

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

August 10, 1966

In the Matter of	:	
	:	
HAYDEN LYNCH & CO., INC.	:	
1333 Norman Drive	:	FINDINGS AND
Palatine, Illinois	:	OPINION OF
	:	THE COMMISSION
File No. 8-11990	:	
	:	
Securities Exchange Act of 1934 -	:	
Section 15(b)	:	

BROKER-DEALER REGISTRATION

Grounds for Denial

Sale of Unregistered Securities

Bids for and Purchases of Stock
During Distribution

False and Misleading Statements in
Offer and Sale of Securities

Where president and sole owner of applicant for broker-dealer registration had sold unregistered securities, bid for and purchased securities during distribution, and made false and misleading statements in offer and sale of such securities concerning, among other things, issuer's production and sales, backlog of orders, financial condition, future earnings, and patent rights, held, under all the circumstances it is in the public interest to deny broker-dealer registration.

PRACTICE AND PROCEDURE

Rulings by hearing examiner on motions and objections of applicant for broker-dealer registration and controlling person of applicant concerning, among other things, adequacy of time to seek counsel and prepare defense, bills of particulars, reopening of hearings to permit amendment of order for proceedings to conform to proof, examiner's participation in questioning of witnesses, admission in evidence of books and records excluded from criminal proceedings, staff counsel's assistance during hearings of grand jury investigation, staff's refusal to allow controlling person to use its copy of transcript of testimony, and examiner's references to controlling person's assertion of claim of privilege against self-incrimination, affirmed.

APPEARANCES:

Melville B. Bowen, Jr. and B. Joan Holdridge Saxer, for the
Division of Trading and Markets of the Commission.

Ralph G. Scheu, for Hayden Lynch & Co., Inc.

Hayden Lynch Leason, pro se.

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Following hearings in these private proceedings instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), the hearing examiner recommended that the application for registration as a broker and dealer of Hayden Lynch & Co., Inc. ("applicant") be denied, 1/ and that Hayden Lynch Leason, president and sole stockholder of applicant, be found a cause of such denial. Applicant and Leason filed exceptions and briefs, and our Division of Trading and Markets ("Division") filed briefs in reply. We base our findings upon an independent review of the record.

Sale of Unregistered Securities

Between November 1959 and April 1960, Leason, then a salesman for Leason & Co., Inc. ("Leason & Co."), a registered broker-dealer of which his father was president, willfully violated Section 5(a)(1) of the Securities Act of 1933 in that he sold securities of Amphibious Boats, Inc. ("Amphibious"), a Texas corporation engaged in the manufacture and sale of fiberglass boats, as to which no registration statement under that Act was in effect.

On November 19, 1959, Amphibious issued and sold 30,000 shares to Leason and 20,000 shares to four persons designated by him at \$2.55 per share. In February 1960, the directors of Amphibious, including Leason who had become a director on December 9, 1959, issued 6% bearer debentures immediately convertible into common stock for \$75,000 at the rate of \$2.50 per share to seven persons designated by the directors. At Leason's direction, \$12,500 of such debentures were issued to Leason & Co. and \$10,000 of debentures were issued to a customer solicited by him. In March 1960, Leason & Co., the customer, and other purchasers disposed of their debentures or converted them and sold the underlying shares.

Leason contends that a private offering exemption under what is now Section 4(2) of the Securities Act was available for the 50,000 shares issued in November 1959, and for the debentures and underlying shares. 2/

We agree with the hearing examiner that no private offering exemption was available with respect to the 50,000 shares issued to Leason and the four persons designated by him in November 1959. Such an exemption is not established by the fact that Leason, as well as the four other purchasers, signed investment letters 3/ or that counsel for

1/ With applicant's consent, we postponed the effective date of applicant's registration pending determination of the denial issue.

2/ Under Section 2(3) of the Securities Act, the sale of debentures immediately convertible into common stock is deemed, by negative implication, to be an offer or sale of such stock. Loss, Securities Regulation 299 (2nd Ed. 1961).

3/ At the bottom of the typewritten investment letter signed by Leason, which was in general terms, appeared a handwritten postscript stating that he had "no present intention to sell or distribute this stock," but that he does "not warrant that it will never be sold," only that he does "not contemplate its sale at any time in the future."

Amphibious expressed the opinion that the company could "legally" sell the stock because the purchasers were present stockholders, no commissions were being paid and investment letters were being signed. We are satisfied from the record that Leason in fact purchased the 30,000 shares with a view to distribution rather than as an investment and accordingly was an underwriter with respect to them. 4/ He sold 5,000 of such shares on December 17, 1959 at \$3 per share to a customer whom he had told the month before that there would be a new stock offering in the near future. On January 1, 1960, this customer signed a letter prepared by and addressed to Leason stating that his purchase was for investment and not with a view to resale. Nevertheless, between January 11 and February 26, 1960, Leason on behalf of Leason & Co. repurchased the shares at prices ranging from about \$4 to \$7.25 per share and then effected sales, at prices of 4½ to 8-3/8, to others who were not shown to have access to the kind of information which registration would disclose. Of the remaining 25,000 shares, Leason in January 1960 sold 15,000 shares to a New York broker-dealer and 10,000 shares to a certain company which in turn, according to Leason, transferred a portion of its shares to the New York broker-dealer. As to the 20,000 shares purchased by Leason's designees, it similarly was not shown that they did not need the protection of the registration provisions. It is clear that Leason's sales and the sales to his designees constituted a public offering. 5/

Nor was a private offering exemption available for the debentures or underlying shares. Except with respect to Leason's customer, no evidence was presented that they were acquired by Leason & Co. or the other purchasers for investment. And with respect to Leason's customer, although he testified that Leason told him the debentures were to be held for investment, he further testified that his intent was to sell when there was a good rise in the market price of the common stock, that he saw no difference between taking for investment and taking for a quick profit, and that Leason in fact told him that the price would rise and that "we should expect" to "convert and sell in the next few days." Leason, as a director of Amphibious, was instrumental in causing the issuance of the convertible debentures and in determining who should purchase them and, therefore, was a participant in the illegal distribution by Amphibious. 6/

Bids and Purchases During Distribution

Leason engaged in a distribution of unregistered Amphibious shares at least by November 25, 1959, through an account with Wm. H.

4/ See S.E.C. v. Culpepper, 270 F.2d 241 (C. A. 2, 1959). See also Skiatron Electronics and Television Corporation, 40 S.E.C. 236, 249 (1960); Elliott & Company, 38 S.E.C. 381, 385 (1958): "The basic policy of registration under the Securities Act may not be frustrated by the technique of mechanically obtaining so-called investment letters from successive groups of purchasers."

5/ See S.E.C. v. Ralston Purina Co., 346 U.S. 119 (1953); S.E.C. v. Sunbeam Gold Mines Co., 95 F.2d 699 (C.A. 9, 1938); S.E.C. v. Tax Service, Inc., 357 F.2d 143 (C.A. 4, 1966); Op. Gen. Counsel, Securities Act Release No. 285 (January 24, 1935).

6/ Leason's further argument that he is entitled to a Section 4(4) exemption under the Securities Act is patently frivolous.

Tegtmeyer & Co. ("Tegtmeyer"), 7/ a broker-dealer firm in Chicago, which was opened for him upon the authorization of Leason & Co. In the course of such distribution, Leason purchased Amphibious shares through Tegtmeyer 8/ and caused that firm to enter bids in the sheets. By so doing, he willfully violated Section 10(b) of the Exchange Act and Rule 17 CFR 240.10b-6 thereunder which proscribes bids for and purchases of a security while distributing such a security. 9/ There is no merit in Leason's contention that his purchases through Tegtmeyer, which were entirely from dealers, were exempt from Rule 10b-6 because unsolicited. The bids in the sheets constituted solicitations.

Fraud in Securities Transactions

Between October 1959 and April 1960, Leason, in the offer and sale of securities of Amphibious, willfully violated or aided and abetted violations of the anti-fraud and anti-manipulation 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(a) and (b) thereunder.

Leason mailed selling literature to prospects and dealers, consisting of two brochures entitled "DON'T MISS THE BOAT!" and reprints of an article which he had been instrumental in having published in the OTC Traders Graphic magazine, entitled "New 'Roadable' Boat Kicking Up Spray." 10/ All three documents recommended the purchase of Amphibious stock and contained materially false and misleading statements.

The first brochure had initially been drafted in September 1959 by a salesman for another broker-dealer, whose president was a director of Amphibious. Leason, without checking its accuracy, revised the brochure on Leason & Co.'s letterhead to include estimates of production capacity and earnings, plans for future plant sites in four states, and a balance sheet as of September 30, 1959. This financial statement, which was uncertified, showed current assets of \$129,243, including cash of \$102,663, a retained earnings deficit of \$25,915, and a net worth of \$186,058. The brochure, as revised, was distributed to 1,500 broker-dealers on October 30, 1959 and to additional dealers thereafter. It referred to "dynamic profit potentials in the booming boating industry," Amphibious' "patented, fully tested airplane-type retractable wheel assembly" for amphibian models, "thoroughly experienced" management, and sales contracts "on hand for all boats to be produced in the

7/ Leason sold about 68,168 shares of Amphibious stock through Tegtmeyer between November 25, 1959 and April 1, 1960, and as previously noted distributed elsewhere the 30,000 shares acquired in November 1959 from Amphibious in December 1959 and January 1960.

8/ Between November 27, 1959 and April 1, 1960, Leason purchased about 33,761 shares of Amphibious stock through Tegtmeyer.

9/ See J. H. Goddard & Co., Inc., Securities Exchange Act Release No. 7618, p. 4 (June 4, 1965); Sutro Bros. & Co., Securities Exchange Act Release No. 7053, p. 8 (April 10, 1963).

10/ The article appeared in the December 1959 issue of the magazine and Leason & Co. was billed \$40 by the magazine for "sponsorship of Amphibious Boats."

near future." Net earnings of over 50¢ per share were projected on the basis of a minimum production of 100 boats per month and a minimum profit of \$100 per boat, "bearing in mind the substantial backlog of orders and early sales successes;" and earnings of over \$1 per share were projected should the sales or profit margins "merely equal company expectations" based on production capacity of about 5,000 boats per year because, "apparently, sales are no problem for the present since the company already has tentative orders for more than 2,500 boats." Characterizing Amphibious' prospects as "staggering," the brochure stated that the \$3 price at which the company's stock was then selling was "far lower" relative to estimated earnings than the stocks of other young boat companies which had "posted impressive records of gain," including one stock which had risen in price from \$1.50 in 1956 to \$36.75 in 1959, and that on a comparative basis Amphibious stock appeared "grossly undervalued" and presented "a rare opportunity for capital gains potential."

The second brochure, prepared by Leason in December 1959 and distributed to dealers and to at least 265 investors, was virtually identical in format and language to the first brochure. Its principal differences were the statements that the stock appeared to be grossly undervalued at the then current market price of \$6 per share, that the company would earn over 80¢ (instead of \$1) per share based on production capacity of about 5,000 boats per year, and that the company "already has tentative orders for more than 5,000 boats."

Leason & Co. ordered 2,000 reprints of the magazine article for distribution to dealers and investors. Calling Amphibious the "speculative stock of the month," the article cited the retractable wheel assembly "covered by patent," and its advantages over trailers, the "some 5,000 orders now on hand," "snowballing demand," an estimated capacity on a two-shift basis at from 5,000 to 8,000 boats a year, and a requirement that each jobber post a \$2,450 deposit against a minimum order for 245 boats. The article compared the company's "headstart" in wheeled boats to the advantage "American Motors enjoys in the compact car field." It projected earnings of 95¢ per share based on a yearly production of 5,000 boats and half the estimated average profit of \$100 per boat. The company was represented to be "in good shape financially," and the figures in the September 30 balance sheet showing that current assets were mostly in cash and far in excess of current liabilities were cited. While stating that Amphibious was a "highly speculative venture" "like any fledgling concern," the article concluded that the company has experienced and aggressive management, "is soundly financed, offers a revolutionary new product that already has won impressive trade acceptance, and is expanding production rapidly," and "seems poised to cut quite a swatch in its fast-growing industry."

Although, as noted, the brochures contained the September 30 balance sheet which showed a retained earnings deficit of \$25,915, they did not include the company's uncertified income statement for the period from February 10 to September 30, 1959, which showed that actual production costs alone, excluding sales, general and administrative expenses, exceeded revenues from boat sales by about 18%. Nor was it disclosed that the company's substantial cash position and net worth resulted from the issuance of stock, not from operations.

Moreover, the company's certified balance sheet as of November 30, 1959 and income statement for the period February 10, 1959 to that date, which became available at the end of December 1959, during the distribution of the second brochure, showed an increase in the retained earnings deficit figure to \$126,876 and that production costs exceeded revenues from the sale of boats by about 115%. In addition, boat molds

valued at \$39,865 in the uncertified balance sheet, a number of which had become obsolete, were written down to \$16,000, and \$22,735 in intangible assets consisting of the patent, plant development cost, and engineering cost with respect to the retractable gear, were written off in the certified balance sheet. The patent was written off in light of the opinion of counsel for Amphibious, who was also an officer, that the company did not have good title to a patent on certain features of a retractable gear for boats, and the fact that the company had decided to develop a retractable gear independently rather than rely on the patent. Although Leason attended the December 9, 1959 board meeting of Amphibious at which the write-down and write-offs were discussed, he included the uncertified September 30 balance sheet in the second brochure which was subsequently prepared and distributed.

The representations in the brochures that Amphibious had 2,500 or 5,000 "tentative" orders for boats were materially misleading in view of the references to sales contracts on hand and to the "substantial" and "impressive backlog of orders." In fact, although it was the company's practice to give franchises to distributors who would agree to order a certain number of boats, such agreement was not enforced. As a result, out of 5,000 "orders" on the books in January, 1960, only 200 were firm. Under these circumstances, the brochures' characterization of the orders as "tentative" was not adequate disclosure. In addition, the magazine article's reference to "some 5,000 orders now on hand" was not qualified and its reference to a requirement that each jobber order a minimum of 245 boats was not accompanied by any disclosure of the limited number of firm orders.

The references in the brochures and the article to the company's ability to produce and sell its products and to trade acceptance of the amphibian boat, and the projections of substantial earnings were indefensible in view of Amphibious' deteriorating financial condition, the excessive cost of production compared to revenues, the higher price, greater weight and lower speed of the amphibian boat as compared to conventional boats, complaints received about the lack of speed, the fact that no more than 40 or 50 amphibians, on which so much stress was placed in the sales literature, were built, 11/ and the quality control problems and considerable number of completed boats that failed to meet quality standards. By January 1960 production of all models had risen to only 12 boats a day, and even this rate, which was below claimed capacity, was not maintained every day. It is apparent that the sales literature was designed to ride the wave of public enthusiasm for the boating industry in 1959 and 1960 without disclosing adverse financial and other information necessary to an informed investment decision.

We reject Leason's defense that he was justified in relying upon the information in the sales literature to the extent that it was supplied by management to him or the salesman who initially drafted the brochures. In the absence of complete financial and factual data, such reliance was misplaced and, at the very least, optimistic representations should have been withheld and prospective investors cautioned as to the risks involved in purchasing the stock without such data. 12/ In any event, having become a director on December 9, 1959, Leason had access to information which belied the glowing representations in the sales literature, yet he continued to use such literature in the sale of the stock.

11/ As of November 30, 1959, only 2 or 3 of the 150 boats at the plant were amphibians.

12/ Cf. Shearson, Hammill & Co., Securities Exchange Act Release No. 7743, at p. 21 (November 12, 1965).

The record does not support Leason's claim that he attempted to verify the information furnished by the company's management. Although, according to one witness, Leason caused the ouster of the president on February 1, 1960 and recommended his successor because of his dissatisfaction with the company's management and operations and his doubts about the number of orders the company had, the sales literature, which as noted praised the aggressiveness and experience of top management, was not modified to reflect such misgivings or the change in management. With respect to Leason's further claim that he "caused all the water to be squeezed out of the financials," the record merely shows that, as previously noted, he attended the December 9 meeting at which the write-offs and write-down were discussed and determined, and that on another occasion Leason did not object to the suggestion of the company's accountant that such adjustments should be made. Despite these events, the mailing of the sales literature continued without any change to suggest any adjustments in the balance sheet.

Leason points, as evidence of his good faith, to the facts that he and a friend each invested \$5,000 in Amphibious for a franchise in Illinois, declined to sell out as late as February 1960, and lost their entire investment. Leason's willingness to speculate with his own funds, however, gave him no license to make fraudulent statements to induce the purchase of Amphibious stock. 13/

Other Matters

Respondents have contended that they did not receive a fair hearing for various reasons. We find no substance in these contentions.

First, there is no merit in respondents' objection that they did not have adequate time to retain counsel and prepare a defense. They received the order for proceedings on June 22, 1964, and four days later appeared without counsel at a preliminary hearing on the question whether the effective date of applicant's registration should be postponed pending determination on the issue of denial. Leason consulted with counsel, who subsequently represented applicant, during a recess granted for that purpose, but such counsel determined not to represent Leason. It was stipulated that if a request by applicant for withdrawal of its application for registration was denied by us, the registration would not become effective pending decision on the denial issue. On July 22, 1964, we denied withdrawal and directed that the hearings on the denial issue proceed on July 27, as previously scheduled. At the opening of the hearings, at which the Division had witnesses ready, Leason requested a continuance to obtain counsel, and the hearing examiner, who had travelled from Washington, D. C. to Chicago to conduct the hearing, denied the request but granted a recess so that Leason could telephone an attorney. The same counsel then presented himself, entered an appearance solely for applicant, and asked for a continuance for an unspecified period to prepare a defense. The examiner, finding that applicant had had adequate notice, denied this request but granted a short recess to permit counsel to read the testimony of the only Division witness who had testified briefly at the preliminary hearing, an officer of Leason & Co. who was being recalled for further testimony.

Leason himself did not retain counsel and represented himself throughout the proceedings. As for applicant, it chose not to retain counsel for the June 26 hearing on the postponement issue, failed to

13/ See Shearson, Hammill & Co., supra, at p. 22 of cited Release.

obtain counsel before July 22 although the hearing examiner had stated there was a "fair possibility" that its withdrawal request would be denied, and failed to obtain counsel between July 22, when withdrawal was denied, and July 27, the scheduled hearing date, or to request a continuance of such hearing. Under these circumstances, we find that the hearing examiner was justified in denying the requested adjournments. 14/

We reject also respondents' further contention that the hearing examiner's denial of their motions for bills of particulars hampered their defense. With respect to the first such motion, made at the opening of the denial hearings, the examiner noted that the motion was not timely since about five weeks had elapsed since the order for proceedings was issued and the hearings had already begun, but ruled that in any event the order sufficiently apprised respondents of the nature of the charges against them. 15/ We have not been shown any basis for holding that this ruling prejudiced respondents in any way in defending against those charges.

Leason filed a second so-called motion for a bill of particulars under the following circumstances. After the hearings were closed, the hearing examiner granted the Division's motion to reopen the record and to amend the order for proceedings to conform to the alleged proof of violations of Section 5(a)(1) of the Securities Act and Section 15(c)(1) of the Exchange Act and Rule 15c1-2 thereunder. The examiner's order stated that respondents would be afforded the opportunity at a reopened hearing to present rebuttal evidence with respect to those charges. Thereupon, Leason asked for particulars with respect to "every alleged act, trade, statement of testimony, or item of evidence in this record" on which the Division had based its motion. The examiner, pointing out that the Division had already adduced the evidence claimed to support the additional charges and briefed the facts and the law with respect to those charges and thus fully informed Leason concerning every material matter as to which he sought particulars, correctly denied his motion.

Respondents' contention that the hearing examiner lacked authority under our Rules of Practice to reopen the hearings to permit the amendment is likewise without merit. During the principal hearings Division counsel stated that they intended to move to amend the order to conform to the proof so that respondents would not be surprised by such motion but, as noted by the examiner, counsel failed to present the motion during the hearings, "apparently through oversight." We agree with the examiner that such oversight was correctible without impinging on respondents' substantive rights.

We are also satisfied on the basis of the record that the hearing examiner did not, as asserted by respondents, improperly assume "the role of prosecutor for the Division" in questioning witnesses. He attempted to elicit facts he deemed necessary to a clear presentation of the issues and toward that end assisted Leason, who appeared without counsel, as well as Division counsel, and did not act in a manner which was likely either "to intimidate any of the witnesses or to prevent any

14/ Cf. Herbert Rapp, Securities Exchange Act Release No. 7243, p. 2 (February 14, 1964); Biltmore Securities Corp., 40 S.E.C. 273, 276-77 (1960).

15/ See Morris J. Reiter, 39 S.E.C. 484 (1959).

of them from giving any relevant testimony." 16/ Moreover, this is not a case of a jury's verdict being influenced by a judge's manner in questioning witnesses. The recommended decision is advisory only and our findings are based on the record before us. 17/

Respondents further contend that the books and records of Leason & Co. and evidence obtained as a result of leads therefrom were improperly admitted in evidence in this proceeding because in Federal criminal proceedings against that firm and Leason arising out of their transactions in Amphibious stock the same or similar evidence had been ordered suppressed as illegally seized. 18/ Leason & Co. and Leason had urged in those proceedings that the evidence in question was illegally seized and obtained in violation of their privilege against self-incrimination but the courts in suppressing the evidence did not specifically indicate the basis for their rulings.

It appears that in June 1962, following a detailed inspection of Leason & Co.'s records, an official of Leason & Co. voluntarily delivered certain documents to this Commission's investigators. Subsequently the documents were turned over to a federal grand jury in Missouri, which returned an indictment in January 1963. A year later, a federal court in Missouri sitting in the action on the indictment ordered that those documents be suppressed and returned, and it dismissed the indictment without prejudice on the motion of the government.

The instant application for broker-dealer registration was filed in May 1964, and shortly thereafter denial proceedings were instituted by this Commission. Pursuant to an administrative subpoena, Leason & Co. produced its books and records, including documents previously suppressed by the federal court in Missouri.

In September 1964, following the close of the principal hearings in the instant proceedings, subpoenas were served upon Leason & Co. by a federal grand jury in Illinois, and the firm authorized this Commission to deliver to the grand jury the records that had previously been obtained by the Commission through the administrative subpoena. In moving to suppress those records, defendants asserted that the documents voluntarily turned over to our investigators in June 1962 were allegedly obtained for "official business" of this Commission when in fact it was to be used in a criminal case, and that the administrative subpoena was used in June 1964 as a means of obtaining evidence for the grand jury, which constituted an abuse of our investigatory powers. In December 1965, a federal court in Illinois to which the grand jury had returned an indictment granted defendants' motion to suppress and return the documents.

16/ N.L.R.B. v. Air Associates, Inc., 121 F.2d 586, 589 (C.A. 2, 1941). See also Bituminous Material & Supply Co. v. N.L.R.B., 281 F.2d 365 372 (C.A. 8, 1960). The instant situation is not like that in U.S. v. Fry, 304 F.2d 296, 298 (C.A. 7, 1962), cited by applicant, where the judge, in questioning defense witnesses, tended to ridicule the defendant and the witnesses before the jury and to infer that he believed defendant was guilty.

17/ See Standard Distributors, Inc. v. F.T.C., 211 F.2d 7, 11-12 (C.A. 2, 1954).

18/ U.S. v. Leason, 64 CR. 572 (N.D. Ill., December 10, 1965); U.S. v. Leason, 63 CR. 12(1) (E.D. Mo., December 19, 1963).

Regardless of the correctness of the exclusions of the documents in the criminal actions, 19/ we find no basis for objection to the use in the instant administrative proceedings of books and records obtained by our staff through an administrative subpoena. In no sense can such books and records be regarded as illegally seized or obtained through leads from illegally seized evidence. Those books and records were required to be kept and preserved by Leason & Co. pursuant to Section 17(a) of the Exchange Act and Rules 17 CFR 240.17a-3 and 17a-4 thereunder to implement the Commission's regulatory functions. As previously mentioned, our staff had made a detailed and clearly lawful examination of such records before any documents were turned over to the staff.

With respect to the privilege against self-incrimination asserted in the federal criminal proceedings, apart from the question whether applicant or Leason has any standing here to object to the production of the corporate records of Leason & Co., 20/ such privilege "cannot be maintained in relation to 'records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restrictions validly established.'" 21/ And, contrary to respondents' contention, there was nothing improper in Division counsel's assisting in a grand jury investigation of Leason's activities in Amphibious stock during their concurrent participation in the instant hearings.

Nor is there any record support for Leason's assertions that several prospective witnesses had refused to testify on his behalf as a result of being interviewed by Division counsel or that any such witness had been threatened or intimidated by the Division. Apparently, no such witnesses were subpoenaed by respondents.

Leason additionally complains that the Division, which had permitted respondents to use its copy of the transcript of the principal hearings, refused to allow them to use its copy of the transcript of the reopened hearing. The Division asserts that it had reason to believe that Leason could afford to buy a copy of such transcript. Moreover, according to Division counsel, counsel for applicant declined the Division's offer of the use of its transcript of that hearing. Also, a copy of the transcript was on file in the Chicago regional office as part of the private record of these proceedings and open to use by respondents. Under these circumstances, we are unable to find that the

19/ It may be noted that Section 21 of the Exchange Act and Section 20 of the Securities Act authorize this Commission to make investigations of acts or practices of any person to determine whether such person has violated any provision of those Acts and to "transmit such evidence as may be available concerning such acts or practices to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this title." They thus indicate that transmission to the Attorney General of documentary evidence properly obtained by us is a part of our "official business."

20/ See Henzel v. U.S., 296 F.2d 650 (C.A. 5, 1961); U.S. v. White, 322 U.S. 694, 701 (1944).

21/ Shapiro v. U.S., 335 U.S. 1, 33 (1948). See also S.E.C. v. Olsen, 243 F. Supp. 338 (S.D.N.Y., 1965), aff'd 354 F.2d 166 (C.A. 2, 1965); U.S. v. Pine Valley Poultry Distributors Corp., 187 F. Supp. 455 (S.D.N.Y., 1960).

hearing examiner abused his discretion in refusing to direct the Division to make the Division's copy of the transcript available or that respondents were prejudiced thereby.

We do not agree with Leason's further contention that the hearing examiner refused to give credit to any defense made by him because he had exercised his privilege against self-incrimination and that the examiner improperly emphasized such claim. The examiner stated that "while no inference" that Leason committed violations is "attributed" to him "by reason of his assertion of his constitutional rights, the fact remains that the Division's allegations against him were amply supported . . . by credible evidence and by the further fact that neither Leason nor any of the witnesses produced by him gave any evidence which reasonably could be considered to be contradictory of the substantial evidence introduced in the record [supporting . . .] each one of the allegations contained in the Commission's order." Further, as noted by the examiner, Leason's "self-serving statements" were not made under oath but in briefs or while acting as his own counsel and are not evidence.

With respect to Leason's assertion that the hearing examiner improperly attributed to him findings made against Leason & Co., which was not charged with any violations and was not a party, the record shows, as found by the examiner, that Leason engaged in certain activities in connection with Amphibious stock both directly and through Leason & Co. The fact that Leason & Co. was not named as a party did not preclude such findings insofar as they pertain to Leason's alleged violations. 22/

Public Interest

In view of Leason's willful violations, we must determine whether it is necessary or appropriate in the public interest to deny registration to applicant which he controls. Leason asserts in mitigation that he had only two years of experience as a securities salesman prior to the period involved in these proceedings, that he was then only about 28 years old and inexperienced with respect to broker-dealer rules and regulations, that there has never been any previous complaint against him, and that he was given no warning by any person competent to give legal advice even though he sought and relied on such advice.

We have carefully considered these factors but, in our opinion, they are not sufficient to overcome the serious and extensive misconduct found. 23/ We agree with the hearing examiner that it would not be in the public interest to permit registration to become effective, and that Leason should be found a cause of the denial of such registration. As president and sole stockholder of applicant, Leason would have to make independent decisions with respect to the duties owed to customers and might have the further responsibility of supervising and guiding employees. In our opinion, he has not demonstrated that he is fully cognizant of the duties and responsibilities owed to customers by broker-dealers or securities salesmen. 24/

An appropriate order will issue.

22/ See U.S. v. Provenzano, 334 F.2d 678, 691 (C.A. 3, 1964).

23/ See R. B. Michaels & Co., 40 S.E.C. 492, 495 (1961).

24/ 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.

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

Orval L. DuBois
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
August 10, 1966

In the Matter of	:	
	:	
HAYDEN LYNCH & CO., INC.	:	ORDER DENYING
1333 Norman Drive	:	BROKER-DEALER
Palatine, Illinois	:	REGISTRATION
	:	
File No. 8-11990	:	
	:	
Securities Exchange Act of 1934 -	:	
Section 15(b)	:	

Proceedings having been instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 to determine whether to deny the application for registration as a broker and dealer of Hayden Lynch & Co., Inc. and whether Hayden Lynch Leason is a cause of an order of denial if entered;

Hearings having been held after appropriate notice, proposed findings and supporting briefs having been filed, the hearing examiner having submitted a recommended decision, applicant and Leason having filed exceptions and briefs, and the Division of Trading and Markets of the Commission having filed briefs in reply;

The Commission having this day issued its Findings and Opinion; on the basis of said Findings and Opinion

IT IS ORDERED that the application for registration as a broker and dealer of Hayden Lynch & Co., Inc. be, and it hereby is, denied, and it is found that Hayden Lynch Leason is a cause of this order of denial.

By the Commission.

Orval L. DuBois
Secretary