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UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

MARKET VALUES, INC. :
110 Beekman Street :
New York, New York :

File Nos. 8-10535 :
801-2368 :

FILED
OCT 11 1963
SECURITIES & EXCHANGE COMMISSION

RECOMMENDED DECISION

SIDNEY L. FEILER
Hearing Examiner

Washington, D. C.

October 11, 1963

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APPEARANCES:

Charles Snow, Esq.
for the Division of Trading and Exchanges

Gideon Cashman, Esq.
640 Fifth Avenue, New York 19, N. Y.
for Market Values, Inc.

BEFORE: SIDNEY L. FEILER, HEARING EXAMINER

I. THE PROCEEDINGS

This is a consolidated proceeding pursuant to Section 203(d) of the Investment Advisers Act of 1940 (1940 Act) and Section 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act) to determine whether it is necessary or appropriate in the public interest or for the protection of investors to suspend or revoke the registration of Market Values, Inc. as an investment adviser; whether it is necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of registration of Market Values, Inc. as a broker-dealer until final determination of the question of denial of registration;^{1/} whether, pursuant to Section 15(b) of the Exchange Act, it is in the public interest to deny registration as a broker-dealer to Market Values, Inc.; and whether, within the meaning of Section 15A(b)(4) of the Exchange Act, the Commission should find that Harold Schreiber and Lee Schreiber a/k/a Elizabeth Wasserman are causes of any order of denial of registration which may be entered herein.

The matters put in issue by the order for this proceeding are:

- A. Whether Market Values, Inc., the Schreibers and Stanley Chandler, singly and in concert, willfully violated and aided and abetted violations of Sections 203(c) and 207 of the 1940 Act, in that Market Values made statements in

^{1/} During the hearing, Market Values agreed to the entry of an order of postponement.

its application for registration as an investment adviser which were at the time and in the light of the circumstances under which they were made, false and misleading with respect to material facts.^{2/}

- B. Whether Market Values, the Schreibers and Stanley Chandler, singly and in concert, willfully violated and aided and abetted violations of Sections 203(c) and 204 of the 1940 Act and Rule 17 CFR 275.204-1, promulgated by the Commission thereunder, in that Market Values failed to file promptly amendments to its application for registration as an investment adviser to correct inaccuracies in its application for registration and to report the resignation of a director.^{3/}

^{2/} Section 203(c) sets forth the information which must be contained in an application for registration as an investment adviser.

Section 207 provides that it shall be unlawful for any person willfully to make any untrue statement of a material fact in any registration application filed with the Commission under Section 203 or willfully to omit to state in any such application any material fact which is required to be stated therein.

^{3/} Section 204 provides in pertinent part that every investment adviser shall make such reports as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204-1 provides in part that if the information contained in any application for registration as an investment adviser or any amendment or supplement thereto becomes inaccurate for any reason, the investment adviser shall promptly file an amendment correcting such information.

- C. Whether Market Values, Inc. and the Schreibers, singly or in concert, willfully violated, and aided and abetted violations of Section 15(b) of the Exchange Act and Rule 17 CFR 240.15b-1 promulgated by the Commission thereunder in that Market Values made statements in an application for registration as a broker-dealer which were, at the time and in the light of the circumstances under which they were made, false and misleading with reference to a material fact, the representation that Irving M. Siegel was a director.^{4/}
- D. Whether Market Values and Harold and Lee Schreiber, singly and in concert, willfully violated and aided and abetted violations of Section 15(b) of the Exchange Act and Rule 17 CFR 240.15b-8 promulgated by the Commission thereunder, in that Market Values, in a statement of its financial condition, filed as a document supplemental to its application for registration as a broker and dealer, made statements which were, at the time, and in the light of the circumstances under which they were made, false and misleading with respect to material facts concerning the assets of Market Values.^{5/}

^{4/} Section 15(b) of the cited rule, in part, deals in general with the filing of applications for registration as brokers and dealers and the information which must be contained therein.

^{5/} Rule 15b-8 provides that every broker or dealer who files an application for registration as a broker or dealer shall also file a statement of financial condition which must be sworn to as being true and correct.

E. Whether Market Values and the Schreibers, singly and in concert, violated and aided and abetted violations of Section 15(b) of the Exchange Act and Rule 17 CFR 240.15b-2 thereunder in that Market Values failed to file promptly an amendment to its application for registration as a broker-dealer to correct the inaccuracy of the representation in said application that Irving M. Siegal was a director of Market Values.^{6/}

Pursuant to notice, a hearing was held in New York, N. Y. before the undersigned Hearing Examiner. Market Values, Inc. and the Division of Trading and Exchanges appeared by counsel. The record evidences the fact that notice of the proceeding was delivered by mail to Harold Schreiber and Lee Schreiber. It further appears that Harold Schreiber was kept fully informed of the course of the proceedings, both in his capacity as president of Market Values, Inc. and as a possible witness since adjournments were requested by counsel for Market Values and granted by the undersigned in order to give counsel an opportunity to consult with Schreiber about his possible appearance in the proceedings as a witness. Notice of the proceedings could not be served on Stanley Chandler.

^{6/} Rule 15b-2 provides in pertinent part that if the information contained in any application for registration of a broker or dealer, or any supplement or amendment thereto, is or becomes inaccurate for any reason, such broker or dealer shall promptly file an amendment with the Commission.

Full opportunity was given to examine and cross-examine witnesses. The evidentiary record was composed chiefly of the testimony of Schreiber given in the course of an investigation leading to the institution of these proceedings. He was originally examined under oath on April 3, 1962 and testified in detail concerning the organization, assets and history of Market Values. Two weeks later, he returned and gave testimony substantially different from that given previously. He returned later in the year to give further testimony on receipts and disbursements of Market Values. On November 13, 1962, both he and his wife, Lee Schreiber, refused to answer questions put to them on the grounds their answers might tend to incriminate them. In all their investigation appearances, except the very first one, the Schreibers were represented by counsel. Most of the findings herein are based on the testimony of Schreiber, particularly in his second appearance in the investigation. The only witness who testified in these proceedings was Dr. Irving M. Siegel, who testified with respect to his dealings with Schreiber and his association in the capacity of director of Market Values.

At the conclusion of the presentation of evidence, opportunity was afforded the parties to state their positions orally on the record. An oral presentation was given on behalf of Market Values. Opportunity was then afforded the parties for filing of proposed findings of fact or conclusions of law, or both, together with briefs in support thereof. Proposed findings and briefs were submitted by the Division; proposed findings of fact and conclusions of law were also submitted on behalf of Market Values. Upon the entire record, and from his observation of the witness, the undersigned makes the following:

II. FINDINGS OF FACT AND
CONCLUSIONS OF LAW

A. False and misleading statements
in Market Values' application for
registration as an investment adviser

1. Market Values, Inc. was incorporated in the State of New York on August 19, 1960.

2. On September 15, 1960, it filed an application for registration as an investment adviser. The application, signed on behalf of the corporation by Stanley Chandler, vice president, stated:

- a. Its principal place of business was 186 Hempstead Avenue, Lynbrook, N. Y.
- b. Stanley Chandler was vice-president and director; Elizabeth Wasserman (Lee Schreiber's maiden name) was secretary, treasurer and a director; and Dr. Irving M. Siegel was a director.
- c. Chandler and Miss Wasserman were listed as persons who owned beneficially, directly or indirectly, more than 25% of the voting securities of the registrant.
- d. The question on the application form whether any person other than those named had any power to exercise a controlling influence over the management or policies of the registrant was answered "no".
- e. An item inquiring whether the registrant was engaged in any business or profession other than the business of investment adviser was answered "no".

3. The evidence, especially Schreiber's testimony on his second appearance in the investigation proceeding (Div. Ex. 2), establishes that the information given in the application was materially false and misleading. Schreiber's recital of the history of Market Values, Inc. clearly establishes that he was an organizer of that concern and at all times exercised a controlling influence over the conduct of its affairs.

4. Schreiber had known Stanley Chandler several years prior to the time the application for registration as an investment adviser was filed. Both were interested in market analysis and were employed by firms engaged in the brokerage business. They had discussed the possibility of establishing an investment advisory service in the summer of 1960.

5. In August, 1960, Schreiber saw an advertisement in a newspaper of a bankruptcy auction, which included mailing lists, mailing machines and mailing equipment. On investigation, Schreiber found that the mailing lists had been prepared and used by a former market advisory service. He and Chandler discussed the possibility of purchasing the lists and the equipment and using them as a base on which to develop a market financial service.

6. The auction was held on August 11, 1960. Schreiber, accompanied by Chandler, attended and was successful in purchasing the aforementioned property in his own name for \$2,781.90.

7. Schreiber proceeded to rent a store at 186 West Hempstead Avenue, Lynbrook, N. Y. where he stored the machinery and equipment. This was the address listed by Market Values when it filed its application for registration as an investment adviser the next month. Schreiber took the lease in his own name.

8. Schreiber and Chandler had discussions as to the formation of the investment advisory service they had in mind. Schreiber was registered as a representative of a member firm of the New York Stock Exchange and, according to his testimony, he felt that there might be criticism if

it became known that a registered representative had outside interests in a financial market service. He was not prepared to resign his position to devote full time to the proposed investment advisory service.

9. Schreiber discussed with his brother, an attorney, the possibility of forming a corporation and concealing his connection with it and although he was advised that this might be considered irregular and was advised against it, Schreiber decided to go ahead. Schreiber suggested to Chandler that a corporation be formed using Schreiber's wife, Lee Schreiber, as the person to represent Schreiber's interest in the company, with both Mrs. Schreiber and Chandler listed as each having a 50% interest in the company. To avoid criticism, her maiden name of Elizabeth Wasserman was to be used.

10. This arrangement was followed and the corporation was formed after Schreiber was successful in bidding for the machinery. The investment adviser application also reflected the arrangement entered into and Schreiber reviewed it before it was filed, even though he was not officially a party to it. It was never contemplated that Schreiber's wife would ever take an active interest in the investment adviser firm since she was a housewife, had a number of children to look after, and also tried to conduct an antique business on a part-time basis. She followed Harold Schreiber's direction in anything that needed to be done.

11. The investment adviser application did not list anyone in the position of president. When an inquiry was received from the Commission about this omission, it was advised that when a president was elected, an amendment would be filed. However, the Commission was not advised that the

office of president was being held open for Harold Schreiber, which the latter testified was his actual arrangement with Chandler.

12. Subsequent to the formation of Market Values, Schreiber and Chandler were too busy in their employment with other concerns to proceed with their plans for an active program for Market Values. The only business conducted on its behalf was the rental of the lists it had purchased. Although they had been purchased by Schreiber in his own name, the income was allowed to accrue to Market Values. From September, 1960 to June 25, 1962, Market Values had gross receipts of approximately \$13,933 from the rental of these lists. Schreiber was uncertain as to just when the rental part of the business was started. His testimony indicates that it may have been started as early as a few days before the application for registration was filed.

13. In the summer of 1961, Chandler and Schreiber reached an understanding whereby Chandler was paid \$500 in termination of his interest in Market Value. Schreiber moved the equipment of Market Values to 110 Beekman Street, New York, N. Y. late in the summer of 1961.

14. Dr. Irving M. Siegel has at all times been listed as a director of Market Values. Dr. Siegel and Schreiber had a mutual interest in stock market analysis. According to Dr. Siegel, Schreiber told him of his plans to set up an investment advisory service and asked him if he would like to be a director. Dr. Siegel agreed to serve. He testified that he had second thoughts about this and several months later told Schreiber that he no longer wished to continue as director. He was very uncertain as to the date or even the year when he agreed to

serve as a director, but he was very positive that he did resign that position. His testimony as to the severance of his connection with Market Values, which was not contradicted, is credited. No amendment was ever filed indicating that Dr. Siegel had severed his connection with Market Values.

15. In addition to the original application for registration as an investment adviser, filed on behalf of Market Values on September 15, 1960, there was filed an amendment on October 10, 1960 involving a change of no importance here. On April 3, 1962, the time when Schreiber considered activating Market Values, he filed an amendment on its behalf, dated February 15, 1962 in which he listed himself as president and director and as the sole beneficial owner of 10% or more of its stock. His wife, Lee Schreiber, was listed as secretary-treasurer and director and Dr. Siegel was listed as still serving as director. An additional amendment, dated March 30, 1962, and also filed April 3, 1962, merely reflected a change of address.

CONCLUSIONS

16. The evidence establishes that the application of Market Values for registration as an investment adviser gave a false and misleading picture of its organization and management. In actual fact it was jointly owned by Schreiber and Chandler. Of the two, Schreiber played the dominant role in making the financial investment to acquire the mailing lists and equipment and in deciding what premises should be leased and where the property of Market Values should be kept. The application failed to disclose that Schreiber beneficially owned 50% of the voting securities

of Market Values, exercised a controlling influence over the management and policies of Market Values, and that Elizabeth Wasserman was acting for Schreiber and was under his control and direction. The application also failed to disclose that Market Values had begun to rent out its mailing lists as a basis for securing income.

17. In the above respects the application for registration contained statements which were at the time, and in light of the circumstances under which they were made, false and misleading with respect to material matters. The correct information was known to Stanley Chandler, Harold Schreiber and Lee Schreiber, also known as Elizabeth Wasserman. The correct information was deliberately withheld by them from the Commission pursuant to an arrangement they had agreed upon. It is, therefore, concluded that they and Market Values, the registrant, willfully violated and aided and abetted violations of Sections 203(c) and 207 of the 1940 Act by their aforementioned activities.^{7/}

18. The application for registration as an investment adviser was filed on September 15, 1960. As pointed out above, information in the application was inaccurate as of the time of filing. Under applicable rules, amendments should have been filed promptly to correct these inaccuracies. This was not done. Schreiber's beneficial interest in Market Values and his control of its affairs was not revealed until an amendment was filed on April 3, 1962. The activity of the registrant, Market Values,

^{7/} Anne Caseley Robin, Inv. Advisers Act Rel. No. 149 (Sept. 10, 1963); Owen K. Taylor, Inc., et al., Inv. Advisers Act Rel. No. 129 (July 9, 1962).

in the rental of its mailing lists, its chief source of income, was never revealed. Regardless of the exact date when Dr. Siegel became a director, it has been found that he did resign that position. This was never revealed in any amendment.

19. By their activities in failing to promptly file amendments correcting the above deficiencies Market Values, Stanley Chandler, Harold Schreiber and Lee Schreiber, singly and in concert, violated and aided and abetted violations of Sections 203(c) and 204 of the 1940 Act and Rule 17 CFR 275.204-1 thereunder. For the reasons previously stated, it is further found that these violations were willful.^{8/}

B. False and misleading statements in Market Values' application for registration as a broker and dealer

20. In the spring of 1962, Harold Schreiber determined to start an underwriting and brokerage business of his own. In addition to filing an amendment to the application of Market Values for registration as an investment adviser, he also filed on behalf of Market Values an application for registration as a broker and dealer. This application, dated February 15, 1962, and filed on March 5, 1962, listed Schreiber as president, director, and the only owner of 10% or more of Market Values' equity securities; Lee Schreiber was listed as secretary-treasurer and director; and Dr. Siegel was listed as a director. There was filed with the application a Statement of Financial Condition of Market Values

8/ Owen K. Taylor, Inc., et al., supra; Cambridge Research and Investment Corporation, Inv. Advisers Act Rel. No. 108 (Oct. 4, 1960); Security Forecaster Co., Inc., 39 S.E.C. 188 (1959).

as of February 23, 1962, as a document supplemental to the application for registration as a broker-dealer listing assets at \$31,550. Of this sum, \$25,000 was reflected as "Mailing Equipment & Lists". The statement was sworn to by Schreiber and certified as true and correct to the best of his knowledge and belief. The only change made thereafter in the application was an amendment showing a change of address of Market Values.

21. When Schreiber was first examined on April 3, 1962, he asserted that the Mailing Equipment and Lists represented an investment of \$25,000 and went into detail on costs. He estimated that the lists and equipment had cost him approximately \$20,000 and that he attached a value to them of \$4,000 or \$5,000 over and above his costs. (Div. Ex. 1, pp. 47-56).

22. When Schreiber was next examined on April 18, 1962, he admitted that the information he had given was incorrect and that the cost of the mailing equipment and lists specified as assets of \$25,000 on the Statement of Financial Condition submitted by Market Values with its application for registration as a broker-dealer included and was limited to:

- (a) The lists and mailing equipment purchased by Schreiber on August 11, 1960, at a cost of \$2,781.90.
- (b) Trucking expenses of approximately \$500.00 to \$600.00.
- (c) Additional mailing equipment purchased at a cost of \$612.85.
- (d) A purchase of a list at a cost of approximately \$300.00.

(e) Miscellaneous mailing equipment purchased at a cost of approximately \$1,000.00.

(Div. Ex. 2, pp. 43-45).

The total of the cost items given by Schreiber is \$5,294.75. Even if his estimate of a mark-up value of \$4,000 to \$5,000 is credited, the total of this item, so far as a reasonable valuation is concerned is no more than \$10,000 instead of the \$25,000 figure given for it.

Schreiber, in his testimony on April 18, 1962, stated that he thought the lists could be sold for close to the figure indicated in the Statement, but presented no proof on this point and admitted that when he was first examined, he realized that there was difficulty in justifying the figures in the Statement and that he tried in his testimony to protect and justify the figures he had given (Div. Ex. 2, p. 62).

23. There is nothing in the Statement of Financial Condition as filed by Schreiber on behalf of Market Values to indicate that the mailing equipment and lists were being valued other than on the basis of sound accounting principles. It is concluded that the assets of Market Values were substantially overstated in the Statement to the extent of approximately one-half the total assets and that thereby a false picture was painted of the financial stability of Market Values. It is concluded that Market Values, Harold Schreiber, President of that company and the person who signed the financial statements filed on its behalf, and Lee Schreiber, an officer and director, singly and in concert, willfully violated and aided and abetted violations of Section 15(b) of the Exchange Act and Rule 17 CFR 240.15b-8 thereunder in the filing of the Statement

of Financial Condition which contained false and misleading information with respect to material facts concerning the assets of Market Values.^{9/}

24. It is alleged that the application for registration as a broker-dealer filed by Market Values was false and misleading in listing Dr. Siegel as a director. While Dr. Siegel's testimony was very confused with respect to exactly when he severed his connection with Market Values, an analysis of his testimony would indicate that the severance took place prior to the time that the application for registration was filed. In any event, it is clear that Dr. Siegel did tell Schreiber that he did not wish to continue serving as a director of Market Values. In view of the fact that no amendment has ever been filed to correct the information in the application, which information is now incorrect, the undersigned finds that Market Values, Harold Schreiber, and Lee Schreiber thereby, singly and in concert, willfully violated and aided and abetted violations of Section 15(b) of the Exchange Act and applicable rules thereunder, in that they failed to file promptly an amendment to correct the inaccuracy in the continued listing of Dr. Siegel as a director.^{10/}

^{9/} Keystone Securities Corporation, Sec. Exch. Act Rel. No. 7095 (July 8, 1963); S.A.E. Corp., Astor Securities Co.; R. J. Cunningham & Company, Inc., Sec. Exch. Act Rel. No. 6956 (November 28, 1962).

^{10/} Associated Underwriters, Inc., Sec. Exch. Act Rel. 7075 (May 10, 1963); S.A.E. Corp., R. J. Cunningham, supra.

III. RECOMMENDATIONS

It has been found that Market Values, Stanley Chandler, Harold Schreiber, and Lee Schreiber also known as Elizabeth Wasserman, singly and in concert, willfully violated and aided and abetted violations of the registration provisions of the 1940 Act. It has also been found that Market Values, Harold Schreiber and Lee Schreiber, singly and in concert, willfully violated, and aided and abetted violations of the registration provisions of the Exchange Act.

The Commission, pursuant to the provisions of Section 203(d) of the 1940 Act, is required to suspend or revoke the registration of an investment adviser if it finds that such action is in the public interest and that such investment adviser, prior or subsequent to becoming such, or any person directly or indirectly controlling or controlled by such investment adviser, prior or subsequent to becoming such, has willfully made in any application for registration any statement which was at the time and in the light of the circumstances under which it was made, false and misleading with respect to any material fact, or has omitted to state in any such application any material fact which is required to be stated therein, or has willfully violated any provision of the Exchange Act or the Securities Act of 1933, or has aided, abetted, counselled or procured the violation by any person of the Securities Acts or of the 1940 Act. It has been found that Market Values and Stanley Chandler and Harold and Lee Schreiber, persons in control of its operations, have willfully violated the registration provisions of the 1940 Act and, except for Chandler, have also violated provisions of the Exchange Act and rules

thereunder.

Section 15(b) of the Exchange Act provides, in pertinent part, that the Commission shall deny registration to any broker or dealer if it finds that such denial is in the public interest and that such broker or dealer prior to becoming such, or any officer, director (or any person occupying a similar status or performing similar functions), or any person controlling such broker or dealer has willfully made or caused to be made in any application for registration or in any documental supplemental thereto any false and misleading statement with respect to any material fact or has willfully violated any provision of the Exchange Act or any rule thereunder. It has been found that Market Values, Harold Schreiber, and Lee Schreiber have willfully made and caused to be made false statements in a document supplemental to an application for registration and have willfully violated the Exchange Act and applicable rules in other respects.

It has been urged that to make "severe findings" against the respondents is unwarranted by the evidence and would be unduly harsh. It is claimed that on his first appearance in the investigation Schreiber was ill and testified somewhat misleadingly, but that he later voluntarily provided the Division with full information and practically all the evidence on which it relied in this proceeding. Therefore, it is maintained that Schreiber's conduct is more consonant with basic truth and candor than with the picture of falsity attributed to him. It is argued that the violations charged were technical; that the presidency of Market Values

was left open rather than filled by a dummy in an effort to mislead the Commission; that the investment advisory service was never activated; that while some technical violations have occurred, the public interest has not been hurt or jeopardized. Finally, it is urged that the violations involved should not bar Market Values from the investment field nor bar Schreiber for life from the securities business.

The evidence established that the violations found to have been committed by the respondents were more than technical violations. From the very beginning of discussions for the formation of Market Values, the individual respondents entered into a plan to deliberately deceive the Commission concerning the true ownership, operation, and management of Market Values. These practices were continued over a period of years. The false financial statement submitted in connection with the broker-dealer application filed on behalf of Market Values again evidenced the loose regard for truth and accuracy which the Schreibers had. When Schreiber was called to testify in the course of an investigation, he gave completely misleading testimony designed to deceive the staff of the Commission as to the matters which eventually became in issue here.^{11/} When he next appeared, he did give a more truthful recital but eventually both he and his wife refused to testify further on constitutional grounds.

The registration provisions of the Exchange Act and the 1940 Act are key provisions in the statutory framework for the protection of

^{11/} He first testified that he had nothing to do with the formation of Market Values and acquired it later from Chandler for no consideration.

investors.^{12/} The need for accuracy and completeness has been stressed in many decisions. The undersigned finds that the violations found are serious and go to the heart of the 1940 Act and the Exchange Act. It is concluded that it is necessary and appropriate in the public interest and for the protection of investors to revoke the registration of Market Values, Inc. as an investment adviser and to deny it registration as a broker-dealer, and it is accordingly recommended that the Commission issue such an order.

In view of the violations found and their activities in seeking to deceive the Commission and obstruct its efforts to protect the public interest and those of investors, it is recommended that the Commission should find that Harold Schreiber and Lee Schreiber, also known as Elizabeth Wasserman, each be found causes of the order of denial which it is recommended be entered herein.

It has been urged that Schreiber should not be barred from the securities business indefinitely. This matter is properly a subject of another proceeding except under unusual circumstances.^{13/} It may be that upon an appropriate showing, Schreiber's employment in a supervised capacity might

^{12/} S. A. E. Corporation, supra, and cases cited in Footnote 1 therein.

^{13/} Meryl Edward Richards, Sec. Exch. Act Rel. No. 6845 (1962).

14/
be approved by the Commission.

Respectfully submitted,

Sidney L. Feiler
Sidney L. Feiler
Hearing Examiner

Washington, D. C.

October 11, 1963.

14/ Associated Underwriters, Inc., Sec. Exch. Act Rel. No. 7075 (May 10, 1963).

All contentions and proposed findings submitted by the parties have been carefully considered. This recommended decision incorporates those which have been accepted and found necessary for incorporation herein.