ADMINISTRATIVE PROCEEDING
FILE NO. 3-5074

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
NASSAR AND COMPANY, INC.	:
(8-20862)	:
	:

INITIAL DECISION

October 28, 1976
Washington, D.C.

Irving Schiller
Administrative Law Judge

ADMINISTRATIVE PROCEEDING
FILE NO. 3-5074

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
NASSAR AND COMPANY, INC.	:	INITIAL DECISION
(8-20862)	:	
	:	

APPEARANCES: Aldis Lapins and Richard Todd Fenton for the Division of Enforcement.

Carl L. Shipley for Nassar and Company, Inc.

BEFORE: Irving Schiller, Administrative Law Judge

This is a proceeding instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Act), (15 U.S.C. 77o(b)), to determine whether an application filed by Nassar & Company, Inc. (applicant) for registration as a broker and dealer should be denied. The Commission's Order for Public Proceedings (Order) dated August 26, 1976 discloses, among other things, that on July 13, 1976 Nassar submitted to the Commission an application for registration as a broker and dealer pursuant to Section 15(b) of the Act. The application states that George M. Nassar (George Nassar) is the president, a director, and the 100 percent stockholder of applicant.

The Order alleges that in Administrative Proceeding File Nos. 3-1950, 3-1951 and 3-1952 the Commission, in its Opinion [1/] found that applicant and George Nassar committed willfull violations of Section 17(a) of the Securities Act of 1933 (Securities Act), (15 U.S.C. 77q(a)), and Section 10(b) of the Act (15 U.S.C. 77j(b)) and Rule 10b-5 (17 CFR 240.10b-5) thereunder, and ordered revocation of applicant's registration as a broker and dealer, expelled it from membership in

---

1/ Richard C. Spangler, et al., Securities Exchange Act Release No. 11737 (February 12, 1976, 8 SEC Docket 1257, (hereinafter referred to as "Commission Opinion" or "Opinion").

the National Association of Securities Dealers, Inc. (NASD) and barred George Nassar from association with any broker or dealer. The revocation and bar became effective March 31, 1976. The instant application was filed approximately 3½ months later.

In its answer applicant admits its registration was revoked but alleges that the Commission's revocation order "is not a final order after judicial determination" and that applicant and George Nassar have petitioned the United States Court of Appeals for the District of Columbia Circuit to review the said order. The appeal is currently pending. Applicant also alleges that the aforesaid order is arbitrary, capricious, unlawful, and an abuse of discretion in that it is not supported by substantial evidence, was entered without compliance with the Administrative Procedure Act (APA) and the Fifth Amendment and imposes an excessive and unconstitutional penalty.

As an affirmative defense applicant alleges that Section 15(b) of the Act, insofar as it may be a basis for denying its pending broker-dealer registration, is inapplicable "until there has been a final judicial review and affirmance of the above-referred to Commission findings and order." Until such

time applicant alleges it has a right to engage in the securities business and the denial of its registration "is and will be a violation of constitutional due process and is a bill of attainder." Applicant also alleges it has engaged in business as an NASD and PBW Stock Exchange member and as an SEC registrant, for a period of ten years following its purported unlawful conduct, without any criticism by any of the three regulatory authorities. Thus, applicant asserts there is no rational basis upon which to deny its broker-dealer registration, "and to do so is arbitrary and capricious." As an additional affirmative defense applicant alleges that the Commission's order revoking its registration is void and unlawful in that no opportunity was given the company to demonstrate compliance prior to the revocation of its registration as required by 5 U.S.C. 558. Applicant attached to its answer copies of approximately twenty-seven letters, all but two of which were addressed to Chairman Hills in March 1976, relating to George Nassar's character, integrity and honesty.

Pursuant to the Order an evidentiary hearing was held on September 27, 1976. Applicant and the Division of Enforcement (Division) filed proposed findings and conclusions and supporting briefs.

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

I.

Under Section 15(b)(1) of the Act an applicant for registration as a broker-dealer may be denied upon a finding that if applicant were registered, its registration "would be subject to . . . revocation under paragraph (4) of this subsection." To be 'subject to revocation' a determination is required that such sanction be in the public interest and that the broker-dealer or any associated persons[2/] of such broker-dealer has willfully violated the Securities Act. Thus, the paramount issue to be determined is whether the public interest requires revocation where a broker-dealer or an associated person was found to have willfully violated the Securities Acts. In weighing the public interest factor, due consideration must be given to a number of matters including the Commission's evaluation of the nature of the broker-dealer's conduct which it found was willfully violative of antifraud provisions of the Securities Acts, noted above, the type of remedial action which the Commission believed warranted for the fraudulent conduct found, together with the stated reasons and purposes sought to be

---

2/ Section 3(a)(18) of the Act defines the term "person associated with a broker or dealer."

achieved by the imposition of the particular sanction and whether there are ameliorating circumstances which on balance should be considered so compelling as to mandate a finding that the public interest would best be served by permitting Nassar's registration application to become effective.

II.

A perusal of the Commission's Opinion relating to the "Nassar Respondents" [3/] reveals that George Nassar, in connection with the offer and sale of stock of Interamerican Industries, Ltd. (Interamerican), recklessly made false and misleading statements to his customers regarding an oral contraceptive pill which he represented Interamerican was manufacturing, that his statements and representations were unsupported by any semblance of adequate foundation and in that connection engaged in a high-pressure sales effort that lasted for a long time, and was characterized by grossly reckless price

---

3/ There is no dispute that George Nassar was president and controlling stockholder of Nassar & Co., Inc. during the period the Commission found him to be a willfull violator. Both George Nassar and the firm were sanctioned. The Commission and the Courts have held that a broker-dealer may sanctioned for the willfull violations of its agent. Cady Roberts & Co., 40 S.E.C. 907, 911; Armstrong, Jones & Co. v. S.E.C., 421 F.2d 359, 362 (C.A. 6, 1970), cert. denied 398 U.S. 958. As noted earlier George Nassar is president, director and sole stockholder of the present applicant for registration. Clearly the firm which was revoked was, and the present applicant is, George Nassar's alter ego.

predictions.[4/] As to George Nassar's understanding of the duties and responsibilities of professionals engaged in selling securities to the public and the standards to which they must adhere in recommending unknown securities of obscure issuers, the Commission found he was wholly indifferent to the boundaries that separate fact from fiction, naively credulous, and prone to embroider on the falsehoods which were fed to him. These matters the Commission considered were of such serious nature that it was led to conclude it was unable to take a sanguine view as to the prospect of Nassar's future honesty, a factor it considered crucial in that type of case.

To explicate the rational for expelling George Nassar and his firm from the securities business the Commission stated "to permit one so prone to irrational euphoria and blatant exaggerations to continue to meddle with other people's money

---

4/ In its Opinion the Commission noted that predictions of very substantial price rises to named figures (in Nassar's case from a price of about $20 to a price of $100 a share) with respect to a promotional and speculative security of an unseasoned company cannot possible be justified. Such predictions it emphasized are a hallmark of fraud and are inherently fraudlent. 8 SEC Docket at 1265 and n. 49.

would be contrary to the public interest." [5/] The Commission also noted that in dealing with matters involving violations of the antifraud sections of the Securities Acts it must weigh the effect of its action or inaction on the welfare of investors as a class and on the standards of conduct in securities business generally. A truly remedial sanction must be one which will have a deterrent effect on other broker-dealers who may be inclined to engage in fraudulent activities.[6/]

Applicant maintains that all such findings are not of such a nature as to require its application to be denied and vigorously urges that a period of ten years has elapsed since the activities occurred which the Commission found violative of the securities acts and that in the intervening period applicant has substantially complied with the requirements of the NASD, the Philadelphia Stock Exchange and the SEC. To support such argument Nassar offered the testimony of nine witnesses, including George Nassar's father and mother, who testified, in general, that applicant's reputation,as well

---

5/ 8 S.E.C. Docket, 1257, 1268.

6/ Cf. Arthur Lipper Corporation, Securities Exchange Act Release No. 11773 (October 24, 1975), 8 S.E.C. Docket 273, 281.

as George Nassar's reputation in the community is either good, excellent or of the highest caliber, that, contrary to the Commission's findings, Nassar did not engage in any high pressure sales tactics or engage in deceitful or fraudulent activities under the securities laws and that in their opinion there is no danger to the public interest if the firm were permitted to continue in the securities business. Most of such witnesses were of the view that since the activities referred to in the Opinion occurred approximately ten years ago and that the firm has conducted itself properly since then, there would be no harm in permitting it to engage in the securities business. In addition copies of twenty-five letters were attached to Nassar's answer which in general attest to George Nassar's good character and integrity. 7/ It is significant that three of the

---

7/ Another person who sent a "character" letter, at George Nassar's request, also testified at the hearing. His testimony was that the information in his letter was not based upon his own knowledge but upon statements furnished him by the Nassar family, which he accepted as true. Many of the letters, in addition to attesting to George Nassar's integrity and honesty, express disagreement with the Commission's findings of his violative conduct. Since the Commission Opinion was based on an independent review of the record, oral argument and briefs filed with it, it would appear inappropriate to give weight to any such unsupported statements which conflict with the said Opinion.

witnesses, when asked hypothetically whether a broker or dealer who, without adequate basis, made false and misleading statements regarding a security, should be permitted to act as a broker or dealer testified such a broker should not be allowed to so act; a fourth responded that such activities would be wrong; a fifth believed "such a person would be disbarred from that kind of tactic" and a sixth stated "certainly you would have great question about letting that person continue in the business, without more."

Applicant urges that the record discloses that since it is under surveillance of the three regulatory bodies noted above and none has been fit to take administrative or judicial action challenging its business operation it cannot be said that the applicant will conduct its business as a broker-dealer contrary to the public interest or in violation of the standards respecting investor protection. Applicant's conclusion concerning its future conduct is contrary to the record and is rejected. In his testimony at the hearing George Nassar continued to protest his innocence of any wrongdoing as found by the Commission and testified as has always abided by the rules. It is reasonable to believe and the record supports the finding that he appears not to understand fully

the duties and responsibilities of a broker or dealer who undertakes to sell securities to the public,nor does he appear to understand the necessity of refraining from making representations without adequate basis or making wholly unwarranted price predictions or engaging in high-pressure sales efforts. His testimony in this regard is most significant. When asked by his counsel whether he has a better understanding now than he did in 1966 as a result of this proceeding,George Nassar testified: ". . . I was innocent then". . . . "I would do the same thing now as I did then . . ." Such lack of understanding of broker-dealer standards for dealing with the public is inimical to the public interest.

In its brief applicant urges there is not a scintilla of evidence adduced by the Commission that the future conduct of the applicant would raise any question respecting the public interest or investor protection in light of its operation since the alleged violations in 1967. The record however fails to support such conclusion. The evidence clearly demonstrates that during the period the Commission found that applicant and George Nassar willfully violated certain sections of the securities laws, George Nassar alone determined the policies and controlled the operations of the firm and the record shows

he has continued to do so until his bar bacame effective in March 1976. During the entire period George Nassar's mother was employed by the firm, as was a bookkeeper and, at the time of revocation, two salesmen. Mrs. Nassar testified she concerned herself with clerical duties in the office but the record demonstrates has neither the training nor capability of operating a brokerage business. The bookkeeper has no such qualification and the record does not indicate either of the salesmen have such capacity nor have they qualified as principals in a brokerage firm. At the hearing George Nassar testified that if his stock ownership was an impediment to the firm's registration he would be willing to place his stock in a voting trust or remove himself from control. However, he was unable to state who would be primarily responsible for the conduct of the firm, other than his mother. The record thus raises serious questions as to whether, in the absence of George Nassar, there would be any person qualified or capable of responsibility for the operation of the applicant. Those questions, on the basis of the evidence, must be answered in the negative. George Nassar admits the existing bar would prohibit him from engaging in the securities business and the record is overwhelming that no one

in the applicant's firm has the executive or managerial ability to operate the firm.

George Nassar's offer to place his stock in a voting trust, particularly where no mention was made as to the disposition of possible profits from the firm's operation, or the offer to replace himself with some unidentified person does not itself provide justification for permitting applicant to register as a broker-dealer. It is basic that both the public interest and protection to investors mandates that a firm seeking to engage in the securities business have, at the very least, a chief operating officer with a knowledge of the duties and responsibilities of persons engaged in advising customers with respect to securities and a knowledge of the complexities of the securities laws and rules and regulations thereunder. Applicant has made no such showing.

Due consideration was given to the fact that since 1967, other than certain deficiencies called to applicant's attention by the NASD in 1974 which apparently were corrected, no regulatory body issued any findings of violations against applicant. However, in light of the Commission's sanguine view as to Nassar's future honesty on the basis of his past conduct to which due consideration must be given, it is concluded that,

under the circumstances of this case, the mere passage of time, even when coupled with an absence of formal findings of violation by a regulatory body, does not afford sufficient justification for permitting the applicant to engage in the securities business. Something more is compelled. There must be some assurance that corrective measures have been or will be taken in an effort to avoid the possibility of recurrence of the kind of activities which are adverse to the public interest and investor protection. In that connection, George Nassar, when asked who, in his absence, would select the stocks which applicant would recommend to customers for purchase and sale, testified the two remaining salesmen would ". . . just keep on selling the same type of securities. I mean I don't see anything changing at my place." In light of applicant's past conduct, as reflected in the Opinion, changes in the methods and means of selling securities appears imperative. None were offered at the hearing nor in applicant's brief. It is concluded that it is necessary and appropriate in the public interest to deny applicant's registration as a broker-dealer.

III.

In its brief applicant contends that there is no evidence in this proceeding of any willfull violation of either the Securities Act or the Act and that reliance is being placed upon a secondary source, i.e. findings of the Commission in its Opinion. Applicant concedes that the Commission has authority to deny an application for registration if it finds that if the applicant were registered, its registration would be subject to revocation under Section 15(b)(4) of the Act. Applicant argues, however, that since it has appealed the Commission's findings to the U.S. Court of Appeals for the District of Columbia, such findings have no validity in terms of substantial evidence to support the findings and conclusions that applicant violated the Act. Applicant asserts there is a constitutional presumption of innocence and it necessarily follows that in this proceeding "there is no evidence of 'willfull' violation of either the 1933 or 1934 Acts." The argument is without substance and is rejected. It is clear from the record that pursuant to Section 15 of the Act extensive hearings were held, that an initial decision was rendered by an administrative law judge, and that the Commission, as stated in its Opinion, made an

independent review of the record. It is pure sophistry to assert that the findings of willfull violation made by an administrative agency after a hearing and agency review of the record[8/] have no validity or are somehow nullified by the mere filing of an appeal in the Court of Appeals. Moreover, Section 25(a) of the Act provides that "the findings of the Commission as to the facts, if supported by substantial evidence are conclusive." Similarly Section 5 U.S.C. 706(2)E (Section 10(e) of the APA) provides that a reviewing court is empowered to set aside agency action, findings and conclusions found to be unsupported by substantial evidence. Hence, until such time as a reviewing court determines that the agency's findings and conclusions are not supported by substantial evidence, they are deemed conclusive.

Applicant further contends that a denial of the pending application for registration would constitute unreasonable governmental interference with the right to hold specific employment and follow a chosen profession, that the protection of that right comes within the "liberty and property" concepts of the Fifth Amendment and that a denial of the application for registration would be in violation of the said Amendment.

8/ 8 S.E.C. Docket 1257.

Applicant's argument that it has a constitutionally protected liberty or property right which would be violated if the instant application is denied,is without substance. The provision of the Fifth Amendment, as applicable here, states that no person may be deprived of liberty or property without due process of law. Assuming arguendo applicant has a property right, the essential question is whether it is being deprived of any such right without due process of law. The record overwhelmingly demonstrates that applicant and George Nassar were,and are being,afforded the traditional safeguards of due process. They were given notice of the charges against them, and a hearing on such charges. They filed proposed findings, and a brief. This initial decision is based on the record and may be appealed to the Commission, whose decision is appealable to the United States Court of Appeals. The due process requirements of the Constitution are and have been met.

Applicant's argument that the sanctions imposed by the Commission are excessive and beyond the power and authority of the Commission under the Constitution is also rejected. It is well settled that under Sections 15(b)(4) and 15(b)(6) of the Act the Commission is empowered to revoke the registration of any broker or dealer and bar any person from being associated

with any broker or dealer if it finds that such revocation or barring is in the public interest and the broker-dealer or the associated person has willfully violated the Securities Acts. Hence, the power and authority to invoke a sanction under Section 15(b) of the Act unquestionably exists. As to the excessiveness of the sanction, the Courts have held that the determination whether a particular remedial action is appropriate rests within the sound discretion of the agency. O'Leary v. S.E.C., 424 F.2d 908 U.S. App. D.C. 420, 423 (1970). It is well settled that absent a gross abuse of discretion, the courts will not interfere with the determination as to the sanction deemed appropriate under the circumstances of a particular case. Tager v. S.E.C., 344 F.2d 5, 8 and 9, (C.A. 2, 1965). In light of George Nasser's fraudulent activities as evident in the Commission's Opinion and the findings made herein there does not appear to be an abuse of discretion by the Commission and the administrative law judge should not, except for cogent reasons, not present here, substitute his judgment for that of the Commission concerning the sanctions which will best accord with the regulatory responsibilities of

of the Commission.[9] Neither applicant nor George Nassar has demonstrated an understanding of the standards required of brokers and dealers nor has either established the qualifications essential to participate in so sensitive a field as the securities business. Pierce v. S.E.C., 239 F.2d 160, 163 (C.A. 9, 1956).

Applicant also contends that Section 15(b)(1) is an unconstitutional bill of attainder to the extent that it operates as a penalty or punishment or forfeiture imposed on applicant for past acts. The argument is friviolous. The Commission and the courts have held that the Commission has no power to invalidate a statute that Congress directed it to enforce.[10] Apart from that fact, the Supreme Court has consistently held that a bill of attainder is aimed at a

---

9/ See e.g. Sinclair v. S.E.C., 444 F.2d 399 (C.A. 2, 1971). Moreover, as noted earlier applicant and George Nassar have appealed the Commission's decision. It is assumed they will urge the same question to the Court of Appeals It would be presumptuous to rule on an issue pending in the Court of Appeals.

10/ Todd v. S.E.C., 137 F.2d 475, 478 (C.A. 6, 1943); Standard Investment Management, Inc., 43 S.E.C. 864, 874 (1968). Milton J. Wallace, Securities Exchange Act Release No. 11252 (February 14, 1975).

particular person or at readily identifiable classes of persons and is a legislative act which reflects punishment without a judicial trial.[11/] Section 15(b) of the Act is not directed at applicant or George Nassar and does not, in a constitutional context, inflict punishment. That Section has been held not to be penal but remedial and a means by which the public may be protected in the future from the fraudulent acts of persons deemed unqualified to act as brokers and dealers.[12/] As noted earlier applicant and George Nassar were given a fair hearing under the APA, the administrative law equivalent of a judicial "trial."

11/ United States v. Brown, 381 U.S. 437, 458 (1965); United States v. Lovett, 328 U.S. 303, 315-16. It is noted that applicant in its brief cites both cases as authority, for its bill of attainder argument. Neither case support applicant's contention. In the Brown case the Court struck down a statute that penalized a communist if he served as a labor union official. The legislature in that case determined the punishment for an act and no trial was afforded. The Court characterized such statute as "trial by legislature." In Lovett, a rider to an appropriation bill was declared unconstitutional because it forbade salaries to three persons that Congress wanted discharged as subversives. Again, no trial was afforded. The distinction in the Nassar case where a hearing was given is obvious.

12/ Blaise D'Antoni & Associates, Inc. v. S.E.C., 289 F.2d 276, 277, rehearing denied, 290 F.2d 688 (C.A. 5), certiorari denied, 368 U.S. 899 (1961); Peoples Securities Co. v. S.E.C. 289 F.2d 268, 275 (C.A. 5, 1971); See also Milton J. Wallace, supra, at p. 4-6.

IV

It is concluded that the record amply supports the finding that within the umbra of Section 15(b)(1) of the Act, if applicant were registered as a broker-dealer, its registration would be subject to revocation under paragraph 4 of that subsection. In view of the findings in the Commission's Opinion relating to the willfull violations of the applicant in connection with the offer and sale of the common stock of Interamerican Industries, Ltd., the applicant would be subject to revocation under Section 15(b)(4)(D) of the Act.[13/] In addition, since George Nassar, an associated person of applicant is subject to an order of the Commission barring him from being associated with any broker or dealer, the applicant would be subject to revocation under Section 15(b)(4)(F) of the Act. It has been concluded earlier that it is in the public interest to deny applicant's application for registration as a broker-dealer.

Accordingly, IT IS ORDERED that the application of Nassar & Company, Inc. for registration as a broker and dealer be, and hereby is, denied.

13/ In this connection it is noted that applicant urges that Section 15(b)(4) of the Act does not include willfull violations of the Securities Exchange Act of 1934 within the "catalogue" of willfull violations for which sanctions may be imposed. Applicant mistakenly overlooked the words "this title" included in subsection (D) of Section 15(b)(4), which is the obvious reference to the Securities Exchange Act of 1934.

The Commission's Order for Public Proceedings dated August 26, 1976, establishes a schedule in connection with the hearings ordered therein, in order for the Commission to comply with Section 15(b)(1)(B) of the Securities Exchange Act. In accordance with the said schedule, this decision shall become the final decision of the Commission, unless any party desiring to file a petition for review of this initial decision in accordance with Rule 17 of the Commission's Rules of Practice (17 CFR 201.17), files such petition with the Commission on or before November 8, 1976. The aforesaid Commission Order further provides that in the event a petition for review is filed, petitioner must file its brief with the Commission on or before November 15, 1976 and any party seeking to file a reply brief must file on or before December 3, 1976. The Order also states, no extensions to the above noted schedule will be granted without findings by the Commission that good cause exists for such extensions. The Order also states the Commission will enter its final decision on or before December 23, 1976. If a party timely

files a petition for review as set forth above, the initial decision shall not become final with respect to that party.[14/]

Irving Schiller
Administrative Law Judge

Washington, D.C.
October 28, 1976

14/ All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with the initial decision, they are accepted.