

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION.

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In the Matter of :  
BUSINESS EQUITY CORP. :  
(8-16273) :  
GASTON R. DESAUTELS :  
\_\_\_\_\_ :

INITIAL DECISION

Washington, D.C.  
February 21, 1975

Warren E. Blair  
Chief Administrative Law Judge

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APPEARANCES: Michael J. Stewart and Michael K. Wolensky, of  
the Commission's Miami Branch Office, for the  
Division of Enforcement.

Louis Stoskopf, for Business Equity Corp. and  
Gaston R. Desautels.

BEFORE: Warren E. Blair, Chief Administrative Law Judge

These public proceedings were instituted by an order of the Commission dated April 26, 1972 ("Order") pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether the respondents <sup>1/</sup> had wilfully violated and wilfully aided and abetted violations of Sections 15(b), 15(c)(3), and 17(a) of the Exchange Act and Rules 15b3-1, 15c3-1, 17a-3, and 17a-11 thereunder, and whether remedial action is appropriate in the public interest.

In substance, the Division of Enforcement ("Division") alleged that during various periods between July 1, 1971 to April 26, 1972 Business Equity Corp. ("registrant") wilfully violated and Gaston R. Desautels wilfully aided and abetted violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1 ("Net Capital Rule"), 17a-3 ("Bookkeeping Rule"), and 17a-11 thereunder by (1) effecting securities transactions while registrant's net capital as computed under the Net Capital Rule was less than required by that rule, (2) failing to make and keep current certain books and records as required by the Bookkeeping Rule, and (3) failing to notify the Commission of registrant's net capital deficiency and failing to file reports required by Rule 17a-11. The Division further alleged failures to promptly file amendments to registrant's Form BD as required under Rule 15b3-1.

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1/ Leon O. Meyer was also named as a respondent, but the proceedings were concluded as to him upon the issuance of the Commission Findings and Order dated April 13, 1973 which accepted his consent to findings of the alleged violations and to the entry of a bar order. Exchange Act Release No. 10107 (1973). Findings herein are not binding upon Leon O. Meyer and, unless otherwise indicated, "respondent(s)" is not hereinafter a reference to him.

Both respondents appeared through counsel, who participated throughout the hearing.<sup>2/</sup> At the conclusion of the hearing, successive filings of proposed findings, conclusions, and briefs were specified and the parties directed to file proposals in these proceedings separate from those filed in the companion Du-Tel Investment Co., Inc. matter.<sup>3/</sup>

Timely filings of proposed findings, conclusions, and a brief in support were made by the Division but respondents made a late filing in which proposals relating to this proceeding were combined with proposals applicable to the other matter and in which they did not clearly indicate the undisputed paragraphs in the Division's proposals. In its reply brief the Division seeks to have respondents' proposals rejected and stricken as not being timely filed and for failing to comply with Rule 16 of the Rules of Practice and instructions of the presiding judge. Since it does not appear that the Division has been or will be prejudiced by the shortcomings of respondents' filing, it is concluded that respondents' proposed findings and conclusions should be accepted as part of the record in these proceedings.

The findings and conclusions herein are based upon the preponderance

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<sup>2/</sup> Pursuant to stipulation of the parties that both the record in this matter and that in the separate but companion matter of Du-Tel Investment Co., Inc., A.P. File No. 3-3683 may be considered in either proceeding (Tr. Sept. 17, 1974, at 6-7, 127), a single hearing was held in the two matters on September 17, 1974. An earlier hearing in this matter that had been scheduled to commence on June 21, 1973 and a hearing that was commenced in Du-Tel Investment Co., Inc. on June 18, 1973 were adjourned in order to give the parties an opportunity to dispose of the issues in both matters by submission of offers of settlement to the Commission.

<sup>3/</sup> Tr. Sept. 17, 1974, at 128.

of the evidence as determined from the record and upon observation of the witnesses.

Respondents

Registrant, a New York corporation whose principal place of business is in Miami, Florida, has been registered as a broker-dealer under the Exchange Act since February 7, 1971 and is a member of the National Association of Securities Dealers, Inc. On March 6, 1972 registrant filed a Form BDW-Notice of Withdrawal from Registration as a Broker-Dealer which has not become effective.<sup>4/</sup>

Desautels, directly and indirectly, financed registrant's business pursuant to an agreement which he entered into on July 1, 1971 with Leon O. Meyer, registrant's then president, under which he also acquired from Meyer an option to purchase capital stock of registrant. By the terms of the agreement it appears that Desautels delivered and paid Meyer \$6,300 in cash and a stock certificate representing 1,096.23 shares of Federated Growth Fund, now known as Boston Foundation Fund, with a market value of \$12,573.76; that Desautels received an option until July 1, 1973 to acquire capital stock in registrant with the amount of stock to be determined by the actual value of the stock at the time that the option was exercised; and that if the option were not exercised Meyer was upon 30 days demand to pay Desautels \$18,873.76 with interest at 10% per annum. On July 21, 1971 the shares of Boston Foundation Fund

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<sup>4/</sup> By operation of Rule 15b6-1 under the Exchange Act, the effective date of the notice of withdrawal was stayed by the institution of these proceedings.

were loaned by Meyer to registrant under a subordination agreement. As stipulated by respondents, Desautels was also in control of registrant.<sup>5/</sup>

### Violations

#### Rule 15b3-1

A broker-dealer registered pursuant to the Exchange Act is required by Rule 15b3-1 under that Act to promptly file amendments on Form BD correcting information in its application for registration whenever any information in the original application or previous amendment becomes inaccurate. There being no dispute that registrant failed to promptly file amendments that were needed to correct earlier information in its application for registration, it is concluded that registrant, wilfully aided and abetted by Desautels, who controlled registrant's conduct, wilfully violated Section 15(b) of the Exchange Act and Rule 15b3-1 thereunder.

As evidenced by the record and the Commission's files, registrant's application for registration as a broker-dealer has since 1971 been inaccurate in that the application has not been amended to reflect that Desautels, directly and indirectly, financed registrant and exercised and had power to exercise a controlling influence over registrant's operations and policies and that he was the beneficial owner or more than 1% of registrant's authorized common stock. Registrant should have also filed an amendment but did not for the purpose of disclosing that on

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<sup>5/</sup> Tr. Sept. 17, 1974 at 110.

March 13, 1972 the United States District Court for the Southern District of Florida entered an order of permanent injunction against Desautels enjoining him from aiding and abetting violations of certain sections of the Exchange Act and rules thereunder.<sup>6/</sup>

Rule 15c3-1

It appears from computations prepared by the Commission's Miami Branch Office ("MBO") during the course of an inspection of registrant in November, 1971 that registrant's net capital position was not in compliance with Rule 15c3-1 on September 30, 1971 and October 31, 1971 and that on those dates registrant required, respectively, additional net capital of \$2,647.85 and \$5,066.02 to meet the requirements of the Net Capital Rule. Further, the testimony of the MBO compliance examiners was to the effect that at no time prior to November 18, 1971 was registrant in compliance with the Net Capital Rule and that registrant engaged in effecting transactions on a daily basis during the period from September 30, 1971 until November 19, 1971.

Respondents do not question the accuracy of the MBO net capital computations nor the credibility of MBO compliance examiners' testimony. It is therefore concluded that registrant, wilfully aided and abetted by Desautels, wilfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.

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<sup>6/</sup> SEC v. Du-Tel Investment Co., Inc., 72-233-Civ.-CA, (S.D. Fla., February 14, 1972).

Rule 17a-3

During the period in question, registrant was required by Rule 17a-3 under the Exchange Act to make and keep current certain books and records specified in that rule. As established by the record, it did not do so.

The uncontradicted testimony educed by the Division establishes that as of October 8, 1971 registrant had neither made nor kept current a securities receipts and deliveries blotter, cash receipts and disbursements blotter, general ledger, customers ledger, or securities position ledger. Inasmuch as the Bookkeeping Rule required registrant to make and keep current the mentioned books and records among others, it is found that registrant, wilfully aided and abetted by Desautels, wilfully violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

Rule 17a-11

Rule 17a-11 requires every broker-dealer subject to the Net Capital Rule to give telegraphic notice to the Commission when net capital is less than that needed under the Net Capital Rule, and thereafter to file certain financial reports. Rule 17a-11 also requires every broker-dealer subject to the Bookkeeping Rule to give telegraphic notice of any failure to comply with the rule, to specify which of its books and records are not current, and thereafter to file a report stating the steps taken to correct the situation.

Inasmuch as registrant was subject to the requirements of the Net Capital and Bookkeeping Rules and failed to comply with those rules as



noted herein, it should have given the notices and filed the reports specified in Rule 17a-11. Since the Commission's files relating to registrant's registration as a broker-dealer do not contain such notices and reports, and would contain those notices and reports if registrant had complied with the rule, it is concluded that registrant, wilfully aided and abetted by Desautels, wilfully violated Section 17(a) of the Exchange Act and Rule 17a-11 thereunder.

### Public Interest

The nature of the long-continuing violations, together with the concealment of the source of registrant's financing and of its control by Desautels, compels the conclusion that the public interest requires the revocation of registrant's registration as a broker-dealer and the barring of Desautels from association with any broker-dealer in a proprietary or supervisory position. And when official notice is taken of Desautels' culpability in connection with the operations of Du-Tel Investment Co., Inc., his co-respondent in the companion proceeding,<sup>7/</sup> and his conduct while directing the broker-dealer operations of that firm taken into consideration, it is further concluded that the public interest demands that Desautels be barred from participation or employment in any aspect of the securities business.<sup>8/</sup>

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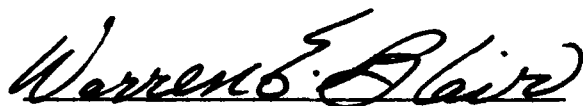
7/ See, Du-Tel Investment Co., Inc., supra.

8/ All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.

Accordingly, IT IS ORDERED that the registration of Business Equity Corp. as a broker-dealer is revoked and that Gaston R. Desautels is barred from association with any broker or dealer.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Rules of Practice.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.



Warren E. Blair  
Chief Administrative Law Judge

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