

IN THE MATTERS OF  
MANN AND COMPANY, INC.

(formerly Mann and Company)

HERMAN M. SOLOMON

BURTON J. ROSENBLATT

*File No. 3-2027. Promulgated June 15, 1971*

Securities Exchange Act of 1934—Sections 15(b) and 15A

**MEMORANDUM OPINION AND ORDER**

In these private proceedings pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") with respect to Mann and Company, Inc. ("registrant"), a registered broker-dealer, and Herman M. Solomon and Burton J. Rosenblatt, officers, directors and sole shareholders of registrant,<sup>1</sup> two former customers of registrant requested that the proceedings be made public. They represented, among other things, that respondents had practiced fraud on them by accepting payment for securities purchased by them through registrant at a time when it had ceased doing business, and by failing to disclose registrant's inability to consummate the transaction and make full delivery of the securities purchased, and that in January 1971 they had brought suit against the individual respondents, alleging violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

The allegations in the order for proceedings as issued in June 1969 charged violations of Exchange Act provisions and rules thereunder relating to disclosure with respect to customers' free credit balances, record-keeping and extension of credit. An amendment to the order authorized by the hearing examiner in December 1970 upon motion of our staff included the allegations that registrant, aided and abetted by Solomon

<sup>1</sup> At the time the proceedings were instituted, registrant was a partnership, with Solomon and Rosenblatt as its general partners.

and Rosenblatt, willfully violated the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by soliciting and accepting customers' orders to purchase securities when registrant was unable to consummate such orders promptly and to make prompt delivery of securities. The order as amended also charged violations of our net capital rule, further violations of the record-keeping requirements and the issuance of a permanent injunction in November 1970 against violations by registrant of the nature charged in the additional allegations and against aiding and abetting of such violations by the individual respondents.

In support of the request that the proceedings be made public, it was urged that such action would facilitate the court proceedings, and would cause no harm to registrant since it was the subject of bankruptcy proceedings. Respondents, in a brief filed in opposition to the request, contended, among other things, that petitioners lacked standing, that many of the issues in the instant proceedings were not involved in the civil litigation and certain stipulations and admissions made in this case were not binding in other contexts, and that public disclosure of these proceedings could subject the individual respondents to nuisance suits by other potential litigants.

Exercise of our discretion to determine whether a proceeding shall be public or private<sup>2</sup> involves a balancing of the desire of respondents not to be subjected to the impact of public knowledge of charges of misconduct, on the one hand, and the extent of the public interest in the subject matter of the proceedings, on the other.<sup>3</sup> In determining whether a substantial public interest exists, we have in the past considered such factors as the gravity of the charges made against the respondents, the extent to which public investors appear to have been affected by the misconduct charged, and the pendency of civil suits involving allegations similar to those made in the administrative proceedings.<sup>4</sup> We have also taken into account the extent to which the allegations in the administrative proceedings or facts underlying those allegations are already a matter of public record. We have pointed out that public proceedings not only apprise investors of possible causes of action against broker-dealers prior to the running of the statute of limitations, but also enable them to institute such actions promptly

<sup>2</sup> Section 22 of the Exchange Act provides that hearings ordered by the Commission "may be public."

<sup>3</sup> See *J. H. Goddard & Co., Inc.*, 41 S.E.C. 964 (1964); *W. H. Bell & Co., Inc.*, Securities Exchange Act Release No. 4039 (December 17, 1947); *Haight & Co., Inc.*, 44 S.E.C. 479, 507-08 (1971), app. pending.

<sup>4</sup> *Ibid.*

before witnesses become unavailable and may alert them to certain activities of broker-dealers.<sup>5</sup>

We are of the opinion that the fact that petitioners have not previously sought to participate in the case should not preclude consideration of the petition<sup>6</sup> and that under all the circumstances presented here it is appropriate to make these proceedings public. Subsequent to the institution of these proceedings as private, the public injunctive action was instituted in which the allegations included in the amendment to the order for proceedings herein became a matter of public record and the permanent injunction was entered against respondents.<sup>7</sup> Moreover, as noted, at least one civil action has been instituted, by petitioners, against the individual respondents which is based on allegations similar to some of those involved in these proceedings. We conclude that making these proceedings public at this juncture is fully warranted.<sup>8</sup>

Accordingly, IT IS ORDERED that the petition to make these proceedings public be, and it hereby is, granted.

By the Commission.

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<sup>5</sup> *J. H. Goddard & Co., Inc., supra*, at 966.

<sup>6</sup> See *W. H. Bell & Co., Inc., supra*, where we made private broker-dealer proceedings public at the request of persons who were plaintiffs in civil suits against one of the respondents.

<sup>7</sup> In those proceedings, respondents, without admitting or denying the allegations in the complaint, consented to issuance of the injunction.

<sup>8</sup> On May 21, 1971, the hearing examiner in these proceedings issued an initial decision adverse to the respondents, and thereafter the individual respondents filed a petition for review of that decision which is now pending before us. Our conclusion that these proceedings should be made public of course in no way represents a determination with respect to the substantive issues presented.