

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF DELAWARE

IN THE MATTER OF:)
)
ALLIED CAPITAL GROUP, INC.,)
FLOYD J. STUMPF,) Case No. 89-02-04
)
Respondents.)

ORDER

On July 14, 1989, I signed a Stipulation and Consent Order in this matter, thereby approving an agreement between the State and respondent Floyd Stumpf. The agreement provided that the charges in this case against Mr. Stumpf would be dismissed in exchange for certain obligations that Stumpf would assume. Two of those obligations were that Mr. Stumpf would testify on behalf of the State against certain other individuals and that he would pay to the State \$24,000 as partial restitution by July 26, 1989.

As I stated at the time, I approved this agreement with a certain amount of reluctance and ambivalence. My concerns were the following:

1. The charges were very serious, involving a pattern of willful misrepresentations that resulted in great financial damage to Delaware investors. If the charges were in fact true, then the public interest perhaps would require revocation of Mr. Stumpf's license to ensure that those events would not happen again.

2. If the charges were in fact true, then Mr. Stumpf would have limited credibility as a witness and the State perhaps would not obtain much benefit from his testimony.

3. The amount of restitution to be paid under the proposed agreement would be less than one quarter of the amount of damages Mr. Stumpf allegedly caused. Even with respect to the immediate alleged victims, without regard to the possibility of future victims, Mr. Stumpf would not have made them whole for his alleged violations.

On July 13, 1989, I listened to a proffer of the testimony that Mr. Stumpf would give on behalf of the State, but my concerns were not allayed. Nevertheless, out of deference to Mr. Wilson, and not wanting to substitute my judgment for the prosecutor's, I orally approved the agreement. The next day, July 14, I signed the Stipulation and Consent Order.

On July 28, 1989, two weeks later and two days after the State was to have received the payment of \$24,000 from Mr. Stumpf, Ms. Denise Salvatore--an investigator for the Securities Division--informed me that no payment had been received. That same day I wrote to Mr. Harry Winderman (Mr. Stumpf's counsel), and sent by facsimile transmission, a letter warning that if payment were not received by August 1, 1989, I would deem the nonpayment a material violation and would vacate the Consent Order. On August 1, I received a facsimile transmission from Mr. Stumpf's counsel to the effect that Mr. Wilson had on July 28 granted Stumpf a 10-day extension. Although Mr. Wilson did not quite agree with that characteri-

zation of his conversation with Mr. Winderman, I nevertheless on August 1 sent a facsimile transmission to Mr. Winderman allowing his client until August 8, 1989 in which to make payment but warning that any deviation from Mr. Stumpf's payment obligations as of that date would result in my vacating the Stipulation and Consent Order.

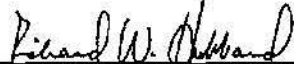
Today is August 9, 1989, and the State still has not received any payment from Mr. Stumpf. I am hereby vacating the Stipulation and Consent Order dated July 14, 1989 between the State and respondent Floyd J. Stumpf. Mr. Stumpf's failure to pay the \$24,000 restitution constitutes a material violation of the agreement.

The proceeding to determine whether revocation or suspension of Mr. Stumpf's license is in the public interest shall be resumed at the point where it was discontinued. The State has already presented its prima facie case. Mr. Stumpf now has the opportunity to cross examine the State's witnesses and to present his own defense. Counsel for Mr. Stumpf should submit his request for subpoenas on or before August 21, 1989.

The proffer of testimony by Mr. Stumpf on July 13, 1989 shall be excluded from the record on which I will base my decision in this case. The transcript of the proffer shall be retained as part of these proceedings, however, in the event that the Court of Chancery would need to review it. The testimony of Mr. Stumpf on July 14, 1989 shall remain as part of the record in this case. I do not think that Mr. Stumpf's

breach of the Stipulation and Consent Order entitles him to the exclusion of his prior testimony pursuant to that agreement. The summary order of suspension issued against Floyd Stumpf on April 6, 1989 is hereby reinstated and shall continue until the conclusion of this administrative matter and the issuance of my decision.

SO ORDERED.



RICHARD W. HUBBARD
Securities Commissioner

Date: August 9, 1989

AFFIDAVIT OF MAILING

STATE OF DELAWARE
NEW CASTLE COUNTY

)
) SS:
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Cynthia K. Evans, being first duly sworn, deposes and says that:

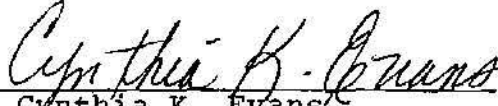
1. She is a secretary with the Department of Justice.
2. That on August 9, 1989 she sent, either by facsimile transmission or hand-delivery, a copy of the foregoing document to the below-listed individuals:

Glenn C. Kenton, Esquire
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Gregg E. Wilson, Esquire
Deputy Attornet General
State Office Building
820 N. French Street
8th Floor
Wilmington, DE 19801



Cynthia K. Evans

SWORN TO AND SUBSCRIBED before me on this 9th day of August, 1989.



Richard W. Hubbard
Securities Commissioner

Pursuant to 29 Del. C. §2508