

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
PETER C. CALCUTTA

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INITIAL DECISION

Washington, D.C.
December ~~27~~, 1993
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Edward J. Kuhlmann
Administrative Law Judge

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APPEARANCES: Edwin H. Nordlinger, Kathryn A. Ashbaugh, Edward K. McCarthy, and Bruce H. Newman for the Division of Enforcement

Robert T. Norton for Respondent Peter C. Calcutta

BEFORE: Edward J. Kuhlmann, Administrative Law Judge

On August 9, 1990 and August 13, 1990, the Commission filed a complaint and amended complaint, respectively, against the respondent Peter C. Calcutta ("Calcutta" or "the respondent") and other defendants in SEC v. Beres Industries, Inc., et al., 90 Civ. 3260 (JCL) (D.N.J. January 8, 1992). The other defendants included Beres Industries, Inc. ("Beres"), Chairman Charles Beres, Sr., President Charles Beres, Jr., Arden R. Brown, former president of Monmouth Investments, Inc., Philip I. Kagan, Monmouth's attorney, David M. Haber, a former owner of Monmouth, and Ronald Sunshine, a salesperson at Monmouth. Div. Exh. 2 (Complaint for Injunction and Ancillary Relief and amended Complaint).

On January 8, 1992, the United States District Court for the District of New Jersey, ordered Calcutta enjoined, on consent, from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rules 10b-5 and 10b-6 thereunder. Div. Exh. 1 (Final Judgment of Permanent Injunction and Order of Disgorgement by Consent against Peter C. Calcutta and Consent of Peter C. Calcutta).

On September 17, 1992, the Commission instituted this proceeding against the respondent, based upon the entry of the injunction against him. The Order for Public Administrative Proceedings and Notice of Hearing Pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 states that on January 8, 1992, Calcutta was enjoined by the United States District Court for the District of New Jersey from violating Sections 5(a), 5(c)

and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-6 thereunder.

On September 2, 1993, a hearing was held at the Securities and Exchange Commission, Northeast Regional Office, to determine what sanction is appropriate in the public interest against Calcutta. The Division of Enforcement filed proposed findings of fact and conclusions of law and a post-hearing brief on October 18, 1993, the respondent filed proposed findings of fact and conclusions of law and response to the Division's proposed findings of fact and conclusions of law on November 17, 1993, and the Division filed a reply on November 24, 1993.

FINDINGS OF FACT

Peter Calcutta has worked in the securities industry since 1958. Tr. 21-22. He worked in trading rooms at various broker-dealers, including Bache & Co., Charles Plohn & Co. and Kobrin Securities. Tr. 22-23; Div. Exh. 4 at 11-12. From about September 1984 to January 1988, Calcutta was a 10 to 15 percent owner of Monmouth Investments, Inc.^{1/} Calcutta Response to Order ¶ A; Div. Exh 5 at 8-11; Div. Exhs. 11-14. He was the firm's head trader and a registered representative. Tr. 24, 26-7, 43; Div. Exh. 4 at 34, 51; Joint Exh. Stipulations of Fact at ¶ 2. Calcutta is currently employed as a registered representative at Advest, Inc., a broker-dealer registered with the Commission. Tr. 24, 52, 65.

^{1/} Calcutta now maintains that he was not an owner of Monmouth. This is contrary to the Forms BD filed with the Commission during 1986, 1987, and 1988. Until he left the firm, he believed that he owned part of the firm. Tr. 25.

The Commission's District Court Complaint alleged that the defendants violated various provisions of the antifraud, antimanipulation, and registration provisions of the federal securities laws in connection with Monmouth's 1986 underwriting of a Beres Industries Initial Public Offering ("IPO"), and Monmouth's subsequent market making activity in Beres Industries stock.

The Commission's Complaint alleged that on two separate occasions Calcutta bid for, or induced others to bid for, Beres Industries stock, while engaging in a distribution of that stock, in violation of Section 10(b) of the Exchange Act and Rule 10b-6 thereunder. Div. Exh. 2 (Amended Complaint ¶¶ 150-160).

The Commission's Complaint further alleged that Calcutta violated Sections 5(a) and 5(c) of the Securities Act by participating in a distribution of unregistered Beres Industries stock. Div. Exh. 2 (Amended Complaint ¶¶ 137-142).

The Commission's Complaint also alleged that Calcutta violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by participating in Monmouth's manipulation of the market for Beres Industries stock on the first day of aftermarket trading in that stock, and by utilizing Monmouth's domination and control of the market for Beres Industries stock to manipulate the market for Beres Industries stock for the next 17 months after commencement of aftermarket trading. Div. Exh. 2 (Amended Complaint ¶¶ 143-149).

Prior to July 24, 1986 and while Monmouth conducted the Beres Industries IPO, Monmouth registered representatives solicited and

accepted between 600 and 800 orders to purchase Beres Industries stock in the aftermarket, and wrote order tickets for each of these 600 to 800 orders. Joint Exh. at Stipulated Facts ¶ 11. Calcutta knew that the Monmouth registered representatives were soliciting customers for aftermarket trading while Monmouth conducted the Beres Industries IPO. Tr. 36. Calcutta executed the 600 to 800 orders represented by the tickets. Joint Exh. at Stipulated Facts ¶ 15. Calcutta knew that the prices on the 600 to 800 order tickets had been arbitrarily set by Arden R. Brown, the President of Monmouth. Joint Exh. at Stipulated Facts ¶ 14. Calcutta knew that Brown, by these acts, was building an active aftermarket for Beres Industries stock during the IPO period. Tr. at 34-35.

On July 24, 1986, Calcutta time and date stamped the 600 to 800 order tickets to indicate that the orders represented by the tickets had been placed on July 24, 1986. Joint Exh. at Stipulated Facts ¶ 16. Starting at 9:30 in the morning, Calcutta stamped tickets containing lower prices, and then proceeded to stamp tickets containing progressively higher prices. Tr. at 37-38.

Calcutta time stamped a group of tickets, then turned back the clock on the time stamp machine approximately twenty minutes, then stamped another group of tickets, then again turned back the clock on the time stamp machine, then repeated this process until he stamped all 600 to 800 order tickets to indicate that the orders had been placed during the morning of July 24, 1986. Joint Exh. at Stipulated Facts ¶ 17. Calcutta knew that the 600 to 800 orders had not been taken on July 24, 1986, but in fact had been taken

during the IPO period. Tr. at 35-40. Calcutta executed the orders on his own initiative, without instructions from anyone. Tr. at 38-39; Div. Exh. 4 at 95.

On the first day of aftermarket trading in Beres Industries stock, Calcutta posted Monmouth's retail and inter-dealer price (bid and ask prices) for Beres Industries stock to the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). Tr. at 41; Joint Exh. at Stipulated Facts ¶ 8.

During the period October 1986 to January 1988, Monmouth sold and purchased Beres Industries stock to and from its retail customers. Joint Exh. at Stipulated Facts ¶ 35. At the same time, Monmouth maintained short positions in Beres stock in its proprietary trading account. Joint Exh. at Stipulated Facts ¶ 6; Tr. 44. Calcutta monitored that account and knew about the firm's short position in Beres' stock. Joint Exh. at Stipulated Facts ¶ 4; Tr. 44-46.

Monmouth used the stock it acquired from Beres officers and directors and family members of Beres officers and directors to cover short positions in its proprietary trading accounts. Joint Exh. at Stipulated Facts ¶¶ 3, 5. Calcutta knew that persons affiliated with Beres sold their stock to Monmouth in reliance upon Securities Act Rule 144. Tr. 32-33, 114. Calcutta executed the orders for Monmouth and he sold and purchased Beres shares for his retail clients. Joint Exh. at Stipulated Facts ¶ 36; Tr. 42.

Calcutta completed the order tickets for some of Monmouth's purchases of restricted stock from Beres affiliated persons. Div.

Exh. 4 at 26; Tr. 32. Monmouth, from October 1986 through January 1988, bid for Beres stock through Monmouth's continuous listing as a market maker for Beres Industries stock on NASDAQ and in the pink sheets. Joint Exh. at Stipulated Facts ¶¶ 33, 34. Calcutta knew that Monmouth controlled most of the public float in Beres Industries stock, that it controlled the supply of Beres stock, that other broker-dealers looked to Monmouth as a source of Beres stock, that it was in a position to determine the price of Beres stock, and that Monmouth almost always maintained the high bid price for Beres stock. Joint Exh. at Stipulated Facts ¶¶ 21-23.

Calcutta knew that Monmouth maintained the high bid price for the Beres stock, that if a customer wanted to sell a large amount of the stock, the customer would sometimes be given a larger markdown than if he or she were selling a small amount and that registered representatives earned commissions on Beres stock only when their customers purchased the stock. Joint Exh. at Stipulated Facts ¶¶ 23, 32; Div. Exh. 4 at 44-45; Tr. 45, 55-6.

Calcutta knew that Monmouth gave its registered representatives a research report that overstated Beres' sales and earnings and that the report was sent to customers, including his own. Joint Exh. Stipulated Fact at ¶¶ 25,27; Div. Exh. 4 at 40-42; Tr. 47-49. Calcutta believed that Beres securities were worth about \$12 million when the price of the stock indicated that they were worth \$36 million. Div. Exh. 4 at 41-42. After Calcutta left Monmouth, he told his customers to sell their Beres stock. Joint. Exh. at Stipulated Facts at ¶ 30. Calcutta purchased Beres stock

for his account and sold it at a profit while he worked at Monmouth. Tr. 57.

Calcutta Gave Dishonest Testimony On February 26, 1987, Calcutta testified under oath to the New Jersey Bureau of Securities that he did not mis-stamp any order tickets on the first day of the aftermarket trading of Beres stock. He said that the mismarked tickets occurred because of a malfunction in the ticket machine. Div. Exh 5 at 123-126. Calcutta admitted in this proceeding both at the hearing and during the investigation that he mis-stamped 600 to 800 order tickets on the first day of the aftermarket trading in Beres stock. Div. Exh. 4 at 92-95; Tr. 38-9. Calcutta admitted that he intentionally lied during the New Jersey proceeding. Tr. 90-91. He concedes that he knew before he testified before the New Jersey Bureau of Securities that what he had done to the tickets was wrong. Tr. 91. Calcutta said he only learned recently that it was illegal. Tr. 92. He also testified that, at the time, he did not believe that mis-stamping order tickets was illegal or that executing orders for aftermarket trading which had been solicited during the IPO at arbitrarily set, increasing prices was wrong. Tr. 39.

CONCLUSIONS OF LAW

Calcutta's injunction and disgorgement and the underlying facts that lead to the complaint demonstrate that the public interest warrants barring him from association with a broker-dealer. The January 8, 1992 injunction by the United States District Court for the District of New Jersey is sufficient premise

for the public interest finding. Charles Phillip Elliott, 52 SEC Docket 2011 (September 17, 1992). "[T]he action required in the public interest as the result of an injunction may be inferred from all the circumstances surrounding the injunctive action." Id. at 2018 (footnote omitted). Section 15(b)(6)(A)(iii) of the Securities Exchange Act empowers the Commission to act in the public interest when a person has been enjoined, with no exception made in the case of a consent injunction. Id.

Calcutta committed egregious acts in violation of Section 10(b) of the Exchange Act and Rule 10b-6 thereunder during the initial public offering of Beres Industries stock. Calcutta sold Beres stock to his customers, executed Monmouth's customers' purchases of Beres stock, solicited purchases of Beres stock for the aftermarket during the IPO, collected 600 to 800 order tickets representing the aftermarket orders solicited during the IPO, and executed the aftermarket orders which had been solicited during the IPO. These actions created an unjustifiable impression of market activity and permitted the sale of securities at artificially high prices.

On the first day of aftermarket trading, Calcutta's actions violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. On that day, Calcutta fraudulently time and date stamped 600 to 800 order tickets to make it appear as if there was heavy and active trading on the first day of the aftermarket trading in Beres stock. He repeatedly turned back the clock on the ticket stamping machine in order to make it

appear that all the orders had been taken in the early morning. Calcutta posted Monmouth's artificial retail bid and ask prices for Beres stock to NASDAQ. This established an artificial, manipulated price for trading in Beres stock on the first day of aftermarket trading.

From October 1986 through January 1988, Calcutta violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder when he executed Monmouth's sales of Beres stock to its customers which resulted in the creation of constant short positions in Monmouth's proprietary trading account. He sold Beres stock to his customers and completed order tickets for and executed Monmouth's purchases of Beres stock from the persons affiliated with Beres to cover Monmouth's short positions. During that time, he repeatedly induced his customers to purchase Beres stock and continuously executed Monmouth's sales of Beres stock.

From July 1986 to January 1988, Calcutta was Monmouth's head trader and he executed the transactions in Beres stock. He also sold for and purchased Beres stock from his own retail customers. He did this even though he knew that Monmouth controlled trading in Beres stock and that its registered representatives engaged in fraudulent sales practices with regard to Beres stock. Calcutta's manipulative conduct was "designed to deceive or defraud investors by controlling or artificially affecting the price of securities." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 199 (1976). In addition, Calcutta deliberately lied to the New Jersey Bureau of

Securities about altering the aftermarket orders to prevent discovery of his role in the manipulation of Beres stock.

Calcutta's actions with regard to Beres stock resulted in one million shares of unregistered restricted shares of Beres stock being held by public investors. This increased the public float of Beres stock by 40 percent and left investors uninformed about the factors that would have been disclosed if the stock had been registered. Calcutta's participation in the unregistered distribution of restricted Beres stock violated Sections 5(a) and 5(c) of the Securities Act.

Calcutta's Scienter About the Beres Stock Transactions Warrants the Bar Sought by the Division

Calcutta knew that Monmouth's registered representatives solicited 600 to 800 aftermarket orders for Beres stock during the IPO period. Calcutta sold Beres stock to his own customers during the IPO and he solicited aftermarket orders from his customers during the IPO. He held the aftermarket orders solicited during the IPO and executed them on the first day of aftermarket trading. Calcutta knew that the prices on the tickets of those transactions had been arbitrarily set. He also stamped false transaction times on the order tickets. Those tickets falsely indicated that the orders had been placed on the morning the transaction was actually executed and at increasing prices.

Calcutta knew that his and Monmouth's sales of Beres stock lead to Monmouth having constant short positions in its proprietary trading account. He knew that Monmouth covered its short positions by purchasing restricted Beres stock from persons affiliated with

Beres. Calcutta executed Monmouth's purchases of restricted Beres stock to cover the short positions and he continued to monitor Monmouth's short position in Beres stock.

Calcutta knew that, from July 1986 through January 1988, Monmouth did not pay commissions to its registered representatives when they sold Beres stock but only when customers purchased Beres stock. He also knew that sometimes customers selling large amounts of Beres stock received higher markdowns than other sellers. When these manipulative practices were going on, Calcutta knew that Monmouth was the dominant market maker in Beres stock and that Monmouth exercised significant control over the market for Beres stock.

Calcutta indicated that by September 1987 he believed that Beres stock was overvalued. At that time, he also knew that Monmouth was using a "research report" to sell the stock that contained inaccurate earnings projections. Calcutta's response to this was simply to continue on doing business as usual. He continued to execute orders for his customers' purchases of Beres stock and he did not advise them to sell their Beres stock until after he had left Monmouth.

Calcutta's Conduct Was Recurrent

Calcutta's actions with regard to Beres stock began in June and July 1986 with the IPO of Beres stock and continued during the aftermarket trading of Beres stock from July 1986 through January 1988. During this 17 month period, Calcutta repeatedly engaged in and carried out manipulative practices involving the sale and

purchase of Beres stock.

Calcutta Has Not Offered Assurance that He Will Not Engage in Similar Illegal Conduct in the Future

Calcutta has pointed out that at Advest, the brokerage house where he currently works as a registered representative, his transactions are closely monitored under special procedures established by the firm. The Division urges that this is not adequate assurance since Advest is not bound to continue the procedures and could end them at anytime. The Division points out that Calcutta could leave Advest and that there is no assurance that his conduct would continue to be monitored. Calcutta also has an understanding with the New Jersey Bureau of Securities that he will not work as a trader. But this too, the Division argues, is not assured since there is no law or court order that requires that Calcutta comply with his agreement with New Jersey, nor is there anything to prevent him from moving to another state.

Calcutta also maintains that there is little risk of his violating the law again. He points out that since he took the job at Advest, there has only been one complaint against him. But this, the Division urges, is not a true test of Calcutta's behavior because he knew that his actions would be scrutinized in this proceeding and by the New Jersey Bureau of Securities, which still has a pending court complaint against him.

Calcutta's Claim that He Recognizes the Wrongful Nature of His Conduct Is Unreliable

Calcutta maintains that, when he falsely stamped the after market orders for Beres stock in 1986, he did not realize it was wrong. He concedes that by 1987 he knew that what he had done was wrong. He asserts that once he knew that he was party to wrong doing, he cooperated with authorities in New Jersey. Calcutta's claim that he was innocent of the true nature of his acts at the time is implausible when it is considered in light of his experience. Calcutta has worked in brokerage firms for 30 years. When the conduct at issue in this proceeding arose, he was an owner of the Monmouth firm, a longtime registered representative and had been a trader at various brokerage firms for a dozen years.

The Possibility Exists that Similar Opportunities for Wrongdoing Could Occur

Calcutta is still employed as a registered representative at a registered broker-dealer. Although he is not currently a trader, there is no legal prohibition to his becoming one again. But even if Calcutta never works as a trader again, he remains a threat to the investing public. The complaint catalogues numerous antifraud violations, many of which were unrelated to his job as a trader. These must be weighed in assessing the public interest and the protection of public investors. Without reliable assurance that he no longer is or could be in a position to commit the same wrongful acts, the record supports a conclusion that wrongdoing by Calcutta could occur again. A substantial sanction is necessary in order to deter Calcutta and others from engaging in similar

conduct.

Calcutta Lacked Candor In Dealing With Regulatory Agencies

Calcutta intentionally lied under oath when he testified before the New Jersey Bureau of Securities that he did not falsely time-stamp the order tickets for Beres stock on the first day of the aftermarket. Calcutta told an untrue story to coverup his actions when he testified. His untruthful testimony was deliberate and planned. Afterward he returned to Monmouth and continued as its chief trader.

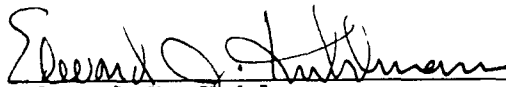
Calcutta also has given inconsistent testimony before the Commission about when he learned that his stamping of the Beres orders was wrong. Originally, he said that he learned that it was wrong in February 1987 before he testified before the New Jersey Bureau of Securities and later he testified that he did not learn that his actions were wrong until recently when "everything came apart." Calcutta claims that in February 1987 he knew it was wrong to alter the orders, but that it was only recently that he learned it was illegal. His testimony does not make that distinction, nor was he asked whether he knew that his actions were illegal.

Calcutta's testimony also indicates that he was untruthful in his testimony about his own responsibility for his false testimony before the New Jersey Bureau of Securities. Calcutta said that his lawyer, Philip Kagan, told him to lie but when questioned about this he conceded that Kagan told him only to say as little as possible and not to give any information that would hurt Monmouth. Mr. Kagan was also Monmouth's lawyer. These two examples lead to

the conclusion that Calcutta's testimony is unreliable and that his representations about how he will act in the future cannot be credited. He has yet to accept responsibility for his actions in the Beres stock transactions and to testify truthfully about his role.

ACCORDINGLY, IT IS ORDERED pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 that Peter C. Calcutta be barred from association with any broker or dealer.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision will become the final decision of the Commission as to any party who has not, within fifteen days after service of this initial decision, filed a petition for review pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review the decision. If the applicants timely file a petition for review, or the Commission takes action to review, the initial decision will not become final. 2/



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2/ The respondent raises various other arguments which have been considered and rejected. All proposed findings and conclusions submitted by the parties have been considered, as have their arguments. To the extent such proposals and contentions are consistent with this initial decision, they are accepted. In all cases where applicable, the demeanor of the witnesses has been considered in assessing their testimony. The conclusions reached are based upon a preponderance of the evidence.