In the Matter of Noel C. Genevay, Jr., an Individual, Trading Under the Name of Contact Lens Specialists

Consent order requiring a retail seller of "Air Comfort" contact lenses in New Orleans, La., to cease advertising falsely in newspapers, circulars, etc., that all persons could successfully wear his said contact lenses, and with complete comfort; that the lenses were unbreakable, protected the entire eye, and would correct all defects in vision including all cases requiring bifocals.

The order to cease and desist is as follows:

It is ordered, That the Respondent, Noel C. Genevay, Jr., trading as Contact Lens Specialists, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: September 28, 1980.

By the Commission.

[SEAL]

ROBERT M. FARRISH,
Secretary.

[F.R. Doc. 80-11031; Filed, Nov. 28, 1980; 8:47 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

PART 231—INTERPRETATIVE RELEAS,ES RELATING TO SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 231—INTERPRETATIVE RELEAS,ES RELATING TO SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

§ 231.4298 Statement of the Commission as to the applicability of the Federal securities laws to real estate investment trusts.

Real estate investment trust. The Securities and Exchange Commission has been requested to determine the applicability of the Federal securities laws to real estate investment trusts as defined in a recent amendment to the Investment Company Act of 1940, in which event, absent an available exemption or exception, registration of the trust under that Act would be required. One exception from the requirements of the Act which may be applicable to a real estate investment trust is that contained in section 3(c)(6)(C) of the 1940 Act for a company primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate and not "engaged in the business of issuing face-amount certificates of the installment type or periodic payment plan certificates."

Thus, in determining the applicability of the exception contained in section 3(c)(6)(C), the character of the trust's assets must be considered. In this respect, the question would be raised where a real estate investment trust invested exclusively in fee interests in real estate or mortgages or liens secured by real estate, and were engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate" and not "engaged in the business of issuing face-amount certificates of the installment type or periodic payment plan certificates."

The other question to be considered in determining the applicability of the section 3(c)(6)(C) exemption is whether the securities issued by the trust are treated as "purchasing or otherwise acquiring mortgages or liens secured by real estate" and not "engaged in the business of issuing face-amount certificates of the installment type or periodic payment plan certificates."

The amendment, among other things, requires that in order to qualify for the special tax treatment provided, the trust's securities must be beneficially owned by 100 or more persons. In view of the number of beneficial owners required, it appears unlikely that the scope of the offering could be so limited as to make available the exemption provided in the second clause of section 4(1) of the Securities Act of 1933 for transactions by an issuer not involving a public offering. Thus, consideration should be given to section 5 of that Act which requires that, unless an exemption is available, a registration statement must be filed before any sales may be made by any means of transportation or communication in interstate commerce or by use of the mails and that such statement must include facts and circumstances to be made available the exemption provided in section 3(a)(11) of that Act for certain intrastate offerings is not available to an investment company registered or required to be registered under the Investment Company Act of 1940.

A real estate investment trust, depending upon the nature of its investment portfolio and the nature of the securities it issues, may come within the definition of an investment company as contained in section 3(a) of the Investment Company Act of 1940, in which event, absent an available exemption or exception, registration of the trust under that Act would be required. One exception from the requirements of the Act which may be applicable to a real estate investment trust is that contained in section 3(c)(6)(C) of the 1940 Act for a company primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate and not "engaged in the business of issuing face-amount certificates of the installment type or periodic payment plan certificates."

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Title 21—FOOD AND DRUGS

PART 121—FOOD ADDITIVES

Subpart A—Definitions and Procedural and Interpretative Regulations

EXTENSION OF EFFECTIVE DATE OF STATUTE FOR CERTAIN SPECIFIED FOOD ADDITIVES

The Commissioner of Food and Drugs, pursuant to the authority provided in the Federal Food, Drug, and Cosmetic Act (sec. 6(c), Public Law 85-529; 72 Stat. 1788; 21 U.S.C., note under sec. 342) and delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 8625), hereby authorizes the use in foods of certain additives for which tolerances have not yet been established or petitions therefor denied.

1. Section 121.86 is amended by adding thereto the following items:

   § 121.86 Extension of effective date of statute for certain specified food additives as direct additives to food.

   On the basis of data supplied in accordance with § 121.85 and findings that no undue risk to the public health is involved and that conditions exist that make necessary the prescribing of an additional period of time for obtaining tolerances or denials of tolerances or for granting exemptions from tolerances, the following additions may be used in food, under certain specified conditions, for a period of 1 year from March 6, 1980, or until regulations shall have been issued establishing or denying tolerances or exemptions from the requirement of tolerances, in accordance with section 409 of the act, whichever occurs first:

   2. Section 121.87 is amended by adding to paragraph (a) the following items:

   § 121.87 Extension of effective date of statute for certain specified food additives as indirect additives to food.

   (a) On the basis of data supplied in accordance with § 121.87 and findings that no undue risk to the public health is involved and that conditions exist that make necessary the prescribing of

   2. Section 121.87 is amended by adding to paragraph (a) the following items:

   § 121.87 Extension of effective date of statute for certain specified food additives as indirect additives to food.

   (a) On the basis of data supplied in accordance with § 121.87 and findings that no undue risk to the public health is involved and that conditions exist that make necessary the prescribing of an additional period of time for obtaining tolerances or denials of tolerances or for granting exemptions from tolerances, the following additives may be used in connection with the production, packaging, handling and storage of food products, under certain specified conditions for a period of 1 year from March 6, 1980, or until regulations shall have been issued in accordance with section 409 of the act, whichever occurs first:

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   § 121.87 Extension of effective date of statute for certain specified food additives as indirect additives to food.

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