(Securities Act Release No. 5163)

ADMINISTRATIVE PROCEEDING
FILE NO. 3-1972

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.
June 29, 1971

In the Matter of	:	
MURRAY A. KIVITZ 1155 15th Street, N. W. Washington, D. C.	:	FINDINGS AND OPINION OF THE COMMISSION
Rule 2(e), Rules of Practice	:	

ATTORNEYS - PRACTICE AND PROCEDURE

Suspension of Privilege to Practice Before Commission

Where attorney allowed layman, who acted as intermediary between him and prospective corporate client seeking to register securities offering, to exploit his privilege to practice before Commission and to negotiate fee for his proposed legal services; participated in arrangement for proposed payment of portion of fee to such layman purportedly for use in obtaining political influence to secure registration; and acquiesced in layman's representation that accountant who would "stretch a point" could be obtained to prepare financial information in registration statement, held, attorney engaged in unethical and improper professional conduct and was lacking in character and integrity within meaning of Rule 2(e) of the Commission's Rules of Practice, and under all the circumstances, suspension of attorney's privilege of practicing before Commission warranted.

Jurisdiction to Discipline Attorneys

Where federal statute provides that member of bar of highest court of State may practice before federal agency but does not limit discipline of attorneys who appear before agency, held, statute does not deprive Commission of jurisdiction under its general rule-making authority to discipline attorneys practicing before it.

APPEARANCES:

Jacob H. Stillman, Robert M. LaPrade, and Michael J. Roach, for the Office of General Counsel of the Commission.

Jacob A. Stein, of Stein and Mitchell, for Murray A. Kivitz.

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Following a private hearing in these proceedings pursuant to Rule 2(e) of our Rules of Practice, the hearing examiner filed an initial decision in which he concluded that Murray A. Kivitz, an attorney at law, should be denied the privilege of appearing or practicing before this Commission for a period of two years. 1/ We granted a petition for review filed by respondent, briefs were filed by him and our Office of the General Counsel, and we heard oral argument. Our findings are based upon an independent review of the record.

Respondent is a member of the District of Columbia and Maryland bars and has engaged in the general practice of law since 1951. Since 1952 or 1953 he has also practiced before this Commission in connection with, among other things, filings pursuant to Regulation A under the Securities Act of 1933 and registration statements under that Act with respect to public offerings of securities.

The charges in these proceedings arose from the efforts of one Harold G. Quase, a non-lawyer, to arrange for the employment of respondent to prepare and file a registration statement on behalf of Houses of Plastic, Inc. ("Plastic"), which proposed to engage in the manufacture of low cost plastic housing. The examiner concluded that the record established, by clear and convincing evidence, that respondent engaged in unethical and improper professional conduct and was lacking in character and integrity, within the meaning of Rule 2(e), in that, among other things, he allowed Quase to control and exploit his professional services and his privilege to practice before us and to negotiate and formulate the terms of the fee for his proposed legal services; participated in an arrangement whereby his fee was to be divided with Quase, who represented that part of the fee was to be used to secure political influence; and acquiesced in the representation by Quase that an accountant who would "stretch a point" could be obtained to prepare the financial information regarding Plastic, for inclusion in the registration statement, in such manner as to appear to meet our accounting requirements. After careful review of the record we are satisfied that it supports the conclusions of the hearing examiner. 2/

1/ Rule 2(e) of our Rules of Practice provides in pertinent part:

> "The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice of and opportunity for hearing in the matter ... (2) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct."

2/ Whether or not the evidence is clear and convincing, and we think it is, in our opinion all that is necessary to sustain the staff's burden of proof in these proceedings is a preponderance of the evidence. Rule 2(e) proceedings do not affect the attorney's license to engage in the general practice of law but only his privilege to practice before us. We have, with court approval, applied the preponderance standard in administrative proceedings before us which may have such consequences as the revocation of a broker-dealer's license to engage in the securities business or

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Prior to the events in question in which respondent participated in October 1964, Robert Ackles, president of Plastic, had made two unsuccessful attempts through different law firms to file with this Commission a satisfactory registration statement with respect to a proposed offering of 12,000,000 shares of Plastic stock at $1 per share. 3/ On October 19, Ackles told one Mary Jo Freehill, a public stenographer in Washington, D. C., who had typed portions of a registration statement for him, that he needed help in securing registration. She referred him to Quase, who was engaged in public relations work, as one who could get the registration cleared through the use of various people with influence. Quase told Ackles that what was required were the services of "someone who knew people" in Washington, that Quase had a "direct [telephone] line to the White House," and that if Ackles would at that point pay $10,000, Quase would distribute it to "various people" and the registration would "go right through without everybody putting a bunch of roadblocks in front of" Plastic.

Ackles reported his conversation with Quase to his counsel, David Doane, a member of an Idaho law firm which had prepared the second registration statement. Doane then spoke by telephone with Quase, who told him that, depending upon the facts, registration could be accomplished in 30 days, but might take an additional 15 days; that experienced persons would be utilized and "our" attorneys are very qualified; that money was the principal factor and would be distributed to the "right areas"; that a certain percentage of the fee, which Quase fixed at no less than $20,000, would be wanted then, followed by additional cash in an amount to be discussed later and stock in such amount as Plastic thought fair; that usually a fee of $50,000 was charged initially and the balance (apparently referring to stock) later; and that the check for $20,000 was to be made payable to an "SEC attorney" whose name Quase would furnish later and whom he described as "a top man in Washington." Doane discussed Quase's proposition with Ackles, who stated he would consider it further.

On October 26, Freehill, at Quase's request, called Doane's office to speak to Ackles but, Ackles not being there, she spoke to Doane. She stressed, as instructed by Quase, the importance of completing arrangements before election day because one must "show the faith before hand," and she urged Doane to come to Washington as soon as possible. Ackles agreed to Doane's meeting with Quase, and three days later a meeting was held in Quase's office, which was

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a bar of an individual's association with any broker-dealer. See James De Mammos, Securities Exchange Act Release No. 8090, p. 5 (June 2, 1967), aff'd C.A. 2, Docket No. 31469 (October 13, 1967); Norman Pollisky, Securities Exchange Act Release No. 8381, p. 9 (August 13, 1968).

3/ Plastic was incorporated in Idaho in September 1964. The first registration statement, which contained no financial statements, was submitted shortly thereafter but was not accepted for filing. The second registration statement, dated October 17, 1964 and containing a financial statement showing current assets of $24, total assets of $697, and liabilities of $1,001, was in acceptable form for filing but was not filed after various deficiencies therein were pointed out by our staff.

attended by respondent, Quase, an associate of Quase, Doane, and Freehill. Within the week preceding that meeting, respondent, at Quase's request, had inquired of our Public Reference Room whether Plastic had filed a registration statement, and had informed Quase that no such statement was on file. 4/

At the meeting, Quase introduced respondent to Doane as "a great SEC lawyer, the finest in the city, with lots and lots of experience." According to Doane's account of the meeting, Quase dominated the discussion and respondent, whom Quase called "my SEC attorney," said little. Quase stated that his "organization" would charge a total cash fee of $50,000, plus stock in an amount to be agreed upon later. Doane and Quase discussed the question of how much stock should be allocated and that discussion ended when respondent suggested that the allocation be in a "mutually agreeable" amount. The importance of making the down payment before election day was stressed by Quase who said to Doane, in respondent's presence, that "you have been in politics and you know about Johnny Come Lately, they don't help much. They don't get anywhere." 5/ In addition, Quase asked Doane, in respondent's presence, whether he had accountants who were "willing to stretch a point?" Doane replied, "I don't think we have [that] kind of accountants ... out in our country. If we have to do that, we better use your accountants." Respondent made no comment on any of these statements by Quase or Doane, and, at Quase's request, described the financial information required in a registration statement. Quase indicated that he might be able to find a corporation with which Plastic could become associated, and the statement was made that an underwriter would be furnished if necessary. Doane then requested that the proposed terms be reduced to writing, and Quase asked respondent to prepare, together with Doane, a retainer agreement. Respondent dictated the agreement, and after a few minor changes by him and Doane, it was typed on respondent's letterhead and signed by him.

The retainer proposal, which was addressed to Doane, purported to be an agreement for the performance of certain services by respondent. It provided that respondent's "office" would, among other things, prepare and process a registration statement in behalf of Plastic for a $12 million stock offering, that the fee for "our" services would be $50,000, payable $20,000 down and $30,000 upon the registration statement becoming effective, plus an indefinite amount of stock mutually agreeable to Plastic and "this office" through the use of warrants or options at not more than 5¢ per share. It further provided that "this office" would "lend its best assistance" toward obtaining an active corporation to associate with Plastic in the manufacture and sale of its products and toward obtaining an underwriter in the event Plastic desires, but cannot through its own efforts obtain, the services of one.

4/ Respondent was not on retainer from Quase and did not bill him for this service. Respondent had previously done some legal work for Quase and for a company in which Quase was an officer, and Quase had referred to him clients with various legal problems.

5/ Doane testified that Quase has a "very deep, resonant voice ... a loud voice," and, when he made the statement, was conversing with him and respondent who was within 8 or 10 feet from Quase.

Respondent's retainer agreement was not accepted by Plastic, and he received no communication with respect to it from Plastic, Doane or Ackles, nor did he make any inquiry of Doane. However, he testified that he "must have asked" Quase concerning the status of Quase's "involvement" with Plastic and received "some negative response."

Respondent testified that the conversation at the October 29 meeting was for the most part between him and Doane; that Quase, who "might have made a comment or two," played no part in proposing the fee of $50,000 plus stock options, and the fee was set by respondent; and that while there was some conversation concerning the impending election, he could not recall Quase stating to Doane that the $20,000 down payment had to be made before the election and that if such a statement and the statement about securing an accountant who would "stretch a point" were made they were not made in his presence. He further testified that although it was not his normal practice to negotiate a fee for preparing a registration statement without any basic facts about the issuer, he set the fee and the option price without knowledge of Plastic's financial condition or the proposed offering price because he was discussing the matter with Doane, who was counsel for the issuer and did not indicate that the issuer would be unwilling or unable to meet such terms; that respondent used the phrase "our services" in the retainer agreement because he was then considering the formation of a firm; 6/ that Quase was not to render any services to Plastic in connection with the fee agreement and was not to receive any compensation or any portion of the proposed fee; and that he mentioned the possibility of interim private financing for Plastic and that he had clients in the construction business who might be of assistance in connection with an association of Plastic with another company, and Quase said he had such a company in mind.

Respondent contends that most of the evidence relied upon by the examiner in finding professional misconduct relates to conversations prior to the October 29 meeting in which respondent admittedly had no part and of which he denies knowledge. He stresses that Doane was the only staff witness whose testimony with respect to that meeting allegedly connects him with the activities and statements of the other persons involved, 7/ and argues that Doane's testimony should not be creditedon the grounds that it contained inconsistent statements and was motivated by a desire to show that the registration statement his firm prepared was considered deficient because of sinister political influences. He further urges that it is not unethical for a lawyer to accept a layman's suggestion as to the amount of a reasonable fee, accept a client recommended by a layman, or even represent a client, such as an insured motorist, who did not employ him, and that there is no direct testimony that respondent agreed to divide the fee with Quase.

6/ Respondent entered into a partnership with another lawyer about a year later.

7/ Quase was called as a witness for our staff but, during the examination, claimed his privilege against self-incrimination. Respondent asserts that staff counsel "actively prevented" Quase from testifying by declining to seek authority from us to grant Quase immunity from criminal prosecution so that he could have been compelled to testify, and contends that, accordingly, it must be presumed that Quase's testimony would have been adverse to the staff's position.

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There is no merit in respondent's contentions. Not only Doane, but also Freehill, testified that Quase discussed the fee with Doane at the October 29 meeting. The fact that the negotiations for respondent's legal services on October 29 were conducted in Quase's office lends support to Doane's testimony that Quase dominated that meeting. The events which occurred prior to the meeting are also relevant, irrespective of whether respondent had knowledge of them, because they too tend to support the testimony of Doane and Freehill as to what took place at the meeting. They demonstrate the likelihood that the negotiations at the meeting, like the earlier negotiations, were conducted by Quase and dealt with the performance of services by Quase and his associates, whom respondent joined by at least October 29, and the proposed use of influence and distribution of a portion of the fee for political purposes.

As we have seen, Freehill made statements to Ackles about the use of influence before Ackles met Quase and Quase made similar statements to Ackles and then to Doane and indicated to Doane that he was in a position to ensure prompt registration and that he was fixing the fee for such services. In addition, the amount, form, and manner of payment of the fee discussed by Quase and Doane prior to October 29, except possibly for the amount due when the registration statement became effective which, however, was also indicated by Quase, were the same as the terms finally arrived at on October 29. It should also be noted that the amount of the proposed Plastic fee was substantially in excess of any fee respondent had previously received for services in connection with a registration statement and of respondent's gross annual income from the practice of law in the years just prior to the events in question. 8/ And it is further consistent with Quase's control of the negotiations that, as previously indicated, respondent apparently looked to Quase, rather than Doane, for information as to whether Plastic intended to accept the retainer agreement.

We find no warrant for rejecting Doane's testimony respecting the events in question. The only testimony at variance with his on the important issues is respondent's own account of the meeting. However, the hearing examiner, who observed the demeanor of both Doane and Kivitz and weighed the circumstantial evidence in the record, chose to believe Doane's version of the essential facts. And the asserted inconsistencies in Doane's testimony are either not real or not material, and none reflects on the credibility of Doane's basic factual account of his dealings with Quase and respondent.

For example, Doane's statements that Quase dominated the October 29 meeting and set the essential terms of the fee and that respondent did not have much to say in the presence of Quase are not inconsistent

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Respondent, however, cannot legitimately complain of the staff's decision not to waive any rights of the Government to bring a subsequent criminal prosecution against Quase, and, under the circumstances, no such adverse presumption can be drawn.

8/ Through 1967 the largest amount received by respondent for services in connection with a registration statement was $15,000, which included the fee payable for services rendered by an accountant. His gross annual fees from the practice of law for 1961 to 1964 ranged from $25,000 to $42,000.

with Doane's testimony that respondent had by the questions he asked Doane indicated a knowledge of Commission rules and regulations and had answered in the negative a question privately put by Doane concerning whether respondent had been successful on all his "SEC applications" (as Quase had indicated). 9/ Nor is respondent aided by the stress he places on a comparison of Doane's testimony that his purpose in meeting with Quase was merely to gather evidence against Quase with Doane's testimony that he told Ackles that the proposed down payment was "to open up the doors for them from this present administration and many things that I don't want to know about," or with Ackles' testimony that his principal purpose in hiring Doane was to secure the registration of the stock. 10/ While the hearing examiner did not credit Doane's testimony that his sole purpose in meeting Quase was to expose apparent misconduct, 11/ he concluded that Doane's purpose in that regard was not a matter on which the charges against respondent were dependent and that Doane's effort to present his motivations in a better light did not justify disregarding his testimony generally, which he found was in its basic aspects "strongly corroborated by other direct testimony and by a tight structure of very compelling circumstantial evidence."

The record does not bear out respondent's assertion that Quase merely referred a client to him and that he merely accepted Quase's suggestion as to the amount of a reasonable fee. It shows that Quase offered Ackles the services of what Quase described as an "organization," including legal and political services, negotiated with a considerable expenditure of time and some phone expense with Ackles and Doane, used his office for the meeting on October 29, set the fee for such services and the form and manner of payment, and asked respondent to furnish the legal services and reduce the proposed agreement to writing. Thus, Quase, not respondent, was determining the manner in which Plastic was to be represented and the fee was to be paid, and exploiting respondent's legal services toward that end. The participation of respondent as an

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9/ Respondent also states that Doane's testimony that when he arrived at Quase's office on October 29 respondent was already present was contradicted by respondent and Freehill. However, not only is such conflict immaterial, as respondent essentially concedes, but Freehill testified that she was not certain whether he arrived after her or not because he may have been in another room of Quase's suite.

10/ Moreover, contrary to respondent's assertion, there is no inconsistency between Doane's stated purpose of gathering evidence against Quase and his characterization of Quase's "dealings" as "above board," in view of Doane's explanation of that phrase as meaning merely that Quase "very bluntly and frankly, laid out to us that he had an organization to do what he [previously] said he could do."

11/ Doane testified that if Quase would have been willing to perform the services without receiving a down payment, he might have engaged Quase's services for Ackles, but that under those circumstances he "would then have disassociated [his] law firm from the operation."

attorney in such an arrangement is precisely the type of conduct which the pertinent provision of the Canons of Professional Ethics of the American Bar Association was designed to prevent. 12/ Quase's role was not, as respondent argues, like that of an insurance company which retains a lawyer to defend an accident suit against its policy-holder. The insurance company bears the risk of liability and, by agreement with the insured, pays the attorney from the proceeds of the premiums paid. Quase, however, would sustain no liability were the registration statement not cleared.

The evidence shows that respondent placed himself under the control of a layman who was not subject to professional discipline and who made unethical and indefensible representations to counsel for the prospective client in respondent's presence. The absence of direct testimony in the record that respondent agreed to divide the fee with Quase is, of course, not conclusive. The record clearly supports the inference that Quase and respondent anticipated Quase's receiving a portion of the fee from respondent purportedly to pay for political influence to clear the registration statement to be prepared by respondent. 13/

Respondent further contends that we cannot discipline him for the activities in question because they do not in fact involve representation of Plastic before this Commission. He notes that he did not prepare any document for filing nor file any document with the Commission, and that the proposed retainer agreement was not accepted by Plastic. We disagree with this contention. It is clear that respondent practices before this Commission. He is therefore subject to discipline under Rule 2(e) if he is found "to be lacking in character or integrity or to have engaged in unethical or improper professional conduct." This language does not limit our disciplinary control to cases of misconduct commited in actual dealings with us or our staff, or, indeed, in connection with any form of practice before this Commission. 14/ But it is not necessary to decide here whether

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12/ Cannon 35 provides:

> "Intermediaries. The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsbility should be direct to the client..."

13/ As stated by the hearing examiner, "Whether Quase was in fact in a position, or intended, to so employ some of the funds is not disclosed by this record, and is not material; his representations do show, however, that some part of the fee was destined for Quase and was for other than the legal services to be rendered" by respondent. Cf. ABA Canon 34: "Division of Fees. No division of fees for legal services is proper, except with another lawyer, based upon a division of service or responsibility." See also Opinions on Professional Ethics, Legal Studies of the William Nelson Cromwell Foundation (1956, Columbia U. Press), pp. 350-52.

14/ See Paul M. Kaufman, Securities Exchange Act Release No. 8925, p. 3 (July 2, 1970).

we may discipline an attorney practicing before us on the basis of conduct totally unrelated to Commission practice. Respondent is charged with unprofessional conduct in a matter which directly related to a proposed filing of a registration statement with us. As the agency charged with the responsibility of protecting investors as well as dealing fairly with issuers, we are vitally concerned by a layman's exploitation of an attorney's privilege to practice before us, by improper fee arrangements involving the proposed use of political influence to secure registration, and by the possible inclusion in the registration statement of financial statements prepared by an accountant willing to "stretch a point." Such misconduct provides a sufficient basis for this Commission to protect the integrity of its administration of the federal securities laws by taking disciplinary action against respondent.

Jurisdiction to Discipline Attorneys

Respondent contends that because there is no specific statutory grant to us of authority to discipline attorneys practicing before us, our jurisdiction to discipline attorneys can be derived only from the power to admit them to practice, which he claims has now been preempted by federal statute (Act of November 8, 1965, 79 Stat. 1281, codified in 5 U.S.C. 500), and cannot be exercised under our general rule-making power.

There is no substance to this contention. Subsection (b) of the cited statute provides that an attorney who is a member in good standing of the bar of the highest court of a State or territory or possession of the United States or the District of Columbia may represent a person before a federal agency on filing an appropriate written declaration with the agency. However, this provision does not in fact preempt the matter of admission to practice before federal agencies but merely makes automatically eligible a certain class of attorneys. Subsection (d)(1) specifically states that the statute does not deny to an individual who is not a member of the bar of the designated courts the right to represent others before an agency. 15/ Moreover, subsection (d)(2) provides that the statute "does not ... limit the discipline, including disbarment, of individuals who appear in a representative capacity before an agency." We cannot agree with respondent's construction of the latter provision as preserving only such power to discipline attorneys as is expressly conferred by statute. The legislative history of that provision indicates that it is applicable to all federal agencies which exercised disciplinary power over attorneys, whether carried out under their general rule-making authority, which had been the case in virtually all federal agencies for a long time prior to the enactment of the statute in question, 16/ or pursuant

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15/ Rule 2(b) of our Rules of Practice makes eligible to practice before us, in addition to members of the bar of the highest court of any State or Territory of the United States, attorneys admitted to practice before the U.S. Supreme Court, or the Court of Appeals or the District Court of the United States for the District of Columbia.

16/ It had been well established that an administrative agency that has general authority to prescribe its rules of procedure may prescribe grounds on which an attorney's right to appear may be revoked. Herman v. Dulles, 205 F.2d 715, 716 (C.A. D.C. 1953);

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to a specific statutory grant. 17/ To apply respondent's construction would leave most of the federal agencies without power to control the large number of attorneys who regularly practice before them, a result which we think it is clear Congress did not intend.

Remedial Sanction

As previously stated, the hearing examiner determined to suspend respondent's privilege of appearing or practicing before us for two years. Respondent has advanced various factors in urging that we impose no sanction or a lesser sanction. Among other things, respondent points out that this case involves a single transaction which occurred in October 1964 and resulted in the institution of Rule 2(e) proceedings almost five years later, and asserts that such transaction constituted his "first offense"; that his alleged misconduct involved no moral turpitude; that although past misconduct is evidence under Rule 2(e), the fitness of an attorney to practice is to be determined on the basis of his present integrity, and the record shows that his present character and reputation are unimpeachable; and that the sanction assessed is unduly harsh compared to sanctions imposed by the courts in disbarment proceedings and by this Commission in broker-dealer disciplinary proceedings.

We view the misconduct found on the part of respondent to be very serious and disturbing, particularly since an attorney holds himself out as observing the highest standards of professional behavior. Respondent became a knowing party to an arrangement the nature of which was to undermine the integrity of the Bar and the processes of an agency of the United States, erode the protection to which public investors are entitled under the Securities Act, and debase the registration and accounting requirements which this Commission is charged to enforce. We cannot accept the argument that no moral turpitude is involved in participating in an arrangement which contemplates the use of a portion of a legal fee for political influence

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Goldsmith v. U.S. Board of Tax Appeals, 270 U.S. 117, 122 (1926); Manning v. French, 21 N.E. 945 (Mass. 1889). See also Schwebel v. Orrick, 153 F. Supp. 701, 704 (D.D.C. 1957), aff'd on other grounds, 251 F.2d 919 (C.A.D.C. 1958), cert. denied 356 U.S. 927.

17/ The House Report which accompanied the bill stated that "the legislation does not ... limit discipline by agencies of persons who appear before them as representatives." H. Rep. No. 1141, 89th Cong., 1st Sess., U.S. Code Cong. & Ad. News, pp. 4170, 4173-74 (1965). In a letter annexed to the Report, Id., at 4178, the then Deputy Attorney General pointed out that the Department of Justice "has eliminated formal admission procedures and special examinations for practice before the administrative boards and agencies under its supervision. The Department, however, has retained the power to discipline attorneys ..." He noted that "the bill retains in Federal agencies an element of control, particularly in disciplinary situations," and stated that, subject to the retention of this feature, the Department favored the bill. Likewise, on the floor of the House of Representatives, Congressman Willis, when introducing the bill, stated: "It does not affect the power of agencies to discipline persons who appear before them." 111 Cong. Record 27193.

and of an accountant who might stretch a point in order to secure the registration of a public offering. While a number of character witnesses testified that respondent's reputation is excellent, such testimony must be considered in light of the facts that these proceedings have been private and that respondent has since the investigation of Plastic in 1965 acted on notice that his conduct might be under scrutiny. Moreover, the remedial action which is appropriate in a disciplinary proceeding depends upon the facts and circumstances of each particular case and cannot be precisely determined by comparison with other cases.18/ We have also taken into account the fact that a suspension from practice before this Commission would not be as serious as a court-ordered suspension which would completely bar the attorney from engaging in any form of law practice during the period of the suspension. Finally, the imposition of a sanction here no less serves a remedial purpose because of the lapse of time since the misconduct occurred, and it does not appear that respondent's defense was prejudiced thereby. 19/ Under all the circumstances, we are of the opinion that the two-year suspension imposed by the hearing examiner is appropriate.

An order denying Kivitz the privilege of practicing before us for that period will issue.

By the Commission (Commissioners OWENS, SMITH and HERLONG), Commissioner NEEDHAM concurring in part and dissenting in part, and Chairman CASEY not participating.

Theodore L. Humes
Associate Secretary

Commissioner NEEDHAM, concurring in part and dissenting in part:

Under the circumstances presented by this record, including the delay in instituting the proceedings and the character testimony, I believe that censure of Kivitz would be a sufficient sanction in the public interest for the improper professional conduct in which he engaged.

18/ Cf. Winkler v. S.E.C., 377 F.2d 517, 518 (C.A. 2, 1967); Dlugash v. S.E.C., 373 F.2d 107 (C.A. 2, 1967); Haight & Co., Inc., Securities Exchange Act Release No. 9082, p. 27 (February 19, 1971).

19/ Cf. Kroll v. U.S., 433 F.2d 1282, 1286 (C.A. 5, 1970).

Respondent has requested that these proceedings remain private, and that, in the exercise of our discretion, we direct that notice of our decision not be published, as is our practice, in this Commission's News Digest. This request is denied. Under the Administrative Procedure Act as amended (5 U.S.C. 552(a)(2)), this Commission is required in accordance with published rules (see 17 CFR 200.80) to make available to the public final opinions and orders made in the adjudication of cases. Moreover, no sufficient showing has been made to warrant the exclusion of notice of our decision from the News Digest.

The exceptions to the initial decision of the hearing examiner are overruled to the extent that they are inconsistent with our decision, and sustained to the extent that they are in accord with it.

ADMINISTRATIVE PROCEEDING
FILE NO. 3-1972

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
June 29, 1971

In the Matter of	
MURRAY A. KIVITZ 1155 15th Street, N. W. Washington, D. C.	ORDER DENYING PRIVILEGE OF PRACTICING BEFORE COMMISSION
Rule 2(e), Rules of Practice	

Proceedings having been instituted pursuant to Rule 2(e) of the Commission's Rules of Practice to determine whether Murray A. Kivitz, an attorney at law, should be temporarily or permanently denied the privilege of appearing and practicing before the Commission;

A private hearing having been held after appropriate notice, the hearing examiner having filed an initial decision, the Commission having granted respondent's petition for review of that decision, briefs having been filed, and oral argument having been heard;

The Commission having this day issued its Findings and Opinion; on the basis of said Findings and Opinion

IT IS ORDERED, pursuant to Rule 2(e) of the Commission's Rules of Practice, that Murray A. Kivitz be, and he hereby is, denied the privilege of appearing or practicing before the Commission for a period of two years.

By the Commission.

Theodore L. Humes
Associate Secretary