

BEFORE THE SECURITIES COMMISSIONER  
OF THE STATE OF DELAWARE

IN THE MATTER OF: )  
 )  
SIMON SECURITIES, INC., AND ) CASE NO. L-91-12-09  
WILLIAM N. WHELEN, JR. )  
 )  
Respondents. )

CONSENT ORDER

WHEREAS, 6 Del.C. Section 7313, provides that it is "unlawful for any person to transact business in this State" as an agent "unless he is registered under this chapter"; and

WHEREAS, the term "agent" is defined as "any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities, 6 Del.C. Section 7302(a)(2); and

WHEREAS, the term "broker-dealer" is defined to mean "any person engaged in the business of effecting transactions in securities for the account of others or his own account, 6 Del.C. Section 7302(a)(3); and

WHEREAS, it "is unlawful for any broker-dealer ... to employ an agent unless the agent is registered." 6 Del.C. Section 7313(b); and

WHEREAS, it has been alleged by the Division of Securities of the Department of Justice of the State of Delaware that:

1. Respondent Simon Securities, Inc. ("SSI"), a foreign corporation with principal place of business in the State of New Jersey, has been registered as a broker-dealer in Delaware since on or about June 13, 1990.

2. William J. Byrd ("Byrd") is the president and sole owner of SSI.

3. On or about June 13, 1990, Byrd through SSI employed respondent William N. Whelen ("Whelen") as a broker-dealer agent to effect or attempt to effect purchases or sales of securities in Delaware to Delaware residents.

4. Whelen executed approximately 300 transactions as a broker-dealer agent of SSI on behalf of Delaware investors in the period beginning on or about June 13, 1990 and ending May 1992.

5. Whelen is not now nor has he ever been registered in Delaware as a broker-dealer agent by SSI though he did make initial application therefor on or about June 1990.

WHEREAS, respondents SSI and Whelen acknowledge that they are entitled to a hearing in connection with the allegations contained herein; and

WHEREAS, respondents SSI and Whelen, wish to waive their right to a hearing and resolve this matter by consent; and

WHEREAS, in furtherance of their desire to resolve this matter by consent SSI and Whelen knowingly and voluntarily wish to admit the following allegations ("specific allegations"):

1. On or about October 23, 1991, respondent SSI, a broker-dealer registered to do business in the State of Delaware ("State") did transact business in the State by effecting a sale of securities to \_\_\_\_\_, a Delaware resident, through Whelen, its unregistered broker-dealer agent, in violation of 6 Del.C. Section 7313(a)-(b), to wit: SSI through Whelen, its unregistered broker-dealer agent, did knowingly effect a sale of 500 shares of Tridex Corporation to \_\_\_\_\_, a Delaware resident.

2. On or about December 11, 1991, respondent SSI, a broker-dealer registered to do business in the State of Delaware ("State") did transact business in the State by effecting a sale of securities to \_\_\_\_\_, a Delaware resident, through Whelen, its unregistered broker-dealer agent, in violation of 6 Del.C. Section 7313(a)-(b), to wit: SSI through Whelen, its unregistered broker-dealer agent, did knowingly effect a sale of 10,000 shares of Standard Energy Corporation to \_\_\_\_\_, a Delaware resident.

3. On or about January 3, 1992, respondent SSI, a broker-dealer registered to do business in the State of Delaware ("State") did transact business in the State by effecting a sale of securities to \_\_\_\_\_, a Delaware resident, through Whelen, its unregistered broker-dealer agent, in violation of 6 Del.C. Section 7313(a)-(b), to wit: SSI through Whelen, its unregistered broker-dealer agent, did knowingly effect a sale of 5,500 shares of Imatron, Inc. to \_\_\_\_\_, a Delaware resident.

4. On or about February 20, 1992, respondent SSI, a broker-dealer registered to do business in the State of Delaware ("State") did transact business in the State by effecting a sale of securities to \_\_\_\_\_, a Delaware resident, through Whelen, its unregistered broker-dealer agent, in violation of 6 Del.C. Section 7313(a)-(b), to wit: SSI through Whelen, its unregistered broker-dealer agent, did knowingly effect a sale of 1,000 shares of Science Dynamics Corporation to \_\_\_\_\_, a Delaware resident.

5. On or about March 10, 1992, respondent SSI, a broker-dealer registered to do business in the State of Delaware ("State") did transact business in the State by effecting a sale of securities to \_\_\_\_\_, a Delaware resident, through Whelen, its unregistered broker-dealer agent, in violation of 6 Del.C. Section 7313(a)-(b), to wit: SSI through Whelen, its unregistered broker-dealer agent, did knowingly effect a sale of 110 shares of E.I. DuPont de Nemours & Co. to \_\_\_\_\_, a Delaware resident.

WHEREAS, the Division acknowledges the complete cooperation of respondents SSI and Whelen in conducting this investigation;

WHEREAS, the Division is unaware of any allegations of fraud in connection with any of the offers or sales of securities effected or attempted to be effected by SSI through Whelen on behalf of Delaware investors; and

WHEREAS, the Securities Commissioner ("Commissioner") finds that it is in the public interest to execute this Consent Order in connection with the instant matter:

NOW THEREFORE, it is hereby stipulated and ordered that:

1. Respondent SSI admits the specific allegations relating to violations of 6 Del.C. Section 7313(b) recited supra.

2. Respondent SSI shall have its broker-dealer registration in Delaware suspended for a period of 15 calendar days dating from the date of execution of this Consent Order by the Commissioner. This Consent Order shall not bar liquidation transactions for existing accounts.

3. Respondent SSI shall pay \$1,000 in fines to the State of Delaware for each of the five violations of 6 Del.C. Section 7313(b) specifically admitted above for a total fine ("total fine") of \$5,000. Such total fine shall be payable in full within 15 calendar days dating from the date of execution of

of this Consent Order by the Commissioner. Failure timely to pay this total fine in full shall serve to extend the period of suspension described in the paragraph next preceding until such time as the total fine is paid in full.

4. Respondent SSI shall submit to audits as the Commissioner may from time to time require upon reasonable notice.

5. Byrd, as President and sole shareholder of SSI, personally guarantees timely payment of the total fine described in paragraph 3, supra. Failure to make payment in full as described in paragraph 3 within 90 calendar days dating from the date of execution of this Consent Order by the Commissioner shall result in an order revoking the broker-dealer registration of SSI and an order suspending, revoking or denying the broker-dealer agent registration of Byrd.

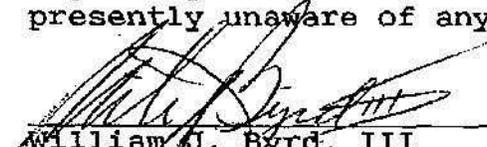
6. Respondent Whelen admits the specific allegations regarding violations of 6 Del.C. Section 7313(a) recited above.

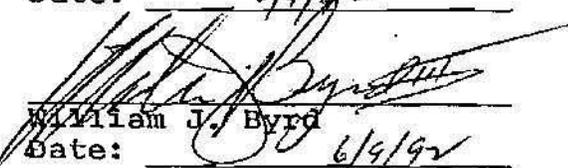
7. Respondent Whelen shall pay \$1,000 in fines to the State of Delaware for each of the five violations of 6 Del.C. Section 7313(a) specifically admitted above for a total fine of \$5,000. Such total fine shall be payable in full within 90 calendar days dating from the execution of this Consent Order by the Commissioner.

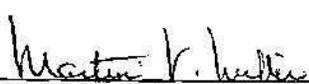
8. Respondent Whelen's pending broker-dealer agent registration application through SSI shall be approved immediately upon execution of this Consent Order by the Commissioner. That registration shall be suspended immediately for a period of 15 calendar days dating from the date of execution of this Consent Order by the Commissioner and shall continue thereafter beyond that 15 calendar day period until such time as the total fine described in paragraph 7, supra, is paid in full. If that total fine is not paid in full within 90 days of the execution of this Consent Order by the Commissioner, the broker-dealer agent registration of respondent Whelen shall be revoked.

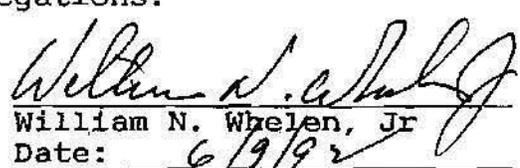
Simon Securities, Inc.  
William N. Whelen, Jr.  
Page 5 of 5

9. Respondents Whelen and SSI understand that nothing in this Consent Order bars the Division or the Commissioner from taking any action expressly or impliedly authorized under 6 Del.C. Section 7316 in the event that new allegations of violations of the Delaware Securities Act ("Act"), 6 Del.C. Section 7301, et seq., ("new allegations") are charged by the Division either before or after approval of Whelen's pending broker-dealer agent application. The term "new allegations" shall be defined to mean any violation other than a violation of 6 Del.C. Section 7313(a)-(b) that occurred during the period beginning June 1990 and ending May 1992. The Division is presently unaware of any such new allegations.

  
\_\_\_\_\_  
William J. Byrd, III  
President, Simon Securities Inc.  
Date: 6/9/92

  
\_\_\_\_\_  
William J. Byrd  
Date: 6/9/92

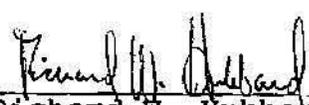
  
\_\_\_\_\_  
Martin Miller  
Attorney for Simon Securities Inc.  
Attorney for William J. Byrd, III  
Date: 6/8/92

  
\_\_\_\_\_  
William N. Whelen, Jr.  
Date: 6/9/92

  
\_\_\_\_\_  
Charles Gruver, III, Esq.  
Attorney for  
William N. Whelen, Jr.  
Date: 6/5/92

  
\_\_\_\_\_  
Dennis Bruce Phifer  
Deputy Attorney General  
Date: 6-5-92

IT IS SO ORDERED this 11th day of June, 1992.

  
\_\_\_\_\_  
Richard W. Hubbard  
Securities Commissioner

c:simon8/dbp