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UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

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SECURITIES & EXCHANGE COMMISSION

In the Matter of

Wright, Myers & Bessell, Inc.
1616 Eye Street, N. W
Washington, D. C.

(File No. 8-9533)

RECOMMENDED DECISION

Washington, D. C.
June 17, 1963

Irving Schiller
Hearing Examiner

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In the Matter of Wright, Myers & Bessell, Inc. 1616 Eye Street, N. W. Washington, D. C. (File No. 8-9533)	RECOMMENDED DECISION

BEFORE: Irving Schiller, Hearing Examiner

APPEARANCES: Alexander J. Brown, Jr. and Paul F. Leonard, Administrator and Assistant Administrator respectively, of the Washington Regional Office and Richard D. Capparella and Robert M. Laprade for the Division of Trading and Exchanges.

Darwin Charles Brown and H. Eugene Bryan for Paul Mulford Wakeman.

These proceedings were instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, to determine whether Wright, Myers & Bessell, Inc. ("registrant"), a broker-dealer registered under the Act, willfully violated certain provisions of the Securities Act of 1933 ("Securities Act"), the Exchange Act and the rules and regulations promulgated thereunder, Jack Clifford Wright ("Wright"), Gerald Leon Bessell ("Bessell"), Jimmy Clark Myers ("Myers"), B. Russell Atwood ("Atwood"), Lawrence Betzler ("Betzler"), Paul Mulford Wakeman ("Wakeman") and Charles E. Redden ("Redden") willfully violated certain provisions of the Securities Act and the Exchange Act or aided and abetted such violations by registrant, whether it is in the public interest to revoke the registration of registrant as a broker and dealer, whether, pending final determination of such question, it is necessary or appropriate in the public interest or, for the protection of investors, to suspend the registration of the registrant, whether, under the Exchange Act, it is necessary or appropriate in the public interest to suspend for a period not exceeding 12 months or to expel registrant from membership in the National Association of Securities Dealers, Inc.(NASD) and whether, under the Exchange Act, the Commission should find that Wright, Bessell, Myers, Betzler, Atwood, Wakeman and Redden are causes of any order of revocation, suspension or expulsion which may be entered.

Appropriate notice of these proceedings was duly given to registrant and to each of the individuals named above except Redden.[1/]

1/ The record discloses that Redden was never served with any notice of the instant proceeding and at the time of the hearing his whereabouts were still unknown.

On June 27, 1962 a stipulation, agreement and consent for the purpose of this proceeding and any other administrative proceeding pursuant to Section 15 of the Exchange Act or Section 203 of the Investment Advisers Act of 1940 was filed by registrant, Wright, Myers, Bessell and Atwood wherein registrant and the individuals named stipulated that they willfully violated certain specified provisions of the Securities Act and the Exchange Act and registrant consented to the entering of an order by the Commission revoking its registration as a broker-dealer and expelling it from membership in the NASD and the aforesaid individuals consented to be named as causes within the meaning of Section 15A(b)(4) of the Exchange Act of any order of revocation or expulsion which the Commission may enter against registrant. Registrant, Wright, Bessell, Myers and Atwood waived the filing of proposed findings of fact and conclusions of law, a recommended decision by the Hearing Examiner, exceptions and briefs thereto and oral argument before the Commission. Registrant and the aforesaid named individuals also agreed and consented that counsel for the Division of Trading and Exchanges and the staff of the Division may assist the Commission in making its findings of fact and conclusions of law. On July 13, 1962 a stipulation, agreement and consent was filed by Betzler for the purpose of this proceeding or any other administrative proceeding under Section 15 of the Exchange Act or Section 203 of the Investment Advisers Act of 1940, in which Betzler stipulated that he willfully violated certain specified sections of the Securities Act and the Exchange Act and consented to be named as a cause within the meaning of

Section 15(b)(4) of the Exchange Act of any order of revocation and expulsion which the Commission may enter against registrant. Betzler reserved his right to be heard orally before the Commission with respect to certain activities which could result in his being found an aider and abetter in certain violations of the Securities Act and the Exchange Act and the rules thereunder. Betzler waived the filing of proposed findings of fact and conclusions of law, a recommended decision by the Hearing Examiner, exceptions and briefs thereto but reserved his right to oral argument as heretofore indicated.

The stipulations, agreements and consents referred to above are included in the record of these proceedings and are respectfully referred to the Commission for appropriate disposition.

This recommended decision will be concerned solely with the charges against Wakeman. The Commission's order for proceedings as amended at the hearing alleges that during the period from about January 5, 1962 to about March 23, 1962 Wakeman made false and misleading statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, with respect to the common stock of Space-Tone Electronic Corporation ("Space-Tone") and engaged in acts, practices and a course of business which would and did operate as a fraud and deceit upon certain persons in willful violation of the anti-fraud provisions of the Securities Act and the Exchange

Act.[2/] The order further alleges that registrant willfully violated Section 15(b) of the Exchange Act and Rule 17 CFR 240.15b-2 thereunder in failing to file an amendment to its registration application reporting that Wakeman was enjoined on December 11, 1961 by the United States District Court for the District of Columbia from further violations of certain provisions of the Exchange Act and the rules thereunder and that Wakeman caused registrant to fail to so file.[3/]

Hearings were held before the Hearing Examiner on the foregoing issues and proposed findings of fact and conclusions of law and briefs were filed by the Division and counsel for Wakeman. The following findings and conclusions are based on the record and exhibits therein and the Hearing Examiner's observation of the various witnesses.

Violations of Section 15(b) of the Exchange Act and Rule 17 CFR 240.15b-2

1. The gist of the violation alleged under Section 15(b) of the Exchange Act and Rule 15b-2 thereunder is that registrant failed

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2/ The anti-fraud provisions referred to are Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2(17 CFR 240.10b-5 and 15c1-2) thereunder. The composite effect of these provisions, as applicable here, is to make unlawful the use of the mails or interstate facilities in connection with the offer or sale of any security by means of a device to defraud, an untrue or misleading statement of a material fact, or any act, practice, or course of business which operates or would operate as a fraud or deceit upon a customer, or by means of any other manipulative or fraudulent device.

3/ The Commission's order for proceedings sets forth allegations of additional violations by Wakeman which were either withdrawn at the commencement of these proceedings or abandoned by the Division after the close of the record.

and Wakeman caused registrant to fail to file an amendment to its registration application to reflect that Wakeman was enjoined by United States District Court for the District of Columbia from violations of certain provisions of the Exchange Act.

2. The record discloses and Wakeman admits that he was employed by registrant from about January 5, 1962 to about May 23, 1962. At the time he was employed an application was prepared and signed by Wakeman for the purpose of registering him with the NASD as a "registered representative" of the registrant. The application form required a response as to whether the applicant had ever been enjoined, permanently or temporarily, from selling or dealing in securities. Wakeman responded he had never been so enjoined.

3. The record shows that on December 8, 1961 the United States District Court for the District of Columbia entered a final judgment enjoining Mulford Wakeman & Co., Inc. and Paul Mulford Wakeman, individually, from using the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities (other than exempted securities) otherwise than on a national securities exchange, by means of manipulative, deceptive or other fraudulent device or contrivance, more particularly, from engaging in any act, practice or course of business which operates or would operate as a fraud and deceit upon any person relating to the defendant's financial condition and the relation of its assets to its liabilities; from engaging in any securities transactions unless compliance was effected with the net capital requirements

of Rule 15c3-1 under the Exchange Act and from effecting any financial transactions unless compliance was effected with Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. The aforesaid injunction was entered on the written consent of the corporation and Wakeman individually.[4/]

4. Wakeman's explanation for his failure to admit in his NASD application that a permanent injunction had been entered against him in the United States District Court was that he was under the impression that the papers he had signed and which were filed in the District Court related solely to a receivership of Mulford Wakeman & Co., Inc. and that at no time did he realize that such papers related to an injunction. The Hearing Examiner rejects Wakeman's explanation. The record shows that on December 8, 1961 Wakeman and his counsel conferred with representatives of the staff of the Commission on two separate occasions that day concerning the financial condition of Mulford Wakeman & Co., Inc. and the condition of its books and records. The Staff informed Wakeman and his counsel that it was of the view that it was in the public interest to institute injunctive action against the corporation and Wakeman individually to enjoin them from further violation of the net capital and bookkeeping rules of the Commission and one of the anti-fraud rules under Section 15 of the Exchange Act. The staff furnished Wakeman and his counsel copies of a "Complaint for Injunction and The Appointment of Receiver" together

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4/ Civil Action No. 3947-61.

with an affidavit of a staff member in support of the complaint, a "Statement of Points and Authorities In Support of Motion For Temporary Restraining Order," a copy of a "Final Judgment" at the end of which were blank lines for signatures by the corporation and Wakeman individually consenting to the entry of the final judgment. In addition, Wakeman and his counsel were furnished with a copy of an "Order Appointing Receiver" also containing blank lines for signatures by the corporation and Wakeman individually consenting to entry of the said order. The staff informed Wakeman and his counsel it was prepared to file the foregoing papers in the United States District Court that day. A discussion ensued in which the allegations in the complaint were reviewed by both Wakeman and his counsel. The record is clear that the discussion was based upon the various legal documents which had been prepared by the staff one of which was clearly entitled "complaint for injunction" and it is equally clear that in the course of the conference the specific grounds on which injunction would be sought were discussed. At the conclusion of the meeting Wakeman and his counsel left the Commission's offices. Later in the day they both returned at which time Wakeman signed the consent to entry of the final injunction as well as the consent to the appointment of a receiver. Both consents were signed by Wakeman as president of the corporation and individually.

5. The Hearing Examiner does not credit Wakeman's testimony that he believed he had merely consented to a receivership and did not realize he had consented to an injunction. Wakeman was present and

participated at both conferences preceding the signing of the various documents, was represented by able counsel well versed in securities matters and on whose advice he obviously relied. The final injunction and order appointing a receiver were signed not only by Wakeman but by his counsel acting for the corporation and Wakeman individually.

6. Wakeman urges he did not intend to fail to disclose the existence of the injunction and points out that in responding to another question in the above-mentioned NASD application inquiring whether applicant was involved in any litigation connected with the securities business he answered in the affirmative and wrote in "Liquidation of Mulford Wakeman." Wakeman contends that such statement indicated he had no intention of hiding or obscuring the fact of the injunction and by his written notation he put the world on notice that he was involved in judicial proceedings. This argument is also rejected. The admission of involvement in liquidation proceedings can not possibly be interpreted as giving notice that a final injunction had been entered by a Court of competent jurisdiction. If anything, a statement that liquidation is in progress indicates an attempt by Wakeman to deceive his employer and the NASD and to hide from the world the fact that he had been enjoined, particularly where, in response to the specific question as to whether he had ever been enjoined, he answered in the negative.

7. The Hearing Examiner finds that Wright, Myers & Bessell, Inc. failed to file an amendment to its registration application as required by Section 15(b) of the Exchange Act to reflect that Wakeman, one of its salesmen, had been enjoined from engaging in or continuing

any conduct or practice in connection with the purchase or sale of any security and that such failure was a willful violation of the above-mentioned Section and Rule 15b-2 promulgated thereunder.[5/] The Hearing Examiner further finds that Wakeman was a cause of such willful violation.

Violations of the Anti-Fraud Provisions

8. The record discloses that during the period Wakeman was employed by Wright, Myers & Bessell, Inc. as a salesman he engaged in the sale of the common stock of Space-Tone by means of false and misleading representations of material fact and he omitted to state material facts necessary in order to make the statements made not misleading. Three witnesses testified concerning the representations made to them with respect to the Space-Tone stock. These representations included the following: "Felt very certain it would at least go to 8 or 9"; "...Space-Tone had been up as high as 12...Every anticipation that it would reach and might exceed the previous year"; "might possibly make two or three points a share"; "...it had made money for everyone. Space-Tone would be a very good stock to get into since it was due to go to 14"; that "it couldn't lose; it was a sure thing"; "it was a good investment."

9. The representations made by Wakeman to prospective customers concerning the increase in the price of Space-Tone were unwarranted and without basis. Space-Tone was organized during 1960 to manufacture stereophonic high-fidelity set cabinets and record cabinets, to purchase component parts such as turntable, amplifier, AM-FM radio

5/ See Stipulation, Agreement and Consent filed by Wright, Myers & Bessell, Inc. in these priceedings.

tuner and speaker, assemble the units and market them through a wholly owned subsidiary. The record discloses that Space-Tone had no earnings during 1960 and a net operating loss of $42,084 for the fiscal year ending December 31, 1961. All of the investor witnesses testified that Wakeman did not disclose that the company had never made any money nor that it in fact had sustained a net loss in the previous year.

10. Wakeman testified he made efforts to inform himself about Space-Tone, that the president of the company was a personal friend, that he contacted him every month during 1961, inspected the plants of the company, was quite familiar with its operations and imparted his knowledge to his customers including the investors who testified. On the other hand, Space-Tone's president testified that Wakeman visited him on one occasion briefly in 1961 at which time they discussed small business in general and that he may have spoken to Wakeman on the telephone on two or three occasions. He denied speaking to Wakeman every month in 1961 and denied Wakeman visited the plants. Space-tone's president further testified he gave no financial information to Wakeman and that other than the company's annual report which was furnished to stockholders he never furnished Wakeman any information concerning the company's financial condition. The Hearing Examiner credits the testimony of the investor witnesses and the president of Space-Tone and finds that Wakeman misled investors by informing them he was fully familiar with the company's operations and failed to disclose to them the losses sustained by the said company.

11. The Commission has repeatedly held that the making of representations in the sale of securities unsupported by a reasonable basis is contrary to the obligation of fair dealing imposed on broker-dealers and their salesmen by the Securities laws.[6/] In the instant case there appears to be no reasonable basis for predicting the price of the stock of Space-Tone could rise to 8 or 9 or to 14 or that it was "a sure thing." The optimistic statements and predictions by Wakeman were wholly unsupported and unwarranted in the light of the information available to him.

12. Wakeman urges that the investors who testified stated they wanted to and knowingly chose to speculate and that speculation is not illegal. The issue is not whether speculation is illegal but rather whether the salesman made misleading statements or omitted to state material facts concerning a security. The desire of an investor to speculate does not per se permit a securities salesman to make unwarranted representations to prospective investors with respect to a rise in the price of a stock or fail to disclose material information concerning losses experienced by the company whose stock he is recommending. As a securities salesman he has a duty to disclose the information available or the lack of any information. No attempt was made by Wakeman to disclose the risks involved in purchasing Space-Tone as a speculation. The

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6/ Ross Securities, Inc., Securities Exchange Act Release No. 7069 (April 30, 1963).

representations that the stock previously reached a price far in excess of the then market price without disclosing that the company had losses displayed a complete lack of understanding of the responsibility of dealing fairly with customers. The record discloses that the investor witnesses placed faith in Wakeman and relied on his experience and judgment in recommending securities. At the time Wakeman was recommending the acquisition of Space-Tone to his customers the record shows he was selling his own shares of that stock at a profit without disclosing such fact to his customers. One of the investors testified she would not have purchased had she known Wakeman was selling the very stock he was recommending. Such activity on the part of Wakeman is hardly consistent with the basic obligation of fair dealing of a salesman selling securities to the public. 7/

13. The Hearing Examiner finds that Wakeman wilfully violated Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 15c1-2 promulgated thereunder and that Wakeman be named as a cause of any order of revocation which the Commission may enter against Wright, Myers & Bessell, Inc.

14. Wakeman argues that naming him as a cause would effectively deny him the right to engage in the securities sales business for which he is qualified to pursue and thereby deprive him of property without

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7/ A. J. Caradean & Co., Inc., Securities Exchange Act Release No. 6903 (October 1, 1962). See also Alexander Reid & Co., Inc., Securities Exchange Act Release No. 7016 (February 7, 1963).

due process of law in violation of the Fifth Amendment. The assumptions in the argument are without foundation and the conclusion is erroneous. Wakeman's conduct in the sale of the Space-Tone stock and his failure to disclose in an employment application that an injunction had been rendered against him on his consent raises serious questions as to his training and qualification and reflects a failure to recognize his responsibilities as a securities salesman to deal fairly with prospective investors. By finding a salesman a cause of a violation after a hearing at which he had full opportunity to be heard is not a deprivation of property without due process of law nor a violation of the Fifth Amendment.[8/]

Recommendation

In view of the foregoing it is respectfully recommended that the Commission enter an order finding that Wakeman wilfully violated Section 17(a) of the Securities Act, Sections 10(b) and 15(b) and (c)(1) of the Exchange Act and Rules 17 CFR 240.10b5, 15b-2 and 15c1-2 promulgated thereunder and that the Commission further find that within

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8/ See Berko v S.E.C., F. 2d (C.A.2, April 9, 1963); R. H. Johnson & Co., 35 S.E.C. 110 (1953); Mac Robbins & Co., Inc., Securities Exchange Act Release No. 6462 (February 6, 1961); W. E. Leonard & Company, Inc., Securities Exchange Act Release 7070 (April 30, 1963).

the meaning of Section 15A(b)(4) of the Exchange Act, Wakeman is a cause of any order of revocation which may be entered against registrant. 9/

Respectfully submitted,

Irving Schiller
Hearing Examiner

9/ To the extent that the proposed findings and conclusions submitted to the Hearing Examiner are in accord with the views set forth herein they are sustained and to the extent they are inconsistent therewith they are expressly overruled.

Washington, D. C.
June 17, 1963