

5/19/87

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ORDER SUSPENDING  
BROKER-DEALER  
REGISTRATION

- A. An order initiating a proceeding under the Delaware Securities Act, Section 7316 of Title 6 Delaware Code was mailed to respondent the 23rd day of January 1987 (copy attached).
- B. Pursuant to Rule 73(1)(1) a Hearing was held on February 24, March 24, March 25, and March 26 in Wilmington, Delaware.
- C. The Commissioner of Securities is charged under 6 Del. C. Section 7325 with enforcement of the provisions of the Delaware Securities Act (The Act).
- D. Section 7316 of the Act authorizes the Commissioner to suspend or revoke the registration of a Broker-Dealer if he determines that such Broker-Dealer is subject to one of the disqualifying factors stated in that section and such action is in the public interest.
- E. Section 7325(b) provides that the Commissioner may make such orders as are necessary to carry out the provisions of the Act.

NOW THEREFORE, the Commissioner having heard the witnesses and made a determination as to their credibility, makes the

following findings of fact and conclusions of law based upon the relevant evidence presented:

FINDINGS OF FACT:

1. On July 27, 1982, respondent Blinder, Robinson & Company, Inc., was approved for registration as a Broker-Dealer by the Delaware Securities Division. Respondent has renewed its registration annually since that time.
2. Respondent has an extensive history of disciplinary problems as set out below.
3. On or about September 12, 1978, the United States District Court for the Southern District of New York issued a permanent injunction against respondent enjoining it from further violations of federal securities laws.
4. On or about June 25, 1979, the State of Wisconsin issued an order of prohibition against respondent prohibiting further sales of securities by an unregistered Broker-Dealer.
5. On or about April 25, 1979, the State of Kansas issued a temporary cease and desist order against respondent prohibiting further violations of Kansas securities laws.
6. On or about February 8, 1980, the Los Angeles County Superior Court issued a preliminary injunction against respondent and Mr. Meyer Blinder, a controlling person, restraining them from further violations of the qualification provisions of the California corporate securities laws.

7. On or about January 28, 1981, the State of Tennessee issued an order of prohibition against respondent prohibiting further sales of securities by an unregistered Broker-Dealer.
8. On or about May 21, 1981, the State of Georgia issued a cease and desist order against respondent prohibiting further sales of securities by an unregistered Broker-Dealer.
9. On or about August 30, 1982, the State of South Carolina issued a cease and desist order against respondent prohibiting further sales of securities by an unregistered Broker-Dealer. The order was vacated on November 10, 1982.
10. On October 20, 1982, the Montana Securities Commission issued a cease and desist order against respondent for selling unregistered securities in Montana while unregistered as a Broker-Dealer.
11. On or about November 1, 1982, the Commonwealth of Massachusetts issued a cease and desist order against respondent prohibiting further sales of unregistered securities by an unregistered Broker-Dealer.
12. The September 29, 1982 Securities and Exchange Commission News Digest issue 82-100 disclosed that the Commission affirmed sanctions imposed by the NASD on respondent and its president, Meyer Blinder, who had been censured and fined \$1,000 each for failure to properly supervise respondent's agents. The NASD is the National Association

of Securities Dealers, a self-regulatory organization authorized under the Exchange Act of 1934 and the Maloney Act.

13. On or about May 10, 1983, the State of Maine issued a consent order against respondent for selling securities as an unregistered Broker-Dealer. On October 30, 1984, Maine issued a Notice of Intent to Deny Registration to respondent on the basis of its past violations.
14. On or about April 13, 1984, the Pennsylvania Securities Commission issued an order against respondent finding that respondent had sold unregistered securities through unregistered agents and suspending its registration as a Broker-Dealer for 120 business days.
15. On or about February 21, 1984, the State of Maryland issued an order fining respondent \$20,000 for violation of Maryland's securities laws. The basis of the order was that respondent, an unregistered Broker-Dealer, had sold securities to 72 Maryland residents in 340 transactions.
16. On or about May 3, 1983, the Virginia State Corporations Commission entered a final order and judgment against respondent in which it was found that respondent had sold unregistered securities in Virginia without being registered as a Broker-Dealer. Respondent was fined \$25,000 and enjoined from future violations of the Virginia Securities Act.
17. On or about February 14, 1984, the Michigan Department of Commerce, Corporation and Securities Bureau, issued a

preliminary cease and desist order against respondent for selling unregistered securities as an unregistered Broker-Dealer. On or about May 17, 1985, a consent cease and desist order was entered censuring respondent and establishing special requirements and conditions before respondent would be permitted to register as a Broker-Dealer.

18. On or about January 24, 1985, the State of Iowa issued an Amended Notice of Hearing which alleged that in the period from 1979 through 1982 unlicensed agents of respondent sold unlicensed securities to Iowa residents. After a hearing, adverse findings of fact and an order revoking respondent's Broker-Dealer registration were issued. The order was subsequently stayed pending the outcome of a lawsuit brought by respondent against the State.
19. On or about September 3, 1986, the National Association of Securities Dealers (NASD), District No. 3, issued a complaint against the respondent, its principal, Mr. Meyer Blinder, and some of its agents. The complaint alleged violations of the rules of fair practice by unfair price mark-ups over cost, among other violations.
20. In June 1986 the California Corporations Commissioner adopted a proposed decision that had been issued in March 1986 by an administrative law judge ordering revocation of respondent's Broker-Dealer license in California but staying the order pending a three-year period of

probation. The decision has been appealed by respondent to Los Angeles County Superior Court.

21. On or about April 30, 1986, the Nebraska Bureau of Securities issued findings of facts, conclusions of law, and an order affirming that Bureau's July 1, 1985 order denying Broker-Dealer registration to Blinder, Robinson & Co., Inc. The order was based on the company's disciplinary history and its sale of unregistered securities in Nebraska while not registered as a Broker-Dealer. Respondent has appealed to the Nebraska courts.
22. On or about April 30, 1986, the Securities Division of the Commonwealth of Massachusetts issued a Amended Notice to Show Cause Why Broker-Dealer Registration Should Not be Denied. The order was based on respondent's disciplinary history.
23. On or about September 5, 1985 the State of Hawaii denied respondent's application to register as a broker-dealer in that State. The denial was based on respondent's disciplinary history. At a later date respondent was licensed subject to certain restrictions.
24. On or about August 17, 1985, a permanent injunction was issued by the Circuit Court of Dane County, Wisconsin, enjoining respondent from committing further violations of Wisconsin securities laws. Blinder Robinson stipulated to the entry of this injunction. This violation was reported by respondent on form B-D Amendment to the Delaware Securities Division as a "Blue Sky Law Violation.

Settlement has been reached and rescission is being made." Plaintiffs Exhibit No. 14. I find this misleading.

25. On or about May 22, 1985, the State of Tennessee entered into a consent order with respondent which prohibited it from applying for broker-dealer registration in Tennessee for five years and permitted Tennessee to extend that period of probation. The bases for the order were a January 28, 1981 cease and desist order against respondent for selling securities to Tennessee residents while unregistered as a Broker-Dealer and subsequent securities law violations in other jurisdictions. Respondent at a later date was permitted to withdraw its application for a Broker-Dealer license in Tennessee.
26. Mr. Meyer Blinder is President and a person directly or indirectly controlling the respondent Broker-Dealer in accordance with the requirements of Section 7316(a).
27. On June 8, 1982, the United States District Court for the District of Colorado issued a permanent injunction enjoining respondent and Mr. Meyer Blinder from further violations of federal securities laws. The injunction was based upon willful violations of anti-fraud and anti-manipulation provisions of the federal securities laws. 542 F. Supp. 468 (D. Colo. 1982, Matsch District Judge). The decision was appealed to the Tenth Circuit Court of Appeals, which affirmed. SEC v. Blinder Robinson & Co., Inc. [1983-1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) Para. 99,491 (10th Cir. 1983). The United States



Supreme Court denied respondent's petition for a writ of certiorari on January 7, 1985. 469 U.S. 1108(1985).

Respondent did not report to the Commissioner the U.S.

Supreme Court's Denial of certiorari pursuant to Section 7315(c) and Rule 14(a)(2). I find this omission misleading.

28. On December 19, 1986 the Securities and Exchange Commission ordered that the Broker-Dealer registration of the respondent be suspended for a period of 45 days commencing January 12, 1987 with certain allowances to effect unsolicited retail customer transactions, and further prohibited the respondent from underwriting securities for 2 years. Plaintiffs Exhibit No. 4. In addition, Mr. Meyer Blinder was barred from the industry for a period of 2 years (p. 17 of Plaintiffs Exhibit #4). Respondent obtained a stay in these matters from the United States Court of appeals for the District of Columbia Circuit pending appeals on March 26, 1987 (consolidated cases Nos. 87-1080 and 87-1086).
29. The Securities and Exchange Commission order referenced in paragraph 28 was based on initial decision of August 30, 1985 in Administrative Proceeding file no. 3-6380 (Plaintiff's Exhibit #5). On pages 19 through 45 the hearing officer found that such sanctions were required "in the public interest."
30. The respondent Broker-Dealer essentially engages in the business of selling unlisted Penny Stocks to



unsophisticated retail customers through a cold-call structured three telephone call system from sixty-one offices throughout the United States.

31. Respondent Broker-Dealer opened it's first Delaware office in January 1987 with 5 to 7 agents and plans to increase the number of agents in Delaware to 25 or 30 as soon as possible.
32. Respondent's total sales through more than 1500 salesman (agents) exceed 1 1/2 billion dollars annually.

### Conclusions of Law

Section 7316 of Del.C. Title 6 is patterned after Section 204 of the Uniform Securities Act and is titled Denial, Revocation, Suspension, Cancellation and Withdrawal of Registration of Broker-Dealers, Investment Advisers, and Agents.

The purpose of both Statutes is to provide the Commissioner with authority to suspend or revoke any registration if he finds that certain orders (actionable orders) have been entered by the Securities Commissioner of another State or by the Securities and Exchange Commission [Subsection (a)(6)]. Similarly the Commissioner may act following an injunction by a Court of competent jurisdiction [Subsection (a)(4)].

Provided the actionable order is established it is not necessary for the Commissioner to go behind the order and review the merits of the earlier action. If one or more actionable orders are found by a preponderance of the evidence the plaintiff must provide additional evidence that the suspension or revocation is in the public interest. This "in the public interest" requirement is also found in federal law when the Securities and Exchange Commission orders suspension or revocation of a Broker-Dealer license. Title 15, U.S. Code Annotated Section 78o(b)(4)(C).

In Delaware registrations of Broker-Dealers expire on December 31 of each year unless renewed. (Title 6, Section 7313) Although perhaps not perfectly expressed the sense of Section 7316, Subsection (a)(11) requires that the Commissioner raise objections to a registrant's renewal within 30 days after

December 31 of each year as to those matters "known to him". See Uniform Securities Act and Comments by Professor Lewis Loss 1956, Page 38. The registrant has the obligation to promptly inform the Commissioner by form B-D amendment as to events affecting the registrant's renewal. Section 7315(c) and Rule 14(a)(2).

Another provision common to the Delaware Act as well as to the Uniform Act and Federal Law is that all provide that an order against any person directly or indirectly controlling a Broker-Dealer is equivalent to an order against the Broker-Dealer for purposes of Section 7316. See Sec.20(a) of The Securities Exchange Act of 1934, 48 Stat. 899 15 U.S.C. Sec. 78t(a).

With that background we turn to the case at hand. The first issue is to determine under the evidence presented if any order or injunction is statutorily sufficient (actionable) to trigger the Commissioners authority to suspend or revoke the registrant's license under Section 7316.

One difficulty becomes apparent when applying Section 7316 (or Uniform Act Section 204) in a specific factual context. Does the "one year from the date of the order or action relied on" in Section 7316(a)(6) start to run from the date of the order, or at the date an appealed order is made final? Respondent argues the latter saying that orders sufficient to trigger Section 7316 are necessarily final orders as appealed orders have no efficacy until appeals are complete. (Page 3 of

Respondent's Post-Hearing Statement, but compare with Respondent's statement on page A-8, March 24, 1987).

The Uniform Act does not specify which interpretation is correct (see Commentary On The Uniform Securities Act by Louis Lossi, Little Brown & Co. 1976) and there is no Delaware case on the point. In Delaware an attempt was made to clarify the problem when the Legislature inserted into Section 7316(a)(6) the words "the effect of which action has not been stayed by appeal or otherwise" at a place in the sentence where one would be likely to believe it applied only to orders by a National Securities Exchange or National Securities Association, and not to orders by the SEC. There is some logic in that belief because the SEC is the next appellate level for actions by a National Securities Exchange or National Securities Association, and the inserted language brings a symmetry to the appellate level needed to make an order actionable by the Commissioner. The Legislative change (from Uniform Act language) in subsection (a)(6) but not in (a)(4) also raises an inference that injunctions by a court of competent jurisdiction are actionable immediately under Section 7316 even if appealed. Inasmuch as Securities Laws are remedial in nature and their primary purpose is to protect investors, Tcherephin v. Knight 389 U.S. 332, 19 L.Ed.2 564, 88 S.Ct. 549 (1967), any interpretation of Section 7316 that renders the Commissioner helpless to take reasonably swift action against fraud or malfeasance seems inappropriate. Requiring that actionable orders be "final" would have that effect.

Fortunately, it is not necessary to resolve the issue at this time. I find in the two dozen or so actions cited in the January 23, 1987 Order and Notice of Hearing several orders are actionable and provide the necessary trigger under either statutory construction. I find three orders (A., B. and C. below) satisfy the statute under the "final" order interpretation and two (D. and E. below) satisfy the "date of the order" interpretation.

The five orders are as follows.

- A. Colorado District Court Injunction Against Respondent.  
(Item 27)
- B. Colorado District Court Injunction Against Mr. Meyer Blinder, a Controlling Person (Items 26 and 27)
- C. State of Wisconsin Injunction Against Respondent (Item 24)
- D. State of Nebraska Order Denying Registration to Respondent. (Item 21)
- E. Securities and Exchange Commission Order of December 19, 1986 Barring Mr. Meyer Blinder from the Industry. (Items 26, 28 and 29).

I further find that the orders in A, B, and C above were either not reported on form B-D Amendment in a timely and proper manner, or were not reported at all to the Commissioner prior to February 1, 1986, that each were accordingly not "known to him" under Subsection (a)(11), and that each is therefore an actionable order under Section 7316.

With respect to orders, in D and E, I find that the date of the Order in Nebraska (April 30, 1986) and the date of the SEC Order (December 19, 1986) are both less than one year from January 23, 1987 and that each are actionable orders under Section 7316.

No specific allegation was made in the January 23, 1987 Notice of Hearing concerning a violation of Section 7316

(a)(1), but evidence introduced by the Deputy Attorney General at the hearing showed that there was a failure by respondent to disclose material disciplinary information in their form BD amendments in relation to denial of certiorari by the U.S. Supreme Court with respect to the Colorado injunction (Item 27) as well as the injunction in Wisconsin (Item 24). This information was material because it could have a bearing on the Commissioner's decision whether to initiate action under Subsection (a)(4).

Information concerning disciplinary activity especially when reached at the judicial level is almost invariably of material interest to State Commissioners.

Both issues were fully addressed by the parties and there is thus no due process infirmity to my reaching a legal conclusion that the respondent filed applications on form BD amendments which were incomplete in a material respect or false and misleading with respect to a material fact under Subsection (a)(1), and I so find.

Plaintiffs Exhibit 3 is a copy of Wisconsin Dane County Circuit Court Permanent Injunction and Order of Recission dated

the 7th day of August 1985. Considerable testimony from Mr. Hubbard showed that this injunction was described as a "Order" repeatedly by Blinder Robinson to conceal that Wisconsin had entered a injunction. (Hubbard Testimony, Page 107-112). Mr. Hubbard stated that the first time a Broker-Dealer Amendment properly disclosed that an injunction had been entered was April 21, 1986. Whether Respondent's failure to properly disclose was intentional or inadvertent is not clear but I note Page 27 of the Securities and Exchange Commission initial decision (Plaintiff's Exhibit 5) which suggests that Respondent habitually "took a very cavalier attitude towards States Securities Law compliance, in effect adopting a policy of unconcern with compliance until they got caught".

#### THE PUBLIC INTEREST

Under Section 7316 it is necessary that the Commissioner find that a proposed order is in the public interest. The term "in the public interest" is not defined by rule and no standards are stated in the Act. It is clear however that the public interest requires action by the Commissioner consistent with the overall purpose of the statute which is primarily to protect investors. National Ass'n for Advancement of Colored People v. Federal Power Commission, Dist.Col., 96 S.Ct. 1806, 1811, 425 U.S. 662, 48 L.Ed.2d284. Some guidance is provided by Federal cases involving similar language in the Exchange Act (15 U.S. C. A. Section 78 o(b)(5)(C); Ref. 69 Am Jur 2d Securities Regulation-Federal Sect. 357). Also it is clear that more



than technical violations by a Broker-Dealer are necessary to suspend or revoke a license.

Mayflower Securities Co., Inc., v. Bureau of Securities, N.J. Supr. Ct. 312 A 2D 497 (1973).

Respondent has a long history of disciplinary problems. Indeed the SEC Administrative Law Judge found Respondent to be a scofflaw of State Securities regulators. Respondent argues that cited violations are old and their present operation improved. Some new computer programs have been installed. Such mechanical steps may help reduce certain violations but they cannot substitute or cure questionable business practices. I too am not persuaded that respondent's ways have changed.

Respondent says that there are few instances of complaints from Delaware citizens. However, Respondent opened its office in New Castle Delaware in January 1987 and few salesmen (agents) were active up to the hearing date. Respondent plans to rapidly increase the number of salesmen to 25 or 30.

With respect to Orders B. and E. above, the Securities and Exchange Commission said that respondent and Mr. Meyer Blind-er's "violations could hardly be more serious". p.11 of December 19, 1986 Order. This degree of culpability weighs heavily when considering what action is appropriate in the public interest.

Accordingly I find that it is in the public interest to issue the following Order:

NOW THEREFORE, the Commissioner orders that the license of respondent Blinder Robinson & Co. Inc. be and hereby is

suspended for a period of 2 years in the State of Delaware  
effective 60 days after the date of this order.

DATED THIS 19TH DAY OF MAY 1987.

STATE OF DELAWARE  
DIVISION OF SECURITIES

BY: Donald L. Bruton  
Donald L. Bruton  
Commissioner