

FILE COPY

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

OWEN K. TAYLOR, INC. :

274 Pearl Street :

New York, New York :

File No. 801-1 :

EDWARD BLATT :

129 E. 82nd Street :

New York 28, New York :

File No. 801-1995 :

WALTER ROSENBUSH :

P. O. Box 37, Limestone Road :

Ridgefield, Connecticut :

File No. 801-2009 :

FINANCIAL FORECASTER, INC. :

15 William Street :

New York, New York :

File No. 801-2164 :

FILED

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D. M. & F. SECTION
SECURITIES & EXCHANGE COMMISSION

RECOMMENDED DECISION

IRVING SCHILLER
Hearing Examiner

Washington, D. C.
December 8, 1960

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RECOMMENDED DECISION

BEFORE: IRVING SCHILLER, HEARING EXAMINER

APPEARANCES:

Andrew N. Grass, Jr., Counsel for the
Division of Trading and Exchanges.

John J. McKenna, for Owen K. Taylor, Inc.

Edward Blatt, pro se.

Sam Panish of Sachs and Spector, for
Walter Rosenbush and Financial Forecaster, Inc.

Gilbert Wallach for Egeth & Wallach

These are consolidated proceedings pursuant to Section 203(d) of the Investment Advisers Act of 1940 (Act) to determine whether it is in the public interest to revoke or suspend the regulations as investment advisers of Owen K. Taylor, Inc., Edward Blatt, Walter Rosenbush and Financial Forecaster, Inc. for alleged violations of Section 207 of the Act.
1/

1/ Section 203(d) of the Act, as here pertinent, provided that the Commission may revoke or suspend the registration of an investment adviser if it finds it is in the public interest and that such investment adviser has violated Section 207 of the Act. This Section was amended effective September 13, 1960. The amendment, as pertinent here, provides that the Commission shall revoke or suspend if it finds it is in the public interest and that such investment adviser has willfully violated any provision of the Act or any rule or regulation promulgated thereunder. However, since the charges in the instant proceeding allege violations of Section 207 of the Act in which willfulness is a necessary element to constitute an unlawful act, the 1960 amendment insofar as it relates to the instant charges would not appear to impose any standard for invoking the sanction of revocation or suspension different from the standard in effect when the alleged violations were committed or at the time of the instant hearings were held.

Section 207 of the Act makes it unlawful for any person willfully to make any untrue statement of a material fact in any registration application filed with the Commission or willfully to omit to state in any such application any material fact required to be stated therein.

Rule 204-1(b)(17 CFR 275, 204-1(b)) under the Act requires the prompt filing of an amendment to correct any information in the application for registration which becomes inaccurate.

Appropriate notice of these proceedings was given to each of the foregoing named investment advisers. During the course of the hearings Walter Rosenbush and Financial Forecaster, Inc. entered into a stipulation with the Division of Trading and Exchanges ("Division"), which was made a part of the record herein, in which each of them consented to the revocation of their respective registrations of investment advisers and waived a hearing examiner's report as well as the other procedures set forth in Rule III(e) of the Commission's Rules of Practice.^{2/}

The above-mentioned two Investment Advisers were informed by the Hearing Examiner on the record that if the Commission, for any reason, did not deem it advisable to accept the stipulation they and the Division would be afforded an opportunity to present additional evidence.

Following the conclusion of taking testimony in these proceedings Edward Blatt entered into a stipulation in writing with the Division, which was made a part of the record herein, in which he consented to the revocation of his registration of an investment adviser and waived a hearing examiner's report and the other procedures specified in III(e) of the Commission's Rules of Practice.^{3/}

Accordingly, this Recommended Decision will be concerned solely with the charges against Owen K. Taylor, Inc., hereinafter referred to as "registrant." The order for proceedings alleges violation of Section 207 of the Act in that registrant's application for registration as an

^{2/} Rule III(e) of the Commission's Rules of Practice referred to herein relates to the Commission's Rules of Practice prior to the adoption of the revised Rules of Practice effective October 1, 1960. Rule 8(b) of the Revised Rules of Practice is substantially similar to old Rule III(e).

^{3/} See footnote 2, supra.

investment adviser and reports (amendments) filed with the Commission under Section 203 and 204 of the Act had become untrue and incomplete and it failed to amend its application to reflect (a) that registrant changed its principal place of business, (b) that two of its named directors had resigned, and (c) that Walter Rosenbush directly and indirectly controlled the business of registrant and had the power to exert a controlling influence over the policies and management of registrant. Hearings were held before the Hearing Examiner on the foregoing issues and proposed findings and briefs were filed by the Division and counsel for the registrant. The following findings are based on the record and exhibits therein and the Hearing Examiner's observations of the various witnesses.

Registrant, a New York Corporation, is registered with the Commission as an investment adviser pursuant to Section 203(f) of the Act. The application for registration filed on October 10, 1952, as amended on June 15, 1953, among other things, sets forth registrant's principal place of business and states that Isadore Aberlin (Aberlin) is President, sole stockholder and a director of registrant and that Arthur I. Singer (Singer) and Herman S. Katz (Katz) are the remaining directors. The application for registration requires the name, business and residence address and brief description of the basis of control of any person not previously named who directly or indirectly controls the business of registrant. The only persons previously named in the application as amended are Aberlin, Singer and Katz and in response to the aforementioned requirement the application states that no person not previously named directly or indirectly controls the business of registrant.

Failure to Amend Application for Registration

(a) Change of Business Address and Resignation of Directors

As previously indicated, the order for proceedings alleges, among other things, that registrant moved its principal place of business and failed to file amendment or supplement to its application reflecting such change. The record discloses that after April 1, 1957 registrant moved its principal place of business from the address listed in its application for registration. No amendment was filed to disclose such fact. Registrant conceded at the hearing that it moved its principal place of business and did not deny at the hearing that it did not comply with the filing requirements of the Act and the rules promulgated thereto to reflect such change.

The record further discloses that Singer and Katz resigned as directors of registrant on July 1, 1955. The record discloses that registrant did not replace the two directors who resigned and that no supplement was filed by registrant to reflect the resignation of the two named directors. At the hearing registrant admitted that no such amendment had been filed.

In extenuation, registrant urges that its failure to amend its registration application with respect to the two foregoing matters was an oversight caused by misplaced reliance on its attorney. Aberlin testified that he hired an attorney presumably well-versed in practice before this Commission who was supposed to take care of such matters and upon whom he relied for the filing of necessary amendments. He further testified that as a result of some difficulty with counsel the latter retained

registrant's corporate books and records and that registrant did not receive its books back until approximately ten days before the instant hearing commenced. Aberlin also testified that registrant informed its clients of its change of address, that its stationery contained the new address, that it advertised frequently in newspapers and periodicals furnishing its new address, that, in fact, the staff of the Commission knew of the new location since about 1958 and that he never intended to violate the Act. However, the record discloses that in April 1958 Aberlin was present at the Commission office, was advised by members of the Commission staff of the necessity of filing an appropriate amendment to comply with the requirements of the Act and the rules and informed the staff that he would do so. The record indicates that Aberlin secured forms for this purpose which he testified he gave to his attorney with instructions to fill them out properly.^{4/}

The Hearing Examiner finds that registrant moved its principal place of business and failed to file an amendment to its registration application to reflect such change as required by the Act and rules thereunder. The Hearing Examiner further finds that registrant failed to file an amendment as required by the Act and the rules to reflect the resignations of Messrs. Singer and Katz as directors of registrant. The Hearing Examiner also finds that these violations were willful. A finding of willfulness within the meaning of the Act does not require a showing of knowledge by the registrant that its action was unlawful; it is enough

^{4/} The record discloses that Aberlin, in fact, is an attorney, admitted to practice in the State of New York and engaged in the practice of law prior to becoming an investment adviser.

that it intended to do the act which constitutes the violation.^{5/}

The Commission has also held that reliance upon advice of counsel is insufficient to negative the existence of willfulness.^{6/}

The Hearing Examiner rejects as tenuous the arguments advanced by registrant. The record amply discloses that registrant was advised of the necessity of filing appropriate amendments, knew it had failed to comply with the filing requirements of the Act and the rules and had ample opportunity to effect compliance. The fact that registrant's clients were informed of the changed address or that the staff of the Commission knew of registrant's new location are wholly insufficient reasons for not complying with statutory requirements. Nor under the circumstances of this case do such reasons negative a finding of willfulness.

(b) Control of Registrant's Business by Rosenbush

The application for registration as an investment adviser filed by registrant required a statement disclosing whether any person not previously named in certain items of the form directly or indirectly controls the business of registrant.^{7/} Registrant stated in said application,

^{5/} Security Forecaster Co., Inc., Investment Advisers Act Release No. 103 (May 20, 1959); Hughes v. S.E.C., 174 F. 2d 969 (C.A.D.C.1949)

^{6/} Peoples Securities Company, Securities Exchange Act Release No. 6176 (February 10, 1960); David Joel Benjamin, 38 S.E.C. 614 (1958)

^{7/} See item 8(a) of Form 3R in effect at the date registrant filed its application. Effective July 1, 1954 Form ADV which replaced Form 3R requires disclosure of persons not previously named who have the power to exercise a controlling influence over the management or policies of registrant. Rule 204-1 under the Act requires every investment adviser to file a supplement on Form ADV by December 31, 1954 or immediately, if the information in the application becomes inaccurate. The record discloses that registrant never filed Form ADV as required by the aforementioned rule. (17 CFR 275.204-1(a))

as amended, that there was no such person. The order for proceedings alleges in substance that during the years 1956 and 1957 Rosenbush directly and indirectly was employed by registrant, controlled the business of registrant, and had the power to exert a controlling influence of the management and policies of registrant. Registrant vigorously denies this allegation. The question as to whether Rosenbush controlled or had the power to exert a controlling influence over the management and policies of registrant necessitates a detailed examination of the relationship between Rosenbush and registrant.

Rosenbush first became acquainted with Aberlin in 1950 or 1951 when Rosenbush was a branch office manager for Walston, Hoffman & Goodman, a brokerage firm. At Rosenbush's request, Aberlin became Rosenbush's personal adviser on securities, for which Rosenbush paid him \$100 a week. This employment lasted approximately nine months.^{8/}

In the latter part of 1952, Aberlin incorporated registrant and purchased the investment advisory business previously conducted by Owen K. Taylor under the trade name "Owen Taylor Associates."^{9/} In general registrant furnishes investment advice to subscribers by means of a weekly market letter. During the course of years of operation registrant has

^{8/} Rosenbush's employment by the Walston firm ceased in March of 1952 when the New York Stock Exchange withdrew its approval of Rosenbush's registration as a registered representative for violation of the provisions of Regulation T. Subsequent applications by Rosenbush to be reinstated as a registered representative were disapproved by the Exchange.

^{9/} After Taylor's death the business was conducted by his Executrix from whom Aberlin purchased the assets.

acquired a list of names of subscribers, prospective subscribers and of persons responding to the advertisements in various newspapers and periodicals. The record indicates the list comprised over 100,000 names, is considered valuable and registrant as part of its operations rents its lists to others either directly or through mail list brokers. Registrant also hires lists of names from others. In addition, registrant maintains a Stock Exchange ticker and commodities tickers which are used in preparation of so-called point and figure charts which Aberlin testified are the key to his investment advice.

The record discloses the following summary of Rosenbush's activities. He posted registrant's books about once a week, assisted in the mass mailings of registrant's market letters, answered the telephone and frequently went to the bank at Aberlin's request to obtain cash for payroll and general business expenses. Rosenbush, who was interested in commodity futures and apparently was registered with the Commodity Exchange Authority, used registrant's commodity tickers and registrant's point and figure chart library for his own purposes. The record contains considerable evidence concerning Rosenbush's actions with respect to the rental of registrant's mailing lists. Three mailing list brokers, two of which handled about 95% of registrant's mailing list rentals, testified that Rosenbush would authorize the rental of registrant's list and would request such brokers to obtain permission from other list owners from whom registrant desired to rent lists. One of such brokers testified it was informed by Aberlin that Rosenbush was registrant's general manager. It is apparent from the testimony of the employees of the mailing list brokers and the documentary evidence in the record that at least during 1957 Rosenbush concerned himself with a great many of the details and

mechanics necessarily involved in connection with the rental of registrant's mailing lists and the rental by registrant of other mailing lists. The record further discloses the fact that Rosenbush, in addition to frequently approving and permitting registrant's list to be rented and arranging the details for such rentals on several occasions instructed the mailing list brokers to make payments for such rentals to Security Forecaster Co., Inc. In one instance one of the list brokers testified Aberlin arranged for the rental of certain of registrant's mailing lists and instructed that payment therefor be remitted directly to Security Forecaster Co., 10/ Inc.

The record shows that Rosenbush never received a salary. However, in addition to his use of registrant's facilities for his own purposes the record discloses that Rosenbush used one of registrant's automobiles, that registrant paid Rosenbush's gas and oil bills and paid for a number of Rosenbush's restaurant bills. Checks in payment of such bills were signed by Aberlin who testified such bills were paid because Rosenbush entertained registrant's clients or prospective clients. 11/

10/ The record discloses that one mailing list broker was informed by Rosenbush that a Melvin Johnson, who was a registered representative of a stock exchange firm whose offices were adjacent to those of registrant, was starting in business (Security Forecaster Co., Inc.) and registrant desired to help Johnson by making some of its mailing lists available to him for rental purposes. Rosenbush instructed two of the list loaners to remit several payments to Security Forecaster Co., Inc. and as noted above on one occasion Aberlin issued such instructions. The Commission's official files disclosed that the investment advisers registration of Security Forecaster Co., Inc. was revoked (Investment Advisers Act Release 103 (May 20, 1959)).

11/ The only evidence in the record as to the extent of payment of the bills referred to herein appears in the form of seven checks to four restaurants totalling \$357.07 covering a period of approximately nine months.

Aberlin admitted that on several occasions during 1956 and 1957 he borrowed money from Rosenbush and once borrowed \$1,000 from Rosenbush's mother to whom he had previously given investment advice. Aberlin testified he borrowed the money to help him meet payroll and other expenses at times when certain of his fees, received from abroad, required about ten days to clear through the banks.^{12/}

Aberlin denied that Rosenbush was ever employed by registrant, that Rosenbush was general manager of registrant or ever had authority to represent himself as such and if he did so it was without Aberlin's knowledge or consent. Aberlin testified he was unaware of the fact that Rosenbush rented any of registrant's lists and denied knowledge of any payments made by any of the mailing list brokers to Security Forecaster Co., Inc. for rental of registrant's mailing list until the staff of the Commission apprised him thereof during the course of its investigation. Registrant urges that "Rosenbush was operating clandestinely" and that Aberlin "had been duped by Rosenbush."

The Hearing Examiner finds that the record does not support such contentions. Aberlin, who is an attorney, testified he was "associated with Wall Street upwards of 30 years," and has been registrant's president, treasurer, director and operating head of registrant since 1952. Aberlin was present at registrant's place of business every day during 1956 and 1957 except for occasional two or three day trips out of town. All of the

^{12/} The mechanics used in connection with the loans was for Aberlin to borrow from Rosenbush and gave the latter a check to hold until informed that funds were available in registrant's bank, at which time Rosenbush would present the check and receive payment. From the record it appears that Rosenbush was repaid in at least sixty days.

employees of the mailing list brokers who testified stated they spoke with either Rosenbush or, if he was not available, with Aberlin. In light of the testimony of the mailing list brokers and the documents supporting the transactions involving the rental of registrant's mailing list and the receipt of invoices for such rentals by the registrant, it does not appear probable that Aberlin could have been completely unaware of the transactions, particularly since the myriad of details involved in these transactions continued over a period of months and necessitated numerous phone calls and correspondence all of which would appear to have been difficult if not impossible to conceal in a small establishment. Moreover, the record does not indicate that Aberlin even after he purportedly discovered these transactions made any effort to retrieve the money purportedly paid without authority by the mailing list brokers to Security Forecaster Co., Inc. for rental of registrant's mailing lists.^{13/}

On the basis of the evidence the Hearing Examiner finds that the record does not support a finding that Rosenbush controlled or had the power to exercise a controlling influence over the policies and management of registrant. Section 202(a)12 of the Act, as amended^{14/} defines "control" to mean the power to exercise a controlling influence over the management

^{13/} Aberlin testified he took no legal action because he felt he did not have sufficient proof that the mailing lists rented were actually registrant's lists and that any legal action would have destroyed registrant's good will in the industry. The testimony is unconvincing.

^{14/} At the time of these proceedings and prior to the September 13, 1960 Amendment to the Act, the term "control" had the same meaning under the Act as it did under the Investment Company Act of 1940 and included the definition set forth herein. The change in the definition in the 1960 Amendment eliminated certain language relating to a presumption of control resulting from ownership of 25% of the voting securities of a company. In light of the finding of the Hearing Examiner of lack of control the impact, if any, of the amendment need not be considered.

or policies of a company, unless such power is solely the result of an official position with such company.

The Commission has held that the concept of "control" as used in the Act intended to include situations where less than absolute and complete domination of a company is present and pointed out that historical, traditional or contractual associations of persons with companies or a dominating persuasiveness of one or more persons acting in concert with others or alone may form the basis of a finding of control.^{15/} Nor need this power be actually exercised. It is sufficient if such power exists in latent form.^{16/}

In applying the concepts of controlling influence, previously enunciated by this Commission, to the facts in the instant case the Hearing Examiner finds that the record fails to establish that Rosenbush exercised a controlling influence over the management or policies of registrant and that the record does not indicate that such power existed in latent form. Since the term control with which the Act deals may be exercised over either the management or policies of a company we will consider first whether Rosenbush exercised a controlling influence over the policies of registrant. As noted above, registrant, as an investment adviser, furnished investment advice to subscribers by means of a weekly market letter and in connection therewith has amassed and maintains a substantial list of names of subscribers, trail subscribers and prospective subscribers, which names registrant rents out at varying prices for different types of lists. Aberlin testified and it is uncontroverted in the record that

15/ The M. A. Hanna Co., 10 S.E.C. 581 (1941)

16/ The Chicago Corporation et al, 28 S.E.C. 463 (1948)

approximately 90% of registrant's gross income is derived from the sale of its market letters to various types of subscribers and that in 1957 registrant's gross income from rental of its mailing lists amounted to between 8 and 12% of such income. It is undisputed in the record that Aberlin alone prepared registrant's market letter and Rosenbush never assisted in such activities in any manner. The record further establishes that Aberlin selects the securities to be charted and he and several employees of registrant prepare and maintain the point and figure charts. The record is barren of any evidence suggesting that Rosenbush assisted or concerned himself in the preparation or the maintenance of the point and figure charts which allegedly served as a basis for registrant's market letter. The record discloses that Rosenbush's activities in connection with registrant's operations related principally to the rental of registrant's mailing lists. The Hearing Examiner finds that the record substantiates the conclusion that Rosenbush exercised authority and made ultimate decisions regarding not only the rental of such lists but payments therefor as well. Even such authority however was not exclusively reposed in Rosenbush but rather shared with Aberlin.^{17/}

Granted that such activities by Rosenbush are sufficient to support a conclusion that Rosenbush had the power to exercise a controlling influence over registrant's mailing lists, such activities do not appear to support a similar conclusion that Rosenbush controlled the policies of registrant which, on the basis of the record, must include the maintainance of the point and figure charts and the preparation of

^{17/} One of the mailing list brokers testified that on at least one occasion when Rosenbush refused to rent registrant's list Aberlin was called and permission for the use of such list was secured from him.

registrant's weekly market letter. Counsel for the staff urges that the ability to act for registrant "in respect of certain aspects of its (Registrant) business must be held to carry with it the latent power to act for Respondent on all the remaining aspects of the business." This argument, if it has validity, is not supported by the facts in the instant case. It is evident from the record that Rosenbush's activities as to which he exercised authority related solely to the rental of registrant's mailing lists and it is equally evident from the record that Rosenbush had no knowledge of nor the slightest concern with the major facet of registrant's business namely, the maintenance of the point and figure charts and the preparation of the weekly market letter to subscribers. It would be mere speculation to infer that Rosenbush because he rented mailing lists had a latent power to act with respect to or influence the policies of registrant which for the most part related to an aspect of registrant's business from which he was completely divorced.

Emphasis has been placed by the staff of the Division on the fact that Rosenbush occasionally loaned money to the registrant and it is urged that the loans were of such significance that it "alone warrants the inference that suggestions by Rosenbush concerning the operations of Respondent's business would be accepted by Aberlin with the knowledge that not to do so could very well squeeze off Respondent's source of quick and easy credit." The record does not specify the number, frequency or amount of such loans. The record contains a series of checks drawn to cash and endorsed by Rosenbush. Aberlin testified that at least half of these checks (those for even amounts) were given to Rosenbush and that the latter obtained cash from the bank which he turned over to Aberlin

who in turn used the money to insert in registrant's Government postage machine rented from the Post Office Department and used in connection with its extensive mailings. A considerable number of the remaining checks, Aberlin testified, were for meeting payrolls and expenses. No proof was offered to contradict this testimony. On one occasion Rosenbush's mother loaned registrant \$1,000 and no other loans were specifically identified from such checks.^{18/}

An inference of the kind suggested, if it is to be drawn, should not be based on mere conjecture. Particularly is this true in the instant case where another hypothesis is to be imposed thereon from which a conclusion is to be drawn that a latent power to exercise a controlling influence over registrant's policies exists.

Without evidence of the amount or number of loans by Rosenbush to registrant the inference cannot be drawn that such loans were material or significant. Nor should such an inference provide the basis for a further inference that Rosenbush thereby did or could have controlled the policies of the registrant.

We finally consider whether Rosenbush's activities establish that he had a controlling influence over the "management" of the registrant. The record discloses that Rosenbush never hired or fired any of registrant's employees nor had any authority to do so. Aberlin's former secretary testified that although she, Rosenbush and other employees of registrant were present at registrant's place of business most every day during 1957, she never received instructions from Rosenbush

^{18/} The reference by the staff that all such checks make evident the extent of the loans from Rosenbush to Aberlin is unwarranted.

in connection with her duties nor did she ever hear Rosenbush ever issue instructions to any other employee of registrant. She testified that Rosenbush assisted with registrant's extensive mailings, answered the telephone and made entries in registrant's books about once a week. She further testified that Rosenbush never worked on any of registrant's point and figure charts, had no knowledge of such charts, and never prepared any of the weekly market letters. Rosenbush never signed nor had authority to sign any of registrant's checks nor is there any evidence of any payments made to him as salary or profits in the enterprise. To infer from Rosenbush's daily presence at registrant's place of business, his assisting with registrant's mailings, his answering the telephone, his trips to the bank to secure cash for registrant's postal machine and his activities previously alluded to in connection with the rental of registrant's mailing lists, in return for which he received office space, use of registrant's facilities for his own purposes and payment of some automobile and restaurant expenses was tantamount to exerting a controlling influence over the "management" of registrant is, on the basis of this record, unwarranted.

It is the Hearing Examiner's conclusion that on the basis of the evidence in the record Rosenbush did not have the power to exercise a controlling influence over the management or policy of the registrant nor does the record provide a basis for concluding the existence of such a latent power.

Accordingly, the Hearing Examiner finds that registrant did not violate Section 207 of the Act in failing to amend its application for registration to disclose that Rosenbush had the power to exercise a controlling influence over the management or policies of the registrant.

Public Interest

The remaining question is whether, in the light of the willful violations as found, it is in the public interest to revoke or suspend the registration of registrant. Registrant urges that the violations, if found to be present against registrant or at most "technical infractions," easily remedied by a very brief amendment to Form ADV, that the whole problem was "de minimus," that the public has not been injured in any way by registrant's failure to change its address, that registrant's clients knew of the change, that the Commission knew where to serve Aberlin with the order on these proceedings, that the failure to delete the names of the directors who resigned did not prejudice anyone, that Commission in fact was aware of the resignations since April 1958 and that to have filed an amendment in light of charges made was a vain and useless act. Finally, Aberlin urges that he is a member of the New York Bar and that a revocation or suspension of his license based upon "willful" omissions could seriously prejudice him before the Bar Association and could subject him to the expense of defending himself again.

The Hearing Examiner has given careful consideration to all of registrant's contentions. The argument, that the violations were technical infractions of a minor nature, indicates that registrant fails to appreciate the purpose and significance of keeping information filed with this Commission current and making available accurate information to the public. From all that appears in the record it would seem that Aberlin deliberately withheld the filing of an amendment to correct statements which had become untrue in registrant's application for registration even after being advised of the necessity for complying with the Act and the Commis-

sion's rules thereunder. Registrant made no effort to comply therewith. Registrant's conduct shows a disregard, if not a flouting, of the disclosure provisions basic to the statutory scheme of investment adviser regulation. As a member of the Bar, Aberlin knew or should have known that compliance with the Acts and rules promulgated thereunder are not to be treated lightly or be brushed aside as technical requirements. Registrants are not free to choose which provisions of the Act and rules thereunder they will comply with or determine that certain requirements are minor technicalities and may be disregarded. To urge now that problems may arise with the Bar Association is, of course, conjecture but a consequence which Aberlin should have considered earlier, particularly in light of his knowledge of the high standards customarily expected of members of the bar. No satisfactory explanation has been made by registrant as to the reasons for its failure to file the required amendment to date. Nor does the fact that the staff of the Commission may have known of the true facts alleviate the Registrant from compliance with the statutory requirements.^{19/}

The Commission has held that the failure to file an amendment to correct information in a registration application which had become untrue provides a sufficient ground for revocation of registration.^{20/}

^{19/} During the course of the hearings Aberlin testified that appropriate amendments had been prepared, evidently recognizing that Registrant was in violation of the Act and the rules thereunder. The Hearing Examiner can only conclude that Registrant never had any intention of complying with the law.

^{20/} Richard Frank Levy, Securities Exchange Act Release No. 6408 (November 3, 1960), Intermountain Securities, Inc., Securities Exchange Act Release No. 6178 (February 9, 1960).

Conclusion

In view of the willful violations as found, the Hearing Examiner recommends that registrant's application for registration as an investment adviser be revoked.^{21/}

Respectfully submitted,


Irving Schiller
HEARING EXAMINER

Washington, D. C.
December 8, 1960

21/ The Division of Trading and Exchanges and Registrant have submitted proposed findings of fact and conclusions of law. To the extent that the proposed findings are in accord with this recommended decision, they are sustained and to the extent they are inconsistent with such views they are overruled.