

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of)	
)	
BC FINANCIAL CORP.)	
STUART M. COHEN)	INITIAL DECISION
DAVID DISNER)	
JAMES SNELGROVE)	
)	

APPEARANCES: William P. Hicks and Penny J. Morgan for the
Division of Enforcement

David A. Zisser for the Respondent James Snelgrove
and David Disner, pro se

BEFORE: Edward J. Kuhlmann, Administrative Law Judge

This proceeding was instituted by order of the Commission on September 29, 1993, pursuant to Section 8A of the Securities Act of 1933, 15 U.S.C. §77h-1, and Sections 15(b), 19(h) and 21C of the Securities Exchange Act of 1934, 15 U.S.C. §§78o(b), 78s(h), and 78u-3. In the order, the Division alleged that from June 1989 through November 1989, David Disner and James Snelgrove violated and aided and abetted violations of the anti-fraud provisions of the federal securities laws by charging undisclosed excessive markups and markdowns to customers in connection with the purchase and sale of penny stocks. The case against the other respondents, Stuart M. Cohen and BC Financial Corp., were resolved prior to the hearing.

A hearing was held on February 8 and 9, 1994 in Atlanta, Georgia. The Division of Enforcement, David Disner, and James Snelgrove filed proposed findings and conclusions and brief on April 4, 1994 and replies on May 3, 1994.

FINDINGS OF FACT

Respondents

Respondent David Disner has worked in the securities industry since December 1980; he has been registered with the National Association of Securities Dealers, Inc. (NASD) as a general securities principal since May 1984. Stipulation (Stip.) ¶ 2. He holds Series 7, 24 and 63 licenses. Ex. 20 at 15. From 1981 to 1988, Disner worked at Blinder Robinson & Co., a registered securities broker. He began as an order taker, was promoted first to a branch manager and then to division manager in charge of five branch offices. Tr. 140-41.

In August 1988, Disner became vice president of sales and national sales manager with BC Financial Corp. (BC), a registered securities broker-dealer. Stip. ¶¶ 1,3; Tr. 142-43. While serving as vice president of sales, he was supervised by Stuart Cohen. Ex. 20 at 38. Cohen founded BC in August 1988 and hired Disner.

During the period relevant to this proceeding, June 21, 1989 through November 20, 1989, BC conducted a general securities business as a registered broker-dealer. Ex. 19 at 11-12, 16. Cohen owned BC's holding company, Resources Corp. Tr. 253-54. During the relevant period, BC had 120-150 representatives in eight branch offices located in eight states. Tr. 144. Disner, at Cohen's request, became President of BC in May 1989 and remained in that office until May 1990. Stip. ¶ 5, Tr. 143-44. Roy Dunning replaced Disner as national sales manager. Tr. 144. Disner's compensation included a monthly salary, a commission on any trades he generated and a portion of the profits of the firm above a certain level. Stip. ¶ 4. After Cohen resigned in April 1989, Disner became, along with BC's compliance officer, Ricky Hartness, and BC's attorney, Richard Vincent, part of a voting trust that controlled BC. Tr. 98, 146. Disner maintains that he relied on Hartness to advise him whether the pricing procedures were legal. Tr.128-29.

As president, Disner was in charge of monitoring the trading department and the trading tickets submitted by the registered representatives. Stip. ¶ 6. Each day, he saw the trading runs which reflected what BC had paid for the stock and what BC's customer

paid. Tr. 147. He also checked the order tickets each day which indicated what each customer was charged. Tr. 166.

The other remaining respondent, James Snelgrove, has been a registered securities representative since 1983. Stip ¶ 7. Snelgrove holds Series 7, 24 and 63 licenses. Tr. 96. He began as a registered representative at Blinder Robinson in August 1983. Tr. 95. After six months, Snelgrove transferred to the trading room where he handled agency trades. Tr. 95. In September 1988, Snelgrove began working at BC as an assistant trader. Stip. ¶ 8. He assisted with the paper work and the agency trades. During this time, Snelgrove reported to Tony Beshara. Tr. 97. His salary then was \$2,000.00 per month plus commissions on any trades he generated. Stip. ¶ 9.

Beginning in April 1989 and continuing until May 1990, Snelgrove was the firm's head or chief trader. Stip. ¶ 10; Tr. 99-100. As director of trading for BC, Snelgrove was paid \$3,000.00 per month, commission on trades he generated and a percentage of the trading profits above a certain level. Stip. ¶ 11. He was then supervised directly by the president of the firm, Disner. Stip. ¶ 12. His job was to execute trades, obtain quotes from market makers, determine markups and markdowns charged BC customers for trades, and oversee the trading department employees. Stip. ¶ 14; Tr. 102. He was responsible for the accuracy of the order tickets and for insuring the accuracy of the volumes reported. Tr. 100-101.

The BC Markup and Markdown Policy

During the period from June 21, 1989 through November 20, 1989, BC's markup policy required that transactions be marked up, or marked down, in the case of a purchase by the firm, no more than five percent from a "bona fide representative market price." Stip. ¶ 15. In order to determine the "bona fide representative market price," for markup purposes, Snelgrove was to telephone no fewer than three market makers to obtain current quotes. Id. The lowest offer quote was the "bona fide representative market price" from which the stock would be marked up to five percent, regardless of BC's actual cost in obtaining the stock. Similarly, on purchases by BC from customers, stocks were marked down up to five percent below the highest bid price. Id.

The same policy was employed by the firm to calculate markups and markdowns on all pink sheet stocks sold to, and purchased from, its customers on a principal basis. Stip. ¶ 16; Tr. 148. BC's markups and markdowns were computed using this method regardless of BC's actual cost in obtaining the stock. Tr. 104-105.

During the period from June 1989 through November 1989, BC consistently purchased Catalyst Communications Corp. (Catalyst), Universal Capital, Inc. (Universal) and Regional Air Group, Corp. (Regional Air) stock for prices substantially lower than the market maker quotations on which it relied. Tr. 134, 156-157.

Disner states that the NASD representatives informed him that BC's policy was permissible. But Sandy Seymour and James Angelos, the NASD representatives Disner claims were the source of the

advice, maintain that they never advised BC or any of its representatives that markups for non-market maker, principal trades in pink sheet stocks could be calculated from a market price based on market maker quotations regardless of what BC actually paid for the stock. Tr. 173, 188-89.

During the period from June 1989 through November 1989, BC sold to, and purchased from, its customers shares of Catalyst, Universal and Regional Air stock. Stip. ¶¶ 19, 22, 25. These stocks traded as pink sheet stocks in the over-the-counter market and were sold and purchased by BC on a principal basis. Stip. ¶¶ 21, 24, 27; Tr. 109. BC was not a market maker in Catalyst, Universal or Regional Air. Stip. ¶¶ 20, 23, 26; Tr. 69-70; Ex. 20 at 88; Ex. 19 at 72, 111.

Snelgrove was responsible for calculating the markups and markdowns and reviewing all transactions to insure that securities were priced consistently with the BC markup and markdown policy. Stip. ¶ 13; Tr. 100-02, 111, 113. Disner was responsible for a final review and he would insure that the policy was followed on all pink sheet stocks BC sold to, and purchased from, its customers. Stip. ¶ 17. Snelgrove was responsible for setting the maximum allowable price a stock could be marked up or marked down by a registered representative to a customer. Tr. 102, 104. He also set the lowest allowable price that a registered representative could pay a customer for a stock. Tr. 103. He provided the information to Disner or the branch managers. Tr. 110.

