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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

74-A-401

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
vs.)
)
HAY SPRINGS CORPORATION,)
et al.,)
)
Defendants.)

OFFICIAL TRANSCRIPT
RULING

Proceedings before the HONORABLE ALFRED A. ARPAJ,
Judge, United States District Court for the District of
Colorado, commencing at 2:15 p.m., on the 1st day of
November, 1978, in Courtroom C-501, United States Courthouse,
Denver, Colorado.

APPEARANCES:

ARTHUR J. KATSIAFICAS, JAMES BIRCHBY and JOSEPH
KRYSS, Attorneys at Law, Securities and Exchange Commission,
Denver, Colorado, appearing for Plaintiff.

ARTHUR S. BOWMAN, Attorney at Law, Denver, Colorado,
appearing for Defendants.

R U L I N G

1
2 THE COURT: I am not going to make specific findings
3 of fact and conclusions of law, but I will make certain
4 comments and observations and reach the conclusion which will
5 in my opinion comply with Rule 54 of the Rules of Civil
6 Procedure, the rule regarding findings of fact and conclusions
7 of law.

8 As I indicated at the outset, the Court is
9 considering in this aspect of this case evidence that has
10 previously been offered and received by the Court in other
11 hearings at which these defendants were present and with
12 counsel and either participated in or had an opportunity to
13 participate in those proceedings, particularly the proceeding
14 in June of 1974 on the application for preliminary injunction.

15 Of course, I am considering all the additional
16 evidence that has been received in the past two and a half
17 days of this hearing.

18 First, the Court adopts and makes a part of these
19 findings the uncontroverted facts which appear on Pages 3,
20 4 and the top half of Page 5 of the pretrial order which I
21 entered in this case on June 13th of 1978. Counsel each have
22 a copy of those uncontroverted facts which the Court signed.

23 I note now, as, of course, counsel are fully aware,
24 that neither counsel approved the pretrial order. There
25 weren't any exceptions formally filed to it, but this is

1 typical of many cases that we have from time to time, that is
2 wherein the lawyers don't agree that they are even in court
3 and that this is November 1st of 1978.

4 We had very little in the form of agreement by
5 counsel. This was truly an adversary proceeding with all
6 of the implements of war, and some of them even carried on
7 into this hearing. It has been quite aggressive, and, frankly,
8 I am pleased that I am now winding it up, as far as this
9 aspect is concerned, at least until a higher court may send
10 it back.

11 I see the Receiver whom I appointed in this case
12 in the courtroom, and his work is not done yet, but he is not
13 directly concerned I take it with this aspect.

14 Having started with the uncontroverted facts, it is
15 obvious from the acceptance of those uncontroverted facts
16 which I had done and clearly from the evidence in this case
17 that there has been a violation of the applicable Securities
18 Act laws and regulations in connection with the sale, offer
19 of sale, of securities in the Hay Springs Corporation, the
20 operation of Beran and Kaminsky and Associates, the Amidon
21 East, and also the promissory notes that were issued both by
22 Andrew Kaminsky and Ray Beran, and I think Hay Springs
23 Corporation had notes.

24 The obligations or documents representing the
25 advance of funds by various investors in these corporations

1 are securities under the Securities Act, and the mails, the
2 United States mails, were used in the sale of these securities.

3 The securities were sold in violation of the law
4 in that there were fraudulent representations made to some
5 of the purchasers of the securities, and there was a failure
6 to reveal facts to some of the purchasers of the various
7 securities.

8 I note at this point that the principals, Ray
9 Beran and Andrew Kaminsky, and certain of the corporations
10 stipulated for the entry by this Court of a permanent
11 injunction enjoining them individually and the entities also
12 from engaging in such practices in the future.

13 So, having found that securities were sold in
14 violation of the law, then the next issue to be determined
15 by the Court is the participation of the defendants Gower
16 and Weaver in the proscribed activities, either as principals
17 or as agents or as aiders and abettors.

18 I find as a fact that at all times with which we
19 are concerned in this particular aspect of the litigation
20 the defendant Gower was an attorney at law licensed by the
21 State of Colorado to practice law in the State of Colorado
22 and that he was engaged in the active practice of law in this
23 state.

24 And I also find that the defendant Weaver was at
25 all times pertinent to this litigation a Certified Public

1 Accountant, duly licensed in the State of Colorado.

2 And I find that Mr. Gower did perform certain legal
3 services for Andrew Kaminsky or for Beran, Kaminsky and
4 Associates, and for some of the related companies, that he
5 was not an employee in the strict sense or by definition of
6 Beran, Kaminsky and Associates or any of the associated legal
7 entities; that he billed these clients as services were
8 performed by him, legal services.

9 I also find that Mr. Gower acted as Trustee and that
10 he handled substantial funds through a trustee account which
11 he opened in the First National Bank of Denver and that the
12 purpose of that trust account was for the Trustee to hold the
13 funds separate from other funds that Beran, Kaminsky and
14 Associates have collected in other business ventures. That
15 account was opened on the 4th of December of 1973 with an
16 original deposit of \$43,000, which had been obtained from
17 various investors through the issuance of promissory notes,
18 presumably.

19 I also find that Mr. Gower resigned or tendered his
20 resignation at a stockholders meeting in February of 1974.

21 Mr. Gower did not engage directly in the sale or
22 offer to sell any of the securities that are involved in this
23 transaction, although his name and his title, that is attorney,
24 appeared on certain brochures which were used by the company
25 in promotion activities, and although Mr. Gower testified that

1 his name appeared thereon without his consent or knowledge,
2 nevertheless, there is no evidence whatsoever that he ever
3 objected to the inclusion of his name on such brochures or
4 in the dissemination or passing out of those brochures.

5 Mr. Gower did not personally contact any of the
6 investors, but I find it incredible and I do not accept the
7 explanation that he did not know from whom the checks made to
8 him as a Trustee came, in other words he did not know who the
9 investors were, and he just in many instances never looked at
10 the face of the check, just endorsed the check "Robert G.
11 Gower, Trustee."

12 In the first place, I find it hard to believe that,
13 and if I did believe it I would say he did not act as a
14 reasonable man should have acted under the circumstances and
15 certainly a man with a legal education and a license to
16 practice law, and those funds were rapidly taken out of the
17 account of Robert G. Gower, Trustee, and paid over for the
18 most part to Continental Colorado Corporation and that
19 corporation used the funds for its own purposes and not to
20 purchase certificates or Treasury bills or notes or
21 certificates of deposit, and some relatively small amount of
22 those funds were apparently diverted to Mr. Gower's own use,
23 but they were not unreasonable an amount and could reasonably
24 be the fair amount to be paid to him as Trustee.

25 So I find that Mr. Gower was an aider and abettor of

1 Ray Beran and Andrew Kaminsky in connection with the offer
2 and sale of certain of these promissory notes of Beran and
3 Kaminsky and Associates, and the funds of which eventually
4 went to Continental Colorado Corporation.

5 After the defendant Weaver, the evidence is that he
6 was an employee of Beran, Kaminsky and Associates and also
7 he worked with Continental Colorado Corporation. He served
8 as comptroller, but apparently was unable to give a definition
9 of what a comptroller did, except that he kept the books. So
10 he was the bookkeeper for Beran, Kaminsky and Associates and
11 the Continental Colorado Corporation, and he was a salaried
12 employee rather than working on a fee basis.

13 It is not clear to me from the evidence who paid
14 his salary, I mean the source of the funds for his salary,
15 but that's not unexpected in a messed up operation, and I
16 use that word intentionally, such as appears here where the
17 funds were bounced back and forth. There is no real
18 accounting either for the source of the funds or where they
19 finally went to.

20 And Mr. Weaver did attend many of the sales
21 meetings which were held at Beran, Kaminsky and Associates'
22 offices on Kipling Street in Lakewood, and although his
23 testimony was that he was just in and out of the meetings
24 carrying notes usually to Mr. Kaminsky or to Mr. Russell
25 Griffith, Jr., or going in there for instructions to do chores

1 for them, the evidence is quite clear in this case that even
2 when they had meetings at times Mr. Kaminsky wasn't even
3 around. He was out hustling for some more investors apparently.

4 Mr. Weaver also, it is clear from the evidence in
5 this case, did sign some letters, those letters being
6 in evidence as Plaintiff's Exhibit 7 and 8, and being from the
7 Continental Colorado Corporation ostensibly to the investors
8 of Amidon East.

9 According to Mr. Weaver's testimony, he put in those
10 letters what he was told to put in. In other words, the
11 substance of the letters was dictated to him by either
12 Griffith or Kaminsky, and I don't recall for sure which, I
13 think Griffith, but he actually signed the letters and caused
14 them to be placed in the mail, and in one of the letters in
15 evidence the addressee was invited to give consideration to
16 making further investments in the ventures of Beran, Kaminsky
17 and Associates.

18 Although there are just a few letters in evidence
19 in the case, they were offered and received by the Court as
20 typical of letters that were sent to the Amidon East
21 investors, so they are not isolated cases.

22 I do agree with counsel for the defendants that Mr.
23 Johnson's testimony was more accurately described and
24 characterized by defense counsel than it was by government
25 counsel, because I too kept fairly copious notes as I do in

1 most bench trials of the testimony, and Mr. Johnson said in
2 substance that he relied entirely on Andrew Kaminsky. He
3 trusted Kaminsky and he wrote his check for I believe a
4 \$10,000 investment, but he invested in that upon the
5 representation of Andrew Kaminsky and he said, and I have this
6 in quotes, "Everything was told me by Andy."

7 But he did say that, "Weaver was present when I gave
8 Andy the check and we were then made out a receipt for the
9 funds, which receipt was signed by Kaminsky."

10 On cross-examination, Mr. Johnson did say that he
11 did not rely on Weaver, and he also said that as far as he
12 could recall he never had seen Gower.

13 Well, Mr. Weaver's activity after the complaint
14 in this action was filed was somewhat unusual in that for
15 five months after the action was filed he still did work out
16 there at the Beran and Kaminsky headquarters.

17 At first he indicated that all he was doing was
18 searching for papers and documents which the various lawyers
19 had requested that should be gathered in so that they might
20 be used presumably in the defense of the complaint and
21 petition in this case. However, there is in evidence in this
22 case certain checks that were signed by Mr. Weaver in the
23 month of September, the month of July, also in the month of
24 October, 1974, so it shows that he was still out there doing
25 some work.

1 True enough, the evidence establishes that Mr.
2 Kaminsky's wife is Mr. Weaver's first cousin, and he testified
3 that he didn't receive any pay after I believe it was the 15th
4 of May of 1974 from Beran, Kaminsky and Associates, and that
5 hasn't been contradicted, so presumably it is true, but as I
6 gathered from Mr. Weaver's testimony, and supported by Mr.
7 Gower's testimony, he was sort of a lackey. He made
8 hamburgers for one of Kaminsky's ventures. I don't know
9 whether he was working towards being another Ray Crock with
10 McDonald's as the asset or not, but I can't believe that a
11 CPA and a MBA, and I didn't learn whether it was from Harvard
12 or the London School of Economics, would have so little
13 knowledge of what went on in these various enterprises for
14 which he kept the books, never asked what this money was for,
15 just posted it.

16 It doesn't take a CPA or an MBA to post deposits
17 from a copy of a deposit slip to a ledger account. An LLB
18 or a JD can do that. They are usually not very good
19 bookkeepers, so I can't believe that Mr. Weaver didn't know
20 something that was going on, or if he didn't know it, and I
21 accept that, then I say he should have known because he is a
22 man of -- well, I'm not going to use the word "intelligence"
23 in connection with this case, but certainly a man of training
24 and education and should have known better if he didn't.

25 So I must reach the inescapable conclusion that also

1 Mr. Weaver was an aider and abettor of the principals Beran
2 and Kaminsky and Continental Colorado Corporation in the sale
3 of non-exempt, non-registered securities.

4 Now, having found that each of these defendants, the
5 lawyer and the bookkeeper, aided and abetted the principals in
6 the violation of the Securities Act, and that was done in 1973
7 and the early part of 1974, then the question necessarily
8 arises as to the ultimate disposition that should be made with
9 regard to the plaintiff's claim and the defense presented by the
10 defendants.

11 It is well over four years now since this proceeding
12 was instituted, and the critical question for me to determine
13 at this time is whether or not there is a reasonable
14 expectation that these defendants will again engage in the
15 activities that I have found that they aided and abetted in
16 and which were in violation of the Securities Act and which,
17 of course, acts are proscribed by the Securities Act and the
18 regulations.

19 As I indicated in my colloquy with the defense
20 counsel while he was making his closing argument, and he I
21 believe agreed, that the weight of authority is that the
22 mere fact that the question may be moot now because the
23 activity has ceased does not preclude the Court from issuing
24 an injunction if the Court should feel that this is the
25 proper course to follow or pursue.

1 There hasn't been any indication by any evidence in
2 this case in this Court's opinion that would suggest that
3 either of these defendants present a cognizable danger of
4 repeating the acts which I have found to be wrongful.

5 First, as to the defendant Gower, he has conceded
6 that what he did was stupid. I would hope and I believe that
7 he has sense enough now to not reengage in such activities
8 in the future. If I felt that he would, I would not hesitate
9 to enjoin him because of what he has done in relation to these
10 transactions.

11 I don't view this as just a hindsight reflection.
12 It is a classic example in my opinion of what can and
13 apparently did happen to a member of our profession who thinks
14 that his license to practice law is sufficient for him to do
15 anything in the legal field. Securities law or securities
16 work in the legal field is complex. It is difficult to
17 comprehend, and while you should not undertake it without
18 either some special training or some assistance from an
19 experienced securities lawyer, I believe that Mr. Gower will
20 not reengage in such activity, and for that reason and in
21 the exercise of my discretion on the facts, I find and
22 conclude that the requested injunction will be denied.

23 As to Mr. Weaver, it isn't quite as clear that he
24 will not engage in activities which may be in violation of
25 the securities law, because he is now with an accounting firm

1 and at least they have made one certification according to the
2 evidence in this case in regard to a proposed offering I
3 believe of securities, but I believe and I conclude that he
4 should be treated the same as Mr. Gower with the expectation
5 on the part of the Court that he will not engage in any
6 activities in the securities field also without some further
7 education or indoctrination into this area, and I don't
8 believe that there is a reasonable expectation that he will
9 violate the securities laws in the future, and the policies
10 of the Act which basically are to protect the public, the
11 investors, will not be thwarted by this decision, and the
12 motion for temporary injunction in his case is also denied.

13 Each party will pay its own costs. No costs will
14 be assessed.

15 MR. KATSIAFICAS: I have one question, Your Honor.

16 THE COURT: All right.

17 MR. KATSIAFICAS: Was it your intention to find that
18 Mr. Weaver violated just the registration provisions and not
19 the anti-fraud, whereas you found I believe Mr. Gower too had
20 violated both.

21 THE COURT: I found that he was an aider and abettor
22 in both. No, it is my intention that the finding be the same.

23 MR. KATSIAFICAS: That's why I'm asking.

24 THE COURT: Be the same as to Mr. Weaver, both
25 provisions, and I so find and conclude as a matter of law from

1 the evidence.

2 All right, Court will be in recess.

3 (Whereupon, at 2:30 p.m. the proceedings were
4 concluded.)

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REPORTER'S CERTIFICATE

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I, Donna G. Spencer, Certified Shorthand Reporter and Official Reporter to this Court, do hereby certify that I was present at and reported in shorthand the proceedings in the foregoing matter;

Further, that I thereafter caused my shorthand notes to be reduced to typewritten form, comprising the foregoing Official Transcript;

Further, that the foregoing Official Transcript is a full and accurate record of the Ruling of the Court at the completion of the presentation of counsel in this matter at the time and place set forth.

Dated at Denver, Colorado, this 7th day of November, 1978.

Donna G. Spencer
Certified Shorthand Reporter

UNITED STATES DISTRICT COURT
DENVER, COLORADO

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action 74-A-401

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
LEONARD W. WEVER and)
)
ROBERT D. GOWER,)
)
Defendants.)

O R D E R

This matter having come on for trial before the Court on the thirtieth day of October, 1978, and the Court having heard the testimony of witnesses and oral arguments of counsel for the parties, and having made oral findings and conclusions on the record, it is hereby

ORDERED that the motion for permanent injunction against defendants Leonard W. Wever and Robert D. Gower be and the same hereby is denied.

DATED at Denver, Colorado, this 15th day of November, 1978.

BY THE COURT:


ALFRED A. ARRAJ, Judge
United States District Court