

FILE COPY

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
ALLSTATE SECURITIES, INC.
80 Wall Street
New York 5, New York
File No. 8-6044

FILED

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D M & F SECTION
SECURITIES & EXCHANGE COMMISSION

RECOMMENDED DECISION

Washington, D. C.
February 17, 1961

Irving Schiller
Hearing Examiner

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SECURITIES AND EXCHANGE COMMISSION

In the Matter of :
ALLSTATE SECURITIES, INC. :
80 Wall Street : RECOMMENDED DECISION
New York 5, New York :
File No. 8-6044 :
:

BEFORE: Irving Schiller, Hearing Examiner

APPEARANCES: Donald J. Bezahler and Leon C. Friedland
of the New York Regional Office of the Commission
for the Division of Trading and Exchanges
Edward S. Friedland for Allstate Securities, Inc.
and Vincent J. Sbarbati

4. It is evident from the record that Sbarbati conducted some negotiations on behalf of Dwain with Union News Company looking toward the possible distribution of its records on news stands operated by the latter company. Such negotiations were preliminary in nature and terminated in January 1960 without any understanding ever being reached concerning distribution of Dwain records. It is further evident from the record that Dwain never produced any hit record nor were there any stars under contract.

5. It is clear from the record that the optimistic representations as to the rise in the price of the stock, as well as the other representations, were unwarranted. As pointed out above, Sbarbati was familiar with Dwain's operations and certainly by March of 1960 was aware of the company's precarious financial condition. The Hearing Examiner finds that registrant's failure to disclose information concerning Dwain's mounting losses constituted an omission to state a material fact and rendered the predictions as to the rise of the stock materially misleading. The Commission has held that a prediction by a securities salesman or dealer to an investor that a stock is likely to go up implies that there is an adequate foundation for such prediction and that there

requested an adjournment of the proceedings. In light of the Commission's action and in view of the fact that a number of witnesses were present in response to subpoenas, some of whom came from distant places, the Hearing Examiner offered to postpone the proceedings to the following day and when that was not acceptable to respondent suggested that the testimony of the subpoenaed witnesses be taken after which the Hearing Examiner would entertain an application for a further postponement to permit the registrant to prepare and present its defense. This suggestion was also rejected by counsel. Registrant and counsel thereupon withdrew and the Hearing Examiner proceeded with the hearing. The following day registrant's president, Sbarbati, appeared and again requested an adjournment and registrant's counsel, by telegram, made a similar request. Both requests were denied by the Hearing Examiner. The hearing continued and registrant's president remained in attendance for two days, participated in the proceedings and cross-examined the witnesses. At the conclusion of the Division's case registrant requested the Hearing Examiner to adjourn the proceedings to permit preparation and presentation of a defense and for such purposes requested the Hearing Examiner to issue eight subpoenas. Both requests were granted and on the adjourned date both counsel and registrant appeared and participated in the proceedings.

10. The Hearing Examiner is of the opinion, and so finds, that the statutory requirements of notice and opportunity for hearing has been met and the proceedings were not irregular nor in violation of registrant's constitutional rights. Registrant was afforded ample notice of these proceedings and had reasonable opportunity to secure ^{10/} counsel. Registrant's president appeared at three of the four hearing

10/ The record reflects that approximately two weeks before the hearings commenced registrant was advised by the staff of the Commission to obtain counsel.

