ADMINISTRATIVE PROCEEDING
FILE NO. 3-3469

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
ROBERT MANUFACTURING CORPORATION	:	INITIAL DECISION
(24B-1782)	:	
	:	

INITIAL DECISION

September 27, 1972
Washington, D.C.

Ralph Hunter Tracy
Administrative Law Judge

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APPEARANCES: Willis H. Riccio and Nancy Driggs for the Division of Corporation Finance of the Commission.

Paul D. Hoffman, pro se and for Robert Manufacturing Corporation.

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

Robert Manufacturing Corporation ("Robert") incorporated in Massachusetts on August 21, 1968, filed with the Commission on April 2, 1971, 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. Hogan-Harry-Co., Inc., was named as underwriter on a "90-day, best efforts, 35% or none" basis.

The Commission, on January 4, 1972, issued an order ("Order") pursuant to Rule 261(a) of Regulation A temporarily suspending the exemption. The Order charged that Robert's notification and offering circular contained untrue statements of material facts and omitted to state material facts necessary to make statements made in the light of the circumstances in which they were made not misleading. In substance the Order alleged that the offering circular failed to disclose the payment of a brokerage commission to a principal of the underwriter in connection with lease negotiations on behalf of the issuer and, that a foreclosure sale of Robert's equipment, subsequent to filing the offering circular, was not disclosed.

The issuer filed an answer admitting the allegations generally and requesting both a hearing and the permanent suspension of the exemption.

The issuer was represented by its president Paul D. Hoffman who was personally represented by counsel at the hearing. However

counsel withdrew following the hearing and Hoffman filed proposed findings of fact and conclusions of law and briefs in support on behalf of the issuer. The underwriter did not file a notice of appearance or appear at the hearing but subsequently applied for leave to file a brief which was granted.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record.

As stated above, the issuer, in its answer to the charges, admitted the allegations and requested a suspension. At the hearing it was stated on behalf of the issuer, that the primary purpose of requesting the hearing was not to rebut the allegations of the Division but to present evidence indicating lack of culpability on the part of issuer and its president. 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 Order alleges that the offering circular was misleading in failing to disclose that Donald S. Harry, the principal stockholder and an officer of the underwriter, and a director of issuer, was paid an $1,800 commission for lease negotiations on behalf of issuer.

The record shows that on May 28, 1970, issuer leased space at 570 Pleasant Street, Watertown, Massachusetts and moved to this location on June 1, 1970. A commission of $1,800 was paid to Donald Harry by the real estate agent for Mr. Harry's assistance in this matter.

This was not known to issuer or its president, Hoffman, until May 7, 1971, and was not disclosed in the offering circular filed on April 2, 1971.

The underwriter, in its brief, argues that an item under $20,000 is not considered "substantial" in a full registration statement. Therefore, it is urged, the $1,800, which was admittedly received as a real estate brokerage commission in connection with issuer's lease, is not material and should not be accepted as a ground for suspension of the offering.

This interpretation of materiality is not applicable under the circumstances. In this situation it is the self-dealing on the part of the underwriter that is opprobious and the failure to disclose the true facts was a material omission. Neither the issuer nor the investing public was dealt with fairly by the underwriter.

The order alleges, further, that the offering circular was misleading in failing to disclose a foreclosure sale of issuer's equipment, subsequent to the filing date, instituted by the issuer's creditors.

On July 24, 1970, a $25,000 loan was arranged for issuer, apparently with the assistance of Donald Harry, from the State Street Bank & Trust Co. On July 19, 1971, all of the inventory, machinery and equipment of Robert was auctioned off by the State Street Bank & Trust Co., under security agreements covering the $25,000 loan.

Where events occur or actions are taken in the course of an offering which render statements in the offering circular materially false or misleading, it is clearly improper to continue the offering without appropriate amendment of the circular. 1/ Accordingly, the foreclosure sale of Robert's equipment required disclosure by amendment and since no amendment was filed it is found that the offering circular was materially false and misleading.

The issuer, while agreeing to the supension, urges in mitigation that upon discovering the misleading nature of the offering circular it attempted, through counsel and the underwriter to have it corrected; that failing this it then brought it to the Commission's attention; that it agreed to the Commission's request to withdraw but then cancelled the withdrawal and requested a hearing, solely for the purpose of adducing evidence as to where responsibility should be placed for the preparation and filing of the false and misleading notification and offering circular.

While the arguments advanced by issuer do not exonerate it from all responsibility it is clear from the record that issuer did make attempts to correct an unhappy situation and that it received no help from those it had depended upon, including the underwriter. Although issuer's president, Hoffman, signed the notification and therefore must be held accountable, he did cooperate with the Commission after the receipt of a deficiency letter on May 7, 1971.

On May 20, 1971, Donald S. Harry, executive vice-president of Hogan-Harry and Co., by letter-agreement with Robert, undertook,

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1 / Tabby's International, Inc., Sec. Act Release No. 5283, July 21, 1972; also, see Rule 256(e) under the Securities Act. Cf. S.E.C. v. Manor Nursing Centers, Inc., C.A. 2, January 21, 1972 (Continued)

among other things, to"make the proper changes in the offering circular." However, instead of accepting its share of the responsibility for making necessary amendments to the offering circular Hogan-Harry promptly withdrew as underwriter and Donald Harry resigned as a director of issuer.

In its brief the underwriter agrees that Robert's exemption pursuant to Regulation A should be permanently suspended but states that, as a matter of law, the restrictions of Regulation A, Rule 252(e) should not apply against the underwriter.

Upon consideration of all the circumstances, it is concluded that Hogan-Harry was responsible, to the extent indicated, for the failure of issuer to comply with the requirements of Regulation A and accordingly, must accept the consequences flowing from the application of Rule 252(e).

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. While the one claiming an exemption has the burden of proving its applicability, [2/] the basis for suspension does not depend upon whether the issuer or the underwriter was the person at fault. [3/]

1/ (Continued)
("The effect of the antifraud provisions [of the securities acts] is to require that the prospectus reflect post-effective developments which make the prospectus misleading in any material respect".)

2/ S.E.C. v. Ralston Purina Co., 346 U.S. 119 (1953).

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

In view of the findings herein that Robert's offering circular was false and misleading and 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 Robert Manufacturing Corporation, under Regulation A is permanently suspended.

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. 4/

Ralph Hunter Tracy
Administrative Law Judge

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4/ 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.