

**In the Matter of RALPH HAROLD SEIPEL doing business as INVESTORS SURETY COMPANY
1728 N Street, N.W., Washington, D.C.**

File No. 801-1

SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISORS ACT OF 1940, Section 203(d), Release No. 93

March 31, 1958

ACTION:

**INVESTMENT ADVISER REGISTRATION
Grounds for Revocation of Registration
Injunction**

Where registered investment adviser is permanently enjoined from employing any device, scheme or artifice to defraud clients or prospective clients, held, injunction is against "engaging in or continuing any conduct or practice in connection with" investment advisory activity, within meaning of Section 203(d) of Investment Advisers Act of 1940, it being immaterial that registrant had no clients at time of conduct on which injunction was based, and it is in public interest to revoke registration as investment adviser.

COUNSEL: APPEARANCES:

Martin J. Meenehan, James J. Duncan, and Anthony B. CuvIELLO, of the Washington Regional Office of the Commission, for the Division of Trading and Exchanges.

Charles F. O'Neill, for Ralph Harold Seipel.

TEXT: FINDINGS AND OPINION OF THE COMMISSION

These are proceedings pursuant to Section 203(d) of the Investment Advisers Act of 1940 ("Act") to determine whether to revoke or suspend the registration as an investment adviser of Ralph Harold Seipel, doing business as Investors Surety Company ("registrant").

After appropriate notice, hearings were held before a hearing examiner, and registrant and our Division of Trading and Exchanges ("Division") submitted proposed findings. The hearing examiner filed a recommended decision in which he recommended that registrant's registration be revoked, and registrant filed exceptions to the recommended decision and a supporting brief. Thereafter we heard oral argument. Our findings are based upon an independent review of the record. n1

Section 203(d) of the Act provides, in pertinent part, that we may revoke or suspend the registration of an investment adviser if we find that such action is in the public interest, and that the investment adviser is "enjoined by a court of competent jurisdiction from acting as an investment adviser . . . or from engaging in or continuing any conduct or practice in connection with any such activity". Registrant is permanently enjoined by a decree entered on October 11, 1954 by the United States District Court for the District of Columbia in an action instituted by this Commission n2 from employing any device, scheme and artifice to defraud a client or prospective client, or from engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any client or prospective client in violation of Sections 206(1) and (2) of the Act. n3 The injunction was based on findings by the Court that registrant had violated those Sections in that he had falsely represented, to persons responding to advertisements placed by him in various newspapers inviting telephone requests for stock market information, that registrant absolutely guaranteed clients against loss in the stock market, maintained cash reserves to protect against loss, rendered professional trading services and had

twenty-five years of trading experience, had many clients, maintained branch offices and a foreign exchange department, and had an arrangement with a certain established brokerage firm for the performance of various services. In fact, the Court found, registrant had no office, organization, associates or customers.

Registrant contends that the Court's decree does not constitute a basis for revocation or suspension under the terms of Section 203(d) because it merely enjoins him from making misrepresentations in an effort to attract clients. He contends that since he had no clients at the time he engaged in the conduct complained of, he was not engaged in any activity of giving investment advice, and that accordingly, no "conduct or practice" connected with such activity as contemplated by Section 203(d) was involved. We find no substance in these contentions.

Registrant was registered as an investment adviser, and his solicitation of clients and the misrepresentations he made in the course of such solicitation were connected with the conduct of an investment advisory business. We consider that the solicitation of clients is part of the activity of an investment adviser and it is immaterial that registrant was not successful in his efforts to obtain clients. Moreover, we think it is the clear intent of the Act that any injunction based on violations of Sections 206(1) and (2) of the Act, which apply to prospective as well as to existing clients, comes within the terms of Section 203(d). Furthermore, the injunction does not have the limited scope which registrant attributes to it, since it enjoins him from engaging in any conduct which would operate as a fraud on both clients and prospective clients.

Registrant also stresses that this Commission did not ask the District Court to enjoin him from acting as an investment adviser and contends that the Court was misled into believing that if the injunction were granted, registrant could continue to act as an investment adviser without further action being taken against him as long as he refrained from making the stated misrepresentations. However, the excerpts from the hearings before the District Court which were made part of the record in this proceeding show that our counsel merely stated that this Commission was not seeking, and had no power to seek, an injunction restraining registrant from engaging in business as an investment adviser, and that the Court understood that the effect of the injunction being requested would be to prevent registrant from continuing to make the misrepresentations he had been making. We find nothing in the proceedings before the Court indicating that the Court was in fact misled, and there is nothing in the Court's Order limiting its effect so as to preclude the instant proceedings or action by us revoking registrant's registration if we find it in the public interest to do so.

The remaining issue before us is whether it is in the public interest to revoke or suspend registrant's registration as an investment adviser. Registrant contends that the Division failed to make a showing that the public interest would be served by the revocation of his registration. He asserts that no one was damaged as a result of the practices enjoined, that there is no threat of future damage to the public, and that registrant's behavior since issuance of the injunction has been blameless. However, in view of the seriousness and complete falsity of the representations which the District Court found registrant made to prospective investors, we find it necessary and appropriate in the public interest that registrant's registration as an investment adviser be revoked.

An appropriate order will issue.

By the Commission (Chairman Gadsby and Commissioners Orrick, Hastings, and Sargent),
Commissioner Patterson not participating.

Endnotes

n1 In the course of the hearing, counsel for registrant made an oral motion to dismiss the proceedings. However, although advised by the hearing examiner that our Rules of Practice require such motions to be made in writing, counsel failed to submit a written motion, and we therefore consider the motion to have been abandoned.

n2 The injunction decree was affirmed on appeal on November 3, 1955, and a petition for rehearing was denied on February 29, 1956.

n3 Sections 206(1) and (2) of the Act make it unlawful for a registered investment adviser, by the use of the mails or facilities of interstate commerce, to employ any device, scheme, or artifice to defraud any client or prospective client, or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.