BEFORE THE SECURITIES COMMISSIONER

OF THE STATE OF DELAWARE

IN THE MATTER OF:	)	
	)	
F.D. ROBERTS SECURITIES, INC.,	)	
and ALBERT V. CELENTE,	)	Case No. 89-11-06
	)	
Respondents.	)	
	)	

W. Michael Tupman, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, attorney for the State of Delaware.

Susan L. Parker, Esquire, Smith, Katzenstein and Furlow, Wilmington, Delaware;
Peter E. Doyne, Esquire, Hackensack, New Jersey;
attorneys for respondent Albert V. Celente.

OPINION AND ORDER

Date: January 14, 1992
Wilmington, Delaware

Charges were issued on January 29, 1990, by the Delaware Securities Division ("Securities Division") against respondents F.D. Roberts Securities, Inc. ("F.D. Roberts"), a New Jersey broker-dealer not registered to sell securities in Delaware, and Albert V. Celente ("Celente"), its unregistered broker-dealer agent. The firm and its agent were charged with registration violations and defrauding a Delaware investor named Robert Neal Cooper, who invested on behalf of his aged parents, in the context of sales of low-priced securities. The notice of allegations ("Notice") charged the following violations:

(1) F.D. Roberts and Celente violated 6 Del. C. sections 7313 and 7316(a)(2) by offering and selling securities in Delaware without being registered to sell securities;

(2) F.D. Roberts and Celente violated 6 Del. C. sections 7304 and 7316(a)(2) by offering and selling unregistered, nonexempt securities in Delaware;

(3) F.D. Roberts and Celente violated 6 Del. C. section 7316(a)(7) by inducing a Delaware resident to use a false address outside the State of Delaware to conceal illegal sales;

(4) F.D. Roberts and Celente violated 6 Del. C. section 7316(a)(7) and section 7316(a)(2) by recommending an unsuitable investment without having reasonable grounds for the recommendation;

(5) F.D. Roberts and Celente violated 6 Del. C. section 7303 and 7316(a)(2) by making willful misrepresentations and

omissions of material fact in connection with the offer and sale of securities in Delaware.

Each of the above-stated allegations was repeated for the sales of four different securities transactions, involving the securities of companies named "Pearl Ventures," "Metro Systems, Inc." and "Integrated Business Corp." Additionally, F.D. Roberts was charged with a violation of 6 Del. C. section 7316(a)(6) for having its license revoked in the State of Maryland for disciplinary reasons.

A hearing on the charges was held on July 9, 1991. F.D. Roberts had filed for Chapter 7 bankruptcy prior to the hearing, and it did not respond to the Notice or send a representative to the hearing. Respondent Albert V. Celente did appear with counsel.

The State presented two witnesses: Denise Herron, a securities investigator, and ("), the Delaware investor. Ms. Herron testified that the respondent broker-dealer and its agent, Mr. Celente, had been unregistered in Delaware at the time of the sales. Ms. Herron also authenticated various documents (mostly registration statements for the securities at issue) that were placed into the record.

testified that in the summer of 1987 he was handling the financial affairs of his parents, and , who were then ages 79 and 75, respectively, and who both had very limited education. His parents had sold their house in 1986 for approximately $137,000 and

had invested the proceeds in some mutual funds. In addition to that investment, his parents' assets included a $30,000 inheritance and income from Social Security and pension benefits, which described as "small."

In 1986 or 1987 the son liquidated some of the mutual fund investment and reinvested the money in common stocks through a Dean Witter broker. In or about July 1987, saw an advertisement for F.D. Roberts in a newsletter and responded by sending in a form with his name and address. testified that at this time he had little knowledge of stock markets and hardly knew the difference between the New York Stock Exchange and the Over-The-Counter ("OTC") market.

Several days after sending in the form he received a telephone call from Albert V. Celente on behalf of F.D. Roberts. Cooper testified that Celente attempted to sell stocks to him) at the time of this first telephone call. Although did not purchase any, he and his wife drove to the Paramus, New Jersey office of F.D. Roberts several days later to meet Mr. Celente.

Mr. Celente failed to disclose at the outset of the meeting that he was not registered to sell securities in Delaware. He did tell that he could double his money within six months to a year by investing with F.D. Roberts. Celente emphasized that should trust him and recommended the purchase of three stocks: Pearl Ventures, Integrated Business Corporation, and Metro Systems, Inc. Celente told that he

had "pre-selected" these stocks for him. Although told Celente that he (was investing on behalf of his parents, Celente failed to inquire about their age, investment objective, education, net worth, or income. Celente said that "everybody is making money" and that none of his clients had lost a penny. He also told to buy when Celente instructed him to buy and to sell when Celente instructed him to sell. When he recommended the three securities, Celente said that he had a widowed mother on no income who was in these issues.

After making the recommendations, Celente informed that F.D. Roberts was not registered in Delaware. However, Celente added that he expected to be registered in Delaware at any time and there was a "solution" to the problem of lack of registration. Celente suggested that provide him with an out-of-state address. then gave Celente a Pennsylvania post office box number that parents had kept after having lived in Pennsylvania.

agreed to buy the three securities recommended by Celente. As a result of the first meeting, purchased 20,000 shares of Pearl Ventures for $10,009 on August 6, 1987 (trade date); 15,000 shares of Metro Systems, Inc. for $18,009 on August 7, 1987 (trade date); and 25,000 shares of Integrated Business Corp. for $19,009 on August 7, 1987 (trade date).

left the meeting with Celente thinking that he had been given a "near guarantee" as to the profitability of the securities he had purchased. There had been no discussion of

risk and little discussion of the companies themselves. had little understanding of what he had bought.

One week later, on or about August 13, 1987, received a telephone call from Celente offering additional shares of Metro Systems, Inc. ("Metro"). resisted the offer, saying that he had already invested all the money that he could. Celente asserted that the price of Metro would rise by $.12 per share within two days and would be foolish not to buy. then purchased an additional 5000 shares of Metro for $6509 on August 13, 1987 (trade date). testified that he made that purchase feeling that Celente had "twisted my arm."

Unfortunately, Metro did not rise by $.12 per share within two days. testified that after two days it rose only $.07 per share and several weeks later its bid price had dropped to one-half the value had paid. Similarly, sold 5000 shares of Integrated Business Corporation ("IBC") on January 6, 1988 (trade date) for $841; an additional 5000 shares of IBC on January 7, 1988 (trade date) for $841; and 20,000 shares of "Sherman Goelz" (formerly "Pearl Ventures") on August 18, 1988 for $7,991. still owns 15,000 shares of IBC and all his shares of Metro. He has been unable to obtain bid quotations for either security and believes all his shares are worthless. In all, lost $43,863 of his parents' money.

Celente did not testify at the hearing. Instead, his counsel moved that the hearing be dismissed because of proceedings in other forums pertaining to these transactions.

Specifically, had already filed a complaint that had been heard by a three-member arbitration panel of the National Association of Securities Dealers, Inc. ("NASD"). had been awarded $5000 by the NASD panel, and Celente had paid that amount. Secondly, the NASD District Business Conduct Committee for District No. 12 had separately brought charges against Mr. Celente for violations of the NASD's Rules of Fair Practice. This proceeding resulted in a consent agreement whereby Celente was censured, suspended for 15 days from doing business as an associate of any NASD member firm, and fined in the amount of $5000. Thirdly, Mr. has filed a civil lawsuit against Celente in the Delaware Superior Court based on the same or similar allegations involved in the NASD arbitration. This suit is still pending.

Counsel for Mr. Celente argued that the doctrine of res judicata requires that the immediate proceeding be dismissed because is the real party in interest opposing Celente and these issues have already been litigated between them. Counsel also asserted that further proceedings against Celente would violate his constitutional rights to Due Process, Equal Protection, and Eighth Amendment protection. Finally, counsel urged that as a matter of the Commissioner's discretion no sanctions should be ordered against Celente because to do so would constitute "overkill."

Also, counsel on cross examination of developed the fact that had conducted extensive short term trading

of securities while doing business with Dean Witter. He argued that this showed that was sophisticated, that he wanted to speculate in low-priced securities, and that his dissatisfaction with his Dean Witter broker showed he was chronically dissatisfied with his brokers. himself explained his trading pattern at Dean Witter on the basis that he had little understanding of the stock market and was simply following a newsletter that recommended such trades. He said he was ultimately dissatisfied with his Dean Witter broker because the account did not produce an overall gain.

The first issue for me to decide is whether the Delaware Securities Division has jurisdiction over transactions completed in Paramus, New Jersey. The Delaware Securities Act applies only to offers or sales of a security "in this State." 6 Del. C. section 7304. Where an offer or sale of a security involves conduct occurring in several states, however, it is necessary to determine whether the contacts with Delaware create a sufficient nexus to trigger jurisdiction in the Securities Division. See Singer v. Magnavox, Del. Supr., 380 A.2d 969, 981 (1977). Here, the respondents placed a telephone call to the Delaware residence of , offered to sell him securities during the course of the conversation, and lured him to travel to New Jersey to complete the transactions. One week after purchasing the securities in New Jersey, received another call at his Delaware residence from Celente, and this time Celente sold the securities directly to over the telephone. These

contacts are sufficient, in my opinion, to give the Securities Division jurisdiction over all the sales.

Secondly, there is Mr. Celente's affirmative defense of res judicata and related constitional arguments. The doctrines of res judicata and collateral estoppel do not apply to this proceeding because there is no identity of the parties to the litigation. The State's interest in bringing this proceeding is substantially different from the interests of , his parents, and the NASD. Unlike and the NASD, the State has a strong interest in enforcing the Delaware Securities Act for the prevention of future harm to Delaware investors. This prophylactic purpose is furthered through the imposition of strict sanctions designed to have a deterrent effect.

Mr. Celente's constitutionally-based arguments fail because they are dependent on the res judicata doctrine. If the respondent's course of conduct is in violation of Delaware law, the NASD's ethical rules, and the legal rights, he may be subjected to sanctions in several different forums because the rights of each party happen to be enforceable in different forums. The Delaware Securities Act, for example, clearly envisions parallel proceedings in a government regulatory action and in a private civil action.[1]

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[1]A caveat, however, is that discretion is required where there is a danger that a particular remedy serving a particular interest may be imposed in multiple forums. For example, the remedy of restitution or rescission may be inappropriate here in view of the prior and pending litigation between Mr. Cooper and Mr. Celente.

My findings of fact and conclusions of law follow. Since testimony was uncontradicted, I accept it as an accurate statement of Mr. Celente's conduct. Without regard to the nature of the securities at issue, several violations are immediately apparent.

Celente sold securities to in four separate transactions without being licensed to do so. These violations were willful as Celente demonstrated his awareness of the illegality by trying to camouflage the Delaware residence of the parents. Thus, he committed four violations of 6 Del. C. section 7313 and section 7316(a)(2).

Turning to the charges of misrepresentations and omissions of material fact, some discussion of the securities themselves is required. Pearl Ventures was incorporated in Nevada on November 14, 1986. In its prospectus dated April 3, 1987 (about four months prior to the purchase by) and filed with the Securities and Exchange Commission ("SEC") on May 13, 1987, the company revealed that it had no business operations, no earnings, and no employees, and its total assets were in the amount of $1500. Moreover, the company was a "blind pool," which means that it would not specifically designate what use it would make of investor proceeds. The company at the time the prospectus was issued (April 1987) was going to undertake a public offering of two to four million units (each unit being one share of common stock and one warrant) at $.05 per unit. The gross proceeds would thus be between $100,000 and $200,000, with the net

proceeds to the company between $78,000 and $178,000. Thirty million shares were outstanding prior to the offering, and after the offering there would be between 32 and 34 million shares outstanding.

paid $.50 per share for his 20,000 shares of Pearl Venture on August 6, 1987. At $.50 per share, the company would have had an aggregate value between 16 and 17 million dollars.

Metro Systems, Inc. was incorporated in Nevada on October 18, 1985 under the name "Y.O. Systems, Ltd." The company intended to operate a securities transfer business through a subsidiary named "Metro Stock Transfer, Inc." According to its prospectus, on May 31, 1987, the company had $48,221 in total assets, no full-time employees, no business operations, revenues of $470 for the calendar quarter ending May 31, 1987, and a net loss of $18,305 for that calendar quarter. Additionally, the company was a blind pool that would not specifically designate the use it would make of investor proceeds. It had 32 million shares of common stock outstanding on May 31, 1987, plus two million warrants exercisable at $.20 each. The company hoped to obtain $400,000 in gross proceeds as a result of the warrants being exercised, with a net $378,000 to be spent by the company as it pleased.

On August 7 and August 13, 1987, paid a total of $24,518 for his 20,000 shares of Metro Systems, Inc., an average of $1.2259 per share. At that cost per share, the company would

have had an aggregate value between 39.23 and 41.58 million dollars, depending on the number of warrants that had been exercised.

Integrated Business Corporation ("IBC") was incorporated in Florida in February 1985 and initiated a public offering of 12,500,000 units of common stock and warrants in September 1985, netting $207,000. It became a holding company thereafter for several small subsidiaries. In its summary of operations in its Form 10-K annual report filed with the SEC on May 14, 1987, the company disclosed that from its inception in February 1985 to January 31, 1986, it had revenues of $9701 and a net loss of $94,860. The next year, from February 1, 1986 to January 31, 1987, it increased its revenues but suffered a net loss of $106,966. The company's net tangible book value as of January 31, 1987, was approximately $725,000. Of those assets, approximately $340,000 was obtained in fiscal year 1987 through the sale of stock in public offerings by its subsidiaries, helping to offset losses in operations. The company had 70,066,225 shares of common stock outstanding as of April 30, 1987.

On August 7, 1987, paid $19,009 for 25,000 shares of IBC. The purchase price average $.76 per share. At this cost per share, the company would have had an aggregate value of more than 53 million dollars.

was obviously defrauded by F.D. Roberts and Mr. Celente. The bid price Cooper paid for each security was grossly

in excess of any rationally derived value. Celente's statements--that everybody was making money, nobody was losing a penny, the price of Metro would rise 12 cents in two days--were all misrepresentations when viewed in the light of the actual financial statements of the issuers and disclosures in each security's prospectus or annual report. Moreover, Celente was legally required to disclose for each security the risk of loss of the entire investment, the prior losses or lack of earnings, and the tiny book value relative to cost per share. These facts were required to make his optimistic forecasts and factual assertions not misleading. Hence, these facts were material to the transactions. Celente never mentioned risk, however.

Mr. Celente committed four violations of 6 Del. C. section 7303(2). These violations were willful and therefore in violation of 6 Del. C. section 7316(a)(2), for Celente demonstrated by his statements designed to gain trust that he intentionally misled his client.

Celente also committed four violations of 6 Del. C. section 7316(a)(7) by recommending unsuitable securities in bad faith. No honest, competent broker could have recommended these securities to a client at those prices. Since the beneficial owners were , an elderly couple with limited education and limited income, and since Celente was told the purchases were for parents but did not bother to make any inquiries, Mr. Celente has no defense to these charges.

F.D. Roberts is equally at fault for Celente's violations. The federal indictments of its principals for fraud and market manipulation and the subsequent plea agreements introduced by the State show that Celente's conduct was part of a pattern at that firm. Additionally, the Maryland broker-dealer license revocation (State's Exhibit S-10) constitutes grounds for revocation in Delaware under 6 Del. C. section 7316(a)(6).

Although the Notice charged respondents with the sale of unregistered, nonexempt securities, the prosecutor did not introduce any evidence on that point. Therefore, those charges are dismissed.

I find it is in the public interest that respondent Albert V. Celente be fined $12,000 for his 12 violations of the Delaware Securities Act. Further, it is in the public interest that the attached Cease and Desist Order be issued against both respondents. No order as to restitution or rescission will be issued, however, due to my concerns as to the legal authority for and the questionable appropriateness of such an order on the facts of this case.

Respondents have 60 days in which to appeal this Opinion and Order to the Delaware Court of Chancery. If no appeal is filed this Opinion and Order shall become final on March 16, 1992. The attached Cease and Desist Order shall be immediately effective.

Richard W. Hubbard
Securities Commissioner

Dated: January 14, 1992

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OF THE STATE OF DELAWARE

IN THE MATTER OF:	)	
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F.D. ROBERTS SECURITIES, INC., and ALBERT V. CELENTE,	)	Case No. 89-11-06
	)	
Respondents.	)	
	)	

PERMANENT CEASE AND DESIST ORDER

WHEREAS, respondents F.D. Roberts Securities, Inc. and Albert V. Celente have been found, after notice and a hearing, to have committed multiple violations of the Delaware Securities Act (6 Del. C. Ch. 73), to have sold securities in Delaware without being licensed to do so, and to have engaged in fraudulent activity,

IT IS HEREBY ORDERED that respondents F.D. Roberts Securities, Inc. and Albert V. Celente shall cease and desist from offering or selling securities, providing investment advice, or engaging in any securities-related activity in any capacity in the State of Delaware. Any violation of this Order will result in criminal prosecution.

Richard W. Hubbard
Securities Commissioner

Dated: January 14, 1992