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ADMINISTRATIVE PROCEEDING
FILE NO. 3-3249

SECURITIES & EXCHANGE COMMISSION

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
AUTEK CONTROL SYSTEMS, INC.
(24A-1979)

INITIAL DECISION

Ralph Hunter Tracy
Hearing Examiner

Washington, D. C.
July 26, 1972

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APPEARANCES: Everett Leo Mast for the Division of Corporation
Finance of the Commission.

Richard B. Marx, of Frank, Strelkow & Marx, for
Autek Control Systems, Inc.

BEFORE: Ralph Hunter Tracy, Hearing Examiner

Autek Control Systems, Inc. ("Autek"), incorporated in Florida on January 5, 1955, filed with the Commission on December 1, 1969, a notification and offering circular for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933 pursuant to Section 3(b) thereof and Regulation A thereunder, with respect to a public offering of 100,000 shares of its \$0.01 par value common stock at \$3.00 per share.

The Commission, on September 22, 1971, issued an order ("Order") pursuant to Rule 261 of Regulation A temporarily suspending the exemption. The Order alleges, in substance that no exemption is available under Rule 252(d)(3) because of the Commission's order of June 4, 1971, revoking the broker-dealer registration of the underwriters J. M. Kelsey & Co. The order alleges, further, that the issuer failed to comply with requirements of Regulation A by:

- (1) Failing to file a Form 2-A report as required by Rule 260;
- (2) Failing to file a revised offering circular as required by Rule 256(e);
- (3) Failing to file notice of delay in the commencing date of the offering, as required by Rule 263; and that the issuer failed to cooperate with the Commission in that it failed to reply to repeated letters from the staff relating to the requirements of Regulation A with respect to the filing of a report on Form 2-A and the filing of a revised offering circular.

The issuer filed an answer denying the allegations generally and requesting a hearing to determine whether to vacate the Order or to enter an order permanently suspending the exemption.

Respondent was represented by counsel and proposed findings of fact and conclusions of law and briefs were filed by the parties.

The findings and conclusions herein are based upon the record and upon observation of the witnesses.

It was stipulated on the record at the hearing that Autek's Regulation A filing became effective on May 28, 1970;^{1/} that no withdrawal of the filing was requested; that no report on Form 2-A was filed; that no revised offering circular was filed; and that the broker-dealer registration of J. M. Kelsey & Co., Inc., underwriter for the offering, was revoked by the Commission on or about June 4, 1971. In addition, respondent admits that it failed to respond to correspondence from the Commission. Therefore, the allegations contained in the order are not in dispute and accordingly, it is found that the issuer violated the requirements of Regulation A as charged in the order for proceedings.

The issuer, while stipulating to the underlying facts, urges in mitigation that the violations were not willfull; that the revocation of the broker-dealer's registration after the effective date of the proposed offering and prior to any stock being sold to the public cannot be considered as making the offering circular false or misleading; that no member of the investing public has suffered any loss; and that the public interest does not require the assessment of a penalty due to the issuer's lack of sophistication.

^{1/} Presumably meaning that the offering could commence on May 28, 1970.

The arguments advanced by the issuer do not exonerate it from responsibility. The exemption under Regulation A is conditional and its availability dependent upon compliance with the specific requirements and standards laid down by the provisions of that regulation. The one claiming an exemption has the burden of proving its applicability.^{1A/}

Each one of the violations found is sufficient to suspend the exemption. Rule 252(d)(3) provides that the exemption is not available if the underwriter is subject to an order of the Commission entered pursuant to Section 15(b) of the Securities Act of 1934. It is not necessary to find willfulness or that the issuer rather than the underwriter was the prime cause of non-compliance with the provisions of Regulation A.^{2/} Pursuant to Rule 261(a)(4) the Commission may suspend the exemption if "any event has occurred after the filing of the notification which would have rendered the exemption hereunder unavailable if it had occurred prior to such filing." The failure to file a report on Form 2A as required by Rule 260 is grounds for suspension under Rule 261(a)(1). Moreover, issuer's negligence in failing to file the report is no excuse. Failure to file a revised offering circular if the Regulation A offering is not completed within 9 months of the date of the offering circular constitutes cause for suspension under Rule 256(e). Failure to file notice of delay with the appropriate

^{1A/} S.E.C. v. Ralston Purina Co., 346 U.S. 119.

^{2/} Antilles Electronics Corporation, 41 S.E.C. 886, 887 (1964), see, also, Utah-Wyoming Atomic Corporation, 36 S.E.C. 454, 458 (1955).

Regional Office if the offering is not commenced in accordance with the provisions of Rule 263 constitutes a violation under Rule 261(a)(1). Rule 261(a)(7) provides for the entering of a suspension order if the issuer fails to cooperate with respect to any offering made or proposed to be made thereunder.^{3/}

As previously stated, the obligation to comply with the terms and conditions of Regulation A rests with the one seeking to take advantage of it, in this case Autek. It is clear that Autek failed to comply with the terms and conditions of Regulation A, that it failed to cooperate with the Commission, and that the exemption was unavailable under the express provisions of Rule 252(d)(3).

Autek's president Costa Mustakis testified that he did not intend to violate the Commission's Rules and Regulations. He testified, also:

"And frankly we were negligent in answering these things (the Commission's letters) because I didn't believe at the time, I didn't even know they were that necessary or that important. . . We were just plain negligent because we were occupied with everything else."

Under the circumstances the issuer's proffered excuse is not entitled to much weight and cannot be accepted.^{4/}

In view of the findings herein that the terms and conditions of Regulation A were not complied with it is concluded that the exemption of Regulation A should be permanently suspended, accordingly,

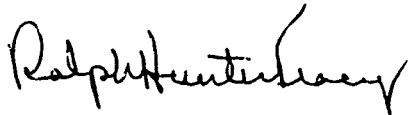
IT IS ORDERED, pursuant to Rule 261 of Regulation A under the Securities Act of 1933, that the exemption of Autek Control Systems, Inc., under Regulation A is permanently suspended.

3/ Decorative Interiors, Inc., 41 S.E.C. 811, 812 (1964), see, also, Salesology, Inc., 38 S.E.C. 812, 814 (1959).

4/ Decorative Interiors, Inc., supra.

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice.

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c) determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.^{5/}



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^{5/} To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected.