By the Commission (Chairman COHEN and Commissioners WOODSIDE, OWENS, BUDGE, and WHEAT).

Orval L. DuBois  
Secretary

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8/ To whatever extent the exceptions to the recommended decision of the hearing examiner involve issues which are relevant and material to our decision, we have by our findings and opinion sustained or overruled such exceptions to the extent that they are in accord or inconsistent with the views herein.