

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
September 30, 1966

<p style="text-align: center;">In the Matter of</p> <p>SEABOARD SECURITIES CORPORATION 80 Wall Street New York, New York</p> <p>LEON NASH HAROLD IGNATOFF</p> <p style="text-align: center;">(8-9753)</p> <p>Securities Exchange Act of 1934 - Sections 15(b) and 15A</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>FINDINGS, OPINION AND ORDER REVOKING BROKER-DEALER REGISTRATION, EXPELLING FROM REGISTERED SECURITIES ASSOCIATION AND BARRING INDIVIDUALS</p>
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BROKER-DEALER PROCEEDINGS

Grounds for Revocation of Registration

Grounds for Expulsion from Membership in
Registered Securities Association

Grounds for Bar From Association with Broker-Dealer

Fraud in Offer and Sale of Securities

Excessive Mark-Ups

Where registered broker-dealer offered and sold speculative securities at unfair prices and made false and misleading representations and predictions regarding, among other things, future market price, issuer's prospects and earnings, payment of dividends, and listing of stock on national securities exchange, held, in the public interest to revoke broker-dealer's registration, expel it from membership in national securities association, and bar its president and a salesman from being associated with any broker or dealer.

APPEARANCES:

Robert M. Berson and Elliott N. Abramson, of the New York Regional Office of the Commission, for the Division of Trading and Markets.

Martin M. Frank, of Feldshuh and Frank, for Seaboard Securities Corporation, Leon Nash and Harold Ignatoff.

Following hearings in these proceedings pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act"), the hearing examiner filed an initial decision in which he concluded that the registration as a broker and dealer of Seaboard Securities Corporation ("registrant") should be revoked, that registrant should be expelled from membership in the National Association of Securities Dealers, Inc. ("NASD"), and that Leon Nash, president, and Harold Ignatoff, a salesman of registrant, should be barred from being associated with a broker or dealer. 1/ We granted petitions for review filed by registrant, Nash and Ignatoff. Upon an independent review of the record, and for the reasons stated in this opinion and in the initial decision, we make the findings set forth below.

Registrant became registered as a broker-dealer in July 1961. Nash is its principal stockholder. Ignatoff became a registered representative about June 1963.

1. During the period from October 18, 1962 to October 15, 1963, registrant, together with or aided and abetted by Nash and Ignatoff, willfully violated the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 15c1-2 thereunder in connection with the offer and sale of the common stock of Vista Industries Corporation ("Vista"), formerly Trans Central Industries, Inc. During that period, registrant, Nash, Ignatoff and other salesmen engaged in a high pressure campaign to sell Vista stock through intensive telephone solicitations, in the course of which false and misleading representations were made concerning, among other things, substantial increases in the price of the stock within a short time, its listing on a national securities exchange, and the prospects, financial condition, earnings and dividends of Vista, and customers were advised to sell other securities they owned in order to purchase Vista stock and urged to make repeated purchases of that stock.

Nash exercised supervision over all of registrant's activities. He made the decision to recommend Vista stock to registrant's customers and determined the prices at which Vista stock was sold. He held frequent meetings with his salesmen regarding Vista stock and suggested that salesmen tell customers that it was hoped Vista would make a profit. In addition Nash himself sold some Vista stock, and he told one customer that on the basis of inside information he could guarantee that the price of the stock would increase from 75¢ probably to about \$2 per share. He later urged the customer to purchase more shares stating that the market price had gone up by then but that the customer could still purchase additional shares at 75¢ per share.

Ignatoff sold at least 2,785 shares of Vista stock to seven customers, to whom he made repeated telephone solicitations. He told the customers that the price of the stock would rise, stating on occasion that it would double or go from 75¢ to \$2 or as high as \$3.75 per share, and that Vista was a good short term investment which could still be bought at 75¢ per share although its market price was then up to 80¢ and would go in a few weeks to \$1 or \$1.50 per share. He also told one customer that dividends would be paid on the Vista stock and told another that the stock might be listed on the American Stock Exchange. He also represented to a customer that Vista owned 1,000

1/ Two other registered representatives who failed to appear at the hearings have previously been barred from associating with a broker or dealer. Securities Exchange Act Release No. 7674 (August 9, 1965).

acres in Tennessee adjacent to land on which oil had been discovered and that there was a possibility oil would be found on Vista's property.

There was no reasonable basis for any of the above representations or predictions. Nash had obtained from Vista interim consolidated financial statements for the first nine months of 1962 which reflected a net profit of only \$5,450 for that period. At this time Vista had 2,025,000 shares outstanding, so that the interim consolidated statements reflected earnings of only about $\frac{1}{4}$ ¢ per share. Although registrant obtained and sent to customers certain brochures issued by Vista, they did not contain any financial statements, and furnished no basis for the unwarranted representations made to customers. In fact Vista, which had been incorporated in March 1959, had net operating losses in 1959, 1960, 1961 and 1962, and a net income of only \$1,291 in 1963. From 1961 through the period during which registrant was selling Vista stock, two of Vista's subsidiaries were losing money and the earnings of the other two, neither of which had annual earnings during this period of more than \$8,374, were decreasing. And the record does not show that Vista owned any land in Tennessee or had taken any steps to list its stock on an exchange. Moreover, as we have repeatedly held, predictions of substantial price increases within relatively short periods of time with respect to promotional and speculative securities are inherently fraudulent and cannot be justified. 2/

Respondents deny that the representations and predictions recited above were made to customers. They further assert that the customers were informed that Vista stock was speculative and were sent such material as was made available by Vista, and that they were all sophisticated investors with prior experience in the securities market. However, the hearing examiner, who observed the demeanor of the witnesses, credited the customers' testimony as to the statements made to them by the respondents and we find no basis for disagreeing with him. That customers may have been sent the available material does not overcome respondents' failure to withhold or appropriately qualify their optimistic representations in the absence of sufficient financial information to serve as a basis for recommending the stock to customers, and neither their asserted sophistication nor information that the stock was of speculative quality could excuse the fraudulent statements made. 3/

2. Registrant, together with and aided and abetted by Nash, also violated the anti-fraud provisions in that it sold Vista stock to customers at prices which were unfair and not reasonably related to the prevailing market prices.

Beginning with an initial purchase of 5,000 Vista shares from another broker-dealer at 45¢ per share, registrant in the period October 18, 1962 through October 15, 1963, purchased a total of 110,750 shares of Vista stock, mostly from broker-dealers, at prices between 30¢ and 50¢ per share, and sold 108,350 shares to customers, mostly at 62.5¢ and 75¢ per share with one sale being at 80¢ and several at 87.5¢ per share.

2/ See, e.g., Crow, Brouman & Chatkin, Inc., Securities Exchange Act Release No. 7839, p. 6 (March 15, 1966); Hamilton Waters & Co., Inc., Securities Exchange Act Release No. 7725, p. 4 (October 18, 1965); Alexander Reid & Co., Inc., 40 S.E.C. 986, 991 (1962).

3/ See Wright, Myers & Bessell, Inc., Securities Exchange Act Release No. 7415, p. 4 (September 8, 1964); Leonard Burton Corporation, 39 S.E.C. 211, 214 (1959).

Of 169 sales to customers during the period, the prices charged by registrant in 91 such transactions represented mark-ups of from 38.9% to 150%, computed on the basis of the prices paid by registrant on purchases from other dealers on the same day as, or within one or two days of, the sales to customers. 4/ Registrant's prices were not reasonably related to the current market prices as represented by its own contemporaneous purchase prices and were clearly unfair.

Registrant and Nash contend that every day he obtained quotations on Vista stock from two or three dealers, that he took the average of such quotations as the selling price to registrant's customers, and that such quotations were indicative of the market and fair. We have consistently held, however, and the courts have affirmed, that prices contemporaneously paid between dealers in actual transactions are the best evidence of the current market prices, absent countervailing evidence. 5/ That the quotations assertedly obtained by Nash were not reliable indications of the market and were subject to negotiation 6/ is shown by the fact that registrant over the entire period of a year was consistently able to purchase Vista stock from numerous dealers 7/ at prices considerably below the prices allegedly quoted to Nash. Moreover, the record here contains additional evidence confirming that such quotations in this case were not reliable indications of the current market prices.

The Division presented data with respect to all transactions in Vista stock among dealers during the period involved here. That data shows that of the 169 sales made by registrant to its customers in the period October 1962 - October 1963, 160 were at prices representing mark-ups ranging from 38.9% to 200% over the highest price in any inter-dealer transaction on the same day. Three were at prices representing mark-ups of 20% over such prices and one at 9%, and only five were made at the same price as the highest same day inter-dealer transaction prices. 8/ Thus, registrant's sales prices to its customers, tested either against its own contemporaneous purchase prices or against the highest contemporaneous prices paid by any dealers in inter-dealer transactions, were unfair and violated the anti-fraud provisions. 9/

4/ Of the 91 sales, 25 were on the same days as registrant made purchases of Vista stock, and 59 were on the same day or the day before or the day after registrant made such purchases. The mark-ups in the 25 and 59 sales also ranged from 38.9% to 150%.

5/ Naftalin & Co., Inc., Securities Exchange Act Release No. 7220 (January 10, 1964); Crow, Brourman & Chatkin, Inc., Securities Exchange Act Release No. 7839, p. 10 (March 15, 1966); Barnett v. S.E.C., 319 F.2d 340 (C.A. 8, 1963). See also S.E.C. v. Seaboard Securities Corporation, 66 Civ. 489 (S.D. N.Y., June 6, 1966).

6/ Cf. Costello, Russotto & Co., Securities Exchange Act Release No. 7729, p. 4 (October 22, 1965).

7/ Registrant made purchases from approximately 14 dealers.

8/ Cf. Shearson, Hammill & Co., Securities Exchange Act Release No. 7743, p. 24 (November 12, 1965).

9/ The hearing examiner also concluded that registrant, aided and abetted by Nash, bid for and purchased Vista stock while engaged in a distribution of that stock, in willful violation of Section 10(b) of the Exchange Act and Rule 17 CFR 240.10b-6 thereunder. We have held that

(Continued)

3. On June 6, 1966, on the basis of charges relating to sales of securities of Halco Chemical Company and Mercury Electronics Corporation during the period October - December 1965, registrant and Nash were permanently enjoined by the United States District Court for the Southern District of New York from charging prices for any securities that are unfair and not reasonably related to the current market. 10/ In addition, on June 25, 1966, also in the United States District Court for the Southern District of New York, Nash was convicted of violations of the registration and anti-fraud provisions of the Securities Act, and of conspiracy to violate such provisions, in the offer and sale of stock of Allied Entertainment Corporation of America, Inc. during the period September 1962 - April 1963. 11/

4. In view of the foregoing, it is in the public interest to revoke registrant's registration and to expel it from membership in the NASD, and to bar Nash and Ignatoff from being associated with a broker or dealer.

Accordingly, IT IS ORDERED that the registration as a broker and dealer of Seaboard Securities Corporation be, and it hereby is, revoked; that Seaboard Securities Corporation be, and it hereby is, expelled from membership in the National Association of Securities Dealers, Inc.; and that Leon Nash and Harold Ignatoff be, and they hereby are, barred from associating with a broker or dealer.

By the Commission (Chairman COHEN and Commissioners WOODSIDE, OWENS, BUDGE and WHEAT).

Orval L. DuBois
Secretary

9 contd./

Rule 10b-6 is applicable to all distributions whether or not subject to registration under the Securities Act (Bruns, Nordeman & Company, 40 S.E.C. 652, 660 (1961)). In view of our other findings of fraud in this case, we do not consider it necessary to reach the issue of violation of Rule 10b-6. We note, however, that registrant's purchases and sales occurred over a period of about thirteen months. Registrant did buy a total of 110,750 shares and sell a total of 108,350 shares of Vista stock for its own account but such sales in themselves would not constitute a distribution within the meaning of Rule 10b-6; otherwise every broker-dealer actively trading a security would automatically be in violation of the rule. There are various factors in this case which suggest that registrant's continuous purchases and sales constituted essentially a trading operation; for example, registrant had no position in the stock prior to the beginning of this period and it never accumulated any substantial inventory.

10/ S.E.C. v. Seaboard Securities Corporation, supra.

11/ 64 Crim. 254.