

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

RE, RE AND SAGARESE
123 Greenwich Street
New York 6, New York

GERARD A. RE
GERARD F. RE

File No. 8-7275

Room 292 Securities and Exchange Commission Building
425 Second Street N.W.
Washington, D.C.
Thursday, May 4, 1961

The above-entitled matter came on for oral argument, pursuant to notice at 2:30 p.m.

BEFORE:

CHAIRMAN WILLIAM L. CARY
COMMISSIONER EDWARD N. GADSBY
COMMISSIONER BYRON D. WOODSIDE

APPEARANCES:

RALPH S. SAUL, ESQ.,
On behalf of the Division of Trading and Exchanges.

MILTON S. GOULD, ESQ.,
Gallop, Climenko and Gould on behalf of the Respondents.

PROCEEDINGS

CHAIRMAN CARY: This is an Oral Argument in connection with proceedings instituted under Sections 15(b) and 19(a)(3) of the Securities Exchange Act of 1934 to determine whether the registration of broker and dealer of Re, Re and Saragese should be revoked and whether Gerard A. Re and Gerard F. Re should be suspended or expelled from membership in the American Stock Exchange.

The Division of Trading and Exchanges of the Commission and respondents have entered into a stipulation of facts and have filed briefs.

It is proposed that any Commissioner, at the time a decision is rendered in this case, may participate therein, with the understanding that if he was not present at this oral argument, he will read the transcript of the argument.

Is this agreeable to all counsel?

MR. GOULD: It is agreeable to Respondents.

MR. SAUL: It is agreeable to the Division.

CHAIRMAN CARY: Now, the requests for time have been submitted as follows:

Mr. Saul, on behalf of the Division of Trading and Exchanges, thirty minutes direct and fifteen minutes Rebuttal.

Mr. Gould, on behalf of the Respondents, sixty minutes.

MR. GOULD: That is right, sir.

CHAIRMAN CARY: You may proceed.

ORAL ARGUMENT ON BEHALF OF THE DIVISION OF TRADING AND EXCHANGES

By

RALPH E. SAUL, ESQ.

MR. SAUL: Mr. Chairman, Members of the Commission.

I am appearing as counsel for the Division of Trading and Exchanges in the matter of Re, Re and Sagarese. The Division, in its brief filed with the Commission, contends for the reasons stated in that brief, that registrant, Re, Re and Sagarese -- Jerry Re and Gerard F. Re -- should be found to have willfully violated the provisions of the Federal Security laws set forth in the orders for proceeding; that Jerry Re, and Gerard F. Re, should be

expelled from membership on the American Stock Exchange, and that the registration of Re, Re and Sagarese, as a broker/dealer, should be revoked.

In my argument for the Division, I would like to make three points.

First, I would like to outline the procedural history of this case which is now before the Commission and give some explanation of the stipulated record.

Secondly, I would like to present briefly, the Division's view of what this case is about; and

Thirdly, I would like to discuss the culpability of Gerard F. Re.

Turning to the procedural posture of this case, this proceeding is now before the Commission on a stipulated record which has been made public in an open hearing. The entire record in this case, by consent of the Respondents, was made public on February 27, 1961, over two months ago.

The stipulation entered into by the Division and the Respondents provides that Respondents, solely for the purpose of this proceeding, did not contest any of the facts alleged in the Commission's Orders.

It is agreed that the Commission, upon the basis of the stipulated record which is now before it, may make such findings of fact and conclusions of law as it may deem appropriate, including findings of willful violations of any of the provisions of the Securities Act and the Exchange Act, and the rules adopted thereunder. The Commission is, therefore, not restricted in its findings to the violations alleged in the Orders for proceeding.

When this procedure for preparing a record in this case was proposed at the hearing, Mr. Gould, counsel for the Respondents, indicated that this procedure would eliminate the need for a lengthy, time consuming hearing; but at the same time, the record would be just as complete as a full hearing.

The Hearing Examiner, Mr. Hislop, requested that the Division, in view of the public interest involved in this case, present the proposed procedure to the Commission. That proposed procedure was so presented to the Commission, and the Commission indicated its concurrence with this procedure.

Much of the record in this case is based upon the testimony of witnesses taken in the course of the private investigation of the Res. In fact, the stipulation -- or the Attachment B to the stipulation -- contains a list of over 75 witnesses who testified in the private investigation.

At the hearing Mr. Hislop, the Hearing Examiner, rightfully expressed concern that the testimony of witnesses taken in private investigations was now being made public when

these witnesses had not been previously informed that their testimony would be used for that purpose. The Hearing Examiner therefore requested that the Division notify all witnesses whose testimony was taken in the private investigation, that their testimony was being made public and to give these witnesses an opportunity to inspect their testimony and to make any additional public statement that they might wish, in the hearing.

The Division immediately complied with Mr. Hislop's request and informed all witnesses whose testimony is set forth in Attachment B to the stipulation, that their testimony was being made public and that if they wished to correct their testimony or to make an additional public statement, the record would remain open for that purpose.

Several witnesses asked to inspect their testimony and they were afforded that opportunity.

No witness asked to be heard.

I would now like to turn to my second point. That is, to explain what in the Division's view -- just what this case is about.

I think the significance of this case -- the first administrative proceeding by the Commission against Exchange Specialists -- can only be understood by examining the role of the Res as specialists in the Exchange market.

The Res were registered as Specialists in about twenty securities on the American Stock Exchange. The Division's investigation covered only nine of these Securities. Under the rules of the Exchange, the Res were entrusted with two functions, essential to the operation of the Exchange market.

The first function was to execute orders entrusted to them by other members of the Exchange. These orders were left with them, when the current market price was away from the price of the orders. These orders would generally be limited price orders and stop loss orders. Some of these orders were for the accounts of other members. However, most of these orders were for the accounts of public customers.

The second function entrusted to the Res was insofar as reasonable, practicably, to maintain a fair and orderly market in the securities in which they were registered by buying and selling for their own account.

These two responsibilities, entrusted to the Res, executing orders for other members and their customers, and maintaining fair and orderly markets, placed the Res in the position of highest trust and responsibility to other members of the Exchange and to the many thousands of investors who entrusted their orders to them, and who depended upon the Res to make fair and orderly markets in the securities in which they were specialists.

I think the dependence of the ordinary investor who wished to buy or sell securities on the Exchange in which the Res dealt, was almost complete. The ordinary investor did not know the Res; in fact, the very existence of the Res and their functions were probably unknown to most investors, as they sat in Board rooms or as they went to their customers' men.

But more than that -- the ordinary investor, by means of the intricate nature of the Exchange market and the many factors affecting Exchange prices, was compelled to rely heavily upon the Res for the honesty of the prices upon which they made their investment decisions.

Ordinary investors were therefore almost completely dependent upon the integrity and the fidelity of the Res in executing their orders; in quoting to them honest prices. The full extent of the wholesale breach of fiduciary obligations by the Res can be appreciated by these few facts:

During the six-year period covered by this proceeding, the Res were entrusted with thousands of limited price orders and stop orders from investors and all of these orders, they entered in their book. The relationship between the Res and each of these customers was fiduciary in nature. The Res were held to the same high standard of conduct as the law imposes upon all vested with fiduciary powers.

Also, during this same period, the many investors watching the tape in Board rooms or in obtaining quotations from their brokers, had every reason to expect that the prices upon which they based their investment decisions were honest and fair and reflected a free market.

What these investors did not know was this:

During most of the six-year period covered by these proceedings, the Res were engaged in unloading their own personal holdings of stock, or those of their cohorts, in the most profitable manner possible.

They were doing this unloading through the use of their Specialist position. The Division estimates at least \$10 million in securities were distributed through the dummy accounts of the Res and through the Res' specialist trading account.

Rather than using their experience, skill and judgment to execute the orders entrusted to them in the interest of investors, the Res used the secret information derived -- derived -- from their book and their expert knowledge of the market to sell their own securities and the securities of others.

In fact, many of these investors who had entrusted their orders to the Res were sold the very shares that the Res were engaged in distributing.

During this six-year period, these ordinary investors did not know that the Res were rigging the market in which these distributions were made. For example, they did not know that the up-ticks at the close, which appeared to indicate buying power in the market, were either made by the Res or one of their cohorts to create the appearance of trading activity. They did not know that the sudden increase in volume or in price on the Exchange may have been induced by the touting of the Res. They did not know that the Res closed the market to outsiders who were aware that the Res were rigging the market.

I think the Edelman situation cited in the Division's brief illustrates this point. They did not know that some trades on the Exchange, which might depress the market price were not even reported on tape.

During the six-year period covered by this case, the ordinary investor did not know that the Res were using their pivotal position in the market to finance the ambitious schemes of the Burrells and others, who for one reason or another, could not distribute their securities through normal channels.

They could not register their shares with this Commission.

The ordinary investor did not know that the securities he purchased on the Exchange were unregistered and that he was, therefore, being denied access to the material information which a registration statement would have provided. Nor did the ordinary investor know that the Res, because of their close and, in at least one installation, controlled relationship to the issuers, had access to material information unavailable to the public and were trading on the basis of that information to their own personal advantage.

I think the Rokeach situation mentioned in the brief is an instance of this.

The immense trust and responsibility imposed upon the Res in their position as Exchange Specialists, and the manner in which the Res exercised that responsibility, can be best illustrated by the events of January 28, 1959, described on pages 59 through 63 of the Division's brief.

An ordinary investor, looking at the tape in his Board room on the morning of January 26, would have seen the opening trade in Thompson-Starrett at 2 3/4's. The stock, during the previous five days, had been trading on heavy volume and rising prices. The ordinary investor who might have been lured into this market by the previous day's trading activities would rightly assume that the activity he saw represented the operations of free and open markets. He could not, and did not, know that the activity during this period was generated by the Res in order to sell their holdings of Thompson-Starrett stock.

The ordinary investor would have been surprised to learn if he entered a buy order on January 26, 1969, that the stock he purchased would probably have been the very shares which the Res were engaged in distributing at artificially high prices. I believe that the Res, on that one day, distributed over 30,000 shares of Thompson-Starrett stock.

If he entered the market early in the morning, he would have purchased Thompson-Starrett stock at 2 3/4's. By 1:00 o'clock, he would have seen the price of that stock fall off to 2 1/8th. The ordinary investor would rightly assume that the decline in market prices represented the free interplay of supply and demand on the Exchange. What he did not know was that the fall-off in price to 2 1/8th occurred because Jerry Re had refused to "eat" Edelman's stock and continued to back away from the stock that was being thrown at him by Edelman.

This instance represents one among many in this record, demonstrating the complete contempt of the Res toward the laws administered by this Commission.

The provisions of law violated by the Res reads like a catalogue of the Federal Security laws. The Res violated Section 5 of the Securities Act by making at least ten unregistered public offerings of the securities of the issuers.

The Res violated Section 17 of the Securities Act by delivering or causing others to deliver false prospectuses covering the public offerings of Trans Continental Industries, Inc., Highway Trailer Industries, Inc., and Silver Creek Precision Corporation.

The Res violated Rule 10(b)(6) adopted under Section 10(b) of the Exchange Act by bidding for and making purchases for their Specialist account of securities while engaged in the distribution of those securities.

The Res violated Section 11(b) of the Exchange Act, by accepting and executing on countless occasions, discretionary orders for the purchase or sales of securities in which they were specialists.

The Res violated Section 15(a) of the Exchange Act by carrying on an unregistered broker/dealer business for at least four years.

The Res violated the anti-fraud provisions under the Securities Act and the Exchange Act on literally countless occasions by failing to disclose their market activity to other members and customers who had entrusted their orders to the Res. And so on.

I don't think it is necessary to list the rest of the violations. I think that the record in this case speaks for itself, but there is one other area that I would like to turn to. I think this bears on the public interest. That is the violations by the Res of Exchange rules.

The Res persistently and flagrantly violated the rules of the Exchange of which they were members. For example, the Res, during the six-year period covered by these proceedings, made no reports to the Exchange under the following rules:

Rule 520 of the Exchange which requires a member to report any interest in or knowledge of any options or selling agreements in securities traded on the Exchange.

Rule 444(a) requiring a member to report any borrowings of over \$1,000 from any source. The Res, as the record shows, borrowed -- allegedly borrowed -- from the Miranda account.

Rule 177, requiring a Specialist to report any unusual activity or price change or any unusual transactions in a stock in which he was registered. No reports were ever made under that rule.

Rule 445, requiring a member to report weekly all underwriting obligations and the net position resulting therefrom.

Rule 363 requiring a member to report weekly transactions in any joint account trading in any securities on the Exchange in which he has knowledge.

In addition, failing to file reports with the Exchange. For example, the Res filed a report under Rule 440 of the Exchange, stating in effect, that they carried on no public customer business. An examination of Exhibit 17 and 24 of the Division reveals that the Res carried on an active and voluminous business with public customers and there are other violations of the Exchange rules.

Perhaps the most important violation was of Rule 174 which requires a specialist to limit his dealer activities to transactions with reasonableness, to maintain a fair and orderly market, the heart of the regulation of Specialists on the Exchange. This rule was repeatedly violated by the Res. I don't think it is necessary to go on and list the Exchange rules which were violated by them.

The third and last point which I would like to discuss -- this is the most important point, I think, of this argument -- that relates to culpability of Gerard F. Re.

Respondents in their brief have stated that the sole issue before this Commission is what sanction if any should be imposed upon Gerard F. Re. Since, by implication the Respondents concede that Jerry Re is guilty and the most severe sanction should be imposed upon him, we will discuss only the culpability of Gerard.

In their brief, Respondents concede that the facts plainly justify the imposition of sanctions but that the sanction imposed upon the younger Re should be less severe than that imposed upon his father because of the substantial difference in the degree of culpability between the two.

The Division will present some of the facts in the stipulated record to demonstrate that the younger Re participated day by day with his father in the wholesale breach of trust as an Exchange Specialist and in the numerous and gross violations which occurred in this case.

To speak of Gerard F. Re as less culpable than his father, misconceives the meaning of this case. Viewed relative to his father, Gerard Re can be said to be less culpable. Viewed in absolute terms, there can be no doubt of Gerard's culpability.

The actions of Gerard F. Re must be judged on their own and these actions merit the most severe sanction which this Commission has the power to impose.

A brief review of the activities of Gerard can leave no doubt of his culpability. Gerard F. Re shared equally with his father in the profits of the firm. The participation of father and son was 48 1/2 percent; Sagarese, the third partner, is a former employee of the Res who was brought into the firm in 1955 and who participated in only three percent of the profits and did not share any of its losses.

The third partner of the firm, Sagarese, has stated before the Exchange Committee on Business Conduct that he operated under the supervision of either the father or the son. Sagarese has said that in the case of any non-routine action, he would check with either the father or the son, and not necessarily with Jerry Re.

Gerard F. Re was responsible for the day-to-day operations of the firm. His father has testified that Gerard took charge of the administrative side of the business and the record amply supports this.

Gerard gave instructions to make deliveries of securities to the Miranda and Grande accounts. Gerard F. Re endorsed checks deposited in the Grande account. Gerard F. Re executed notes evidencing alleged loans from the Miranda account; but Gerard F. Re's activities went beyond mere administrative routine.

Examination of the record shows that Gerard was particularly active in obtaining a listing of securities on the Exchange. For example, the record shows that he was very active in obtaining the listing of Rokeach, Skiatron; United Pacific Aluminum Corporation; and Silver Creek Precision, on the Exchange. With respect to the listing of Rokeach, it was Gerard F. Re who informed the Exchange that he and his father were members of the Rokeach controlled group.

Rokeach was the company in which the Res later held 20 percent of its stock but most important, Gerard F. Re actively participated in the wholesale and gross violations of the law described in the Division's brief. Any doubts about Gerard F. Re's participation can be quickly dispelled by the testimony of the two principal dummies for the Res, Grande and Wheeler.

Charles A. Grande has testified under oath that it was either the father or the son who opened his account at Josephthal. He was not sure. Grande has testified that with respect to his transactions in Skiatron, the arrangements for those transactions were mostly made by Gerard F. Re but it was not only in Skiatron that Grande consulted with Gerard F. Re. He has admitted in his testimony that in connection with the Swan-Finch transactions, that he "discussed a lot of this with Gerard F. Re."

When he was asked about the circumstances surrounding the purchase of certain securities for his account, Grande replied -- this is a quote from Mr. Grande 's testimony:

“I would have to check with Gerard, because I think Gerard, he was an agent, but he – Gerard -- more or less told me what I could buy and it was through him, and to the best of my recollection, and the agents must have called me and I made the deal with him, and had him deliver that back and forth, I would have to ask Gerard that.”

That is on page 118 of the Grande testimony of March 22, 1960.

Wheeler, the other dummy for the Res, in his testimony, has stated that, “When we received instructions from the Res, they usually came from Gerard,” but we need not rely upon the testimony of the Res’ dummies to implicate Gerard. The whole illegal scheme here shows the active participation of Gerard F. Re. After the Res, both Jerry and Gerard and Grande, consented to a permanent injunction in the Swan-Finch case, which was brought by this Commission in 1957, the Grande account at Josephthal, was closed out. It is the contention of the Division that after the Grande account was closed out, that the Res set up the Miranda account to continue their illegal distributions of securities on the Exchange.

The Miranda account first started to operate in late July 1957. Gerard F. Re, according to his own testimony, was in Zurich, Switzerland, in early July 1957 for about two weeks.

The first cable instruction from the Swiss Credit Bank in Zurich to its agent in New York concerning the Miranda transactions arrived in New York on July 17, 1957. It was an instruction for the agent of the Swiss Credit Bank in New York -- Swiss/American Corporation -- to pick up 20,000 Rokeach warrants from the Grande account on behalf of “Jose et Gerardo Miranda”.

The warrants delivered out of the Miranda account were receipted for by Gerard F. Re; then delivered to the Miranda account at Swiss/American. The pattern was now established for three more years of illegal activity.

For these reasons, for the reasons stated in its brief, the Division respectfully submits that both the Res should be found to have willfully violated the Securities laws and that the Commission should impose the maximum sanction within its power upon both.

COMMISSIONER GADSBY: Mr. Saul, do I understand you to say that the Res advised the Exchange that they controlled Rokeach?

MR. SAUL: They did. They advised the Exchange -- there is a letter to the Exchange which I believe is quoted in the Division’s brief on page 28, in which Gerard F. Re advised the Exchange that the Res, father and son, were members of the Rokeach control group.

COMMISSIONER GADSBY: So the Exchange knew that the Res were in that group at the time that they assigned the specialist listing to the Res. Is that customary?

MR. SAUL: I hope not, Mr. Commissioner. I don't know.

CHAIRMAN CARY: Thank you. Mr. Gould.

ORAL ARGUMENT ON BEHALF OF RESPONDENTS
By MILTON S. GOULD, ESQ.

MR. GOULD: If the Commission please, I certainly concur in what Mr. Saul has said about this being a most unusual case and I am happy, I rejoice, that it is an unprecedented case, and perhaps because it is an unprecedented case, it requires that it be treated with perhaps an unprecedented kind of advocacy.

First of all, I should make clear the kind of advocacy that at least Mr. Berman and I have tried to employ in our representation of these people. The Commission should be aware that we are not the first lawyers who have appeared for the Messrs. Re in this case.

CHAIRMAN CARY: We are aware of it.

MR. GOULD: And that we did not appear in this case until sometime in the middle of January when, if I may be euphemistic, the case was fully matured.

We were at the point, in the middle of January, where through the inevitability with which administrative proceedings move, there was to be a hearing, a trial, a public exhibition of what had happened in this case, and when we were brought into the matter, we concluded that the only appropriate professional function that we could perform in the case was, first of all, to avoid the waste of such a proceeding; such a full dress hearing, in which would be made public, all the nonsense about the rules of evidence.

I think we all know about it. We did not need it because the facts were clear. What had happened in the case was manifest. It was obviously a situation in which there could be no quarrel about culpability, and resort to the usual tools of the lawyer's trade were not going to do any good with respect to the exposure of the facts. And so, with the knowledge, understanding, and consent of the Messrs. Re -- father and son -- we resorted to what we thought was a procedure calculated to facilitate the public exposure of what had happened; an exposure which had to take place and the administrative resolution of that crime.

I emphasize their cooperation in that procedure because there was still open to them at that point, the avenue more tortuous, more expensive, of fighting it out. I must say for them in full conscience, and without any criticism of our numerous predecessors in the case, that I don't think they ever understood what this case was about until it was explained to them at that juncture in the matter.

Then, for the first time did they understand the character of the allegations made against them; the importance of those allegations; and the gravity of the administrative and civil sanctions which could be imposed upon them as a consequence of those things.

And so we appear here today -- I, at least-- in a most unusual role; the role where I don't say to the Commission, "It did not happen", and I don't say to the Commission that the Division has been unfair or has over-emphasized the gravity of these things. I concur completely with the Commission staff in its analysis of the facts and in its professional appreciation of the gravity of those facts and as I said earlier, this is perhaps a most unusual kind of advocacy. Certainly it is for me.

Now, those of us who have been prosecutors recognize that in every important case where the guilt or innocence of people is concerned, whether it is in an administrative proceeding or in a stockholder's suit or even in a criminal case, there develops a peculiar psychological terminology of the case -- a vocabulary peculiar to the case.

I remember as a young prosecutor how we used to strive to find out who was going to be labeled the "king pin" in the case; who was going to be the metaphorical spider that sat in the middle and guided everything that went on. I understand that. That is good advocacy.

In this case, I respectfully suggest that where professionals are dealing with a professional Commission, we should not be seduced by this kind of semantic trickery. Over and over again, Mr. Saul in his brief, in his argument, talks about "the Res".

Gentlemen, there are not any Res. There are two human beings; one identified in the record as Jerry Re, and one identified in the record as Gerard Re.

Jerry, the father, the old war horse, as I shall point out to you, the experienced man; and Gerard, the Son, the younger man, like the young Aeneas, is following in his father's unequal footsteps. Gerard Re, who could not have been an equal partner in a firm of this size unless he happened to be the son of Jerry Re. That is why he is here. Re is here before you today, not because he was a Specialist in a firm that was regarded as one of the foremost Specialist firms on the floor, but he was pappa's son. That's how he got there. Now, that is no excuse for violating the law. I don't suggest; and I certainly agree with my friend, Mr. Saul, that when we start to measure culpability we have to use absolute standards.

If a father and son go out to commit a murder, the mere fact that the father designed it and the son just held the gun does not exculpate the son. I would be naïve to think that I could impress a Commission of this sophistication with any such delicate concept. It is not so.

In this case, we hear about the Res and when we hear about the Res, we would think that everything that was done here was done by two people, and then we hear about the cohorts.

More of this semantic trickery which has more place before a jury than before a Commission like this, because there were not any Res and there were not any cohorts and before I proceed to a demonstration of what I have said to the Commission, because I think that that is highly germane to a consideration of what sanction should be imposed to this difficult attempt at evaluating, at assessing comparative guilt, one of the toughest jobs that any tribunal can have; before we come to that, I should like to make a few comments on the case as it comes to the Commission.

It is an important case. It has had an extraordinary public impact and the public impact has been somewhat unfortunate because it makes more difficult the administrative task of assessing culpability and of imposing sanctions. A Commission which yields to the kind of publicity that we have had, unfortunately, in this thing, finds itself in the position of saying with considerable administrative merit, "If we don't kill them both, it looks as if we are being timid or we are being afraid", or something like that.

I think that this Commission is too conscious of the fundamental concepts of justice to be persuaded by that. For example, the publicity talks about victims and proceeds to enumerate the victims, and proceeds to name the victims. I respectfully suggest to you that with one possible exception and the amount involved is not worth talking about, none of the people who have been described as victims were in fact victimized. All of them made a little money. Maybe they were something different from victims.

Maybe they were just friends who took advantage of these techniques, these procedures. There are no victims here.

Now, I recognize that sanctions must be imposed on these people. I think that in the case of Jerry Re, there is almost nothing that I can conscientiously say to this Commission which should affect the character of the sanctions to be imposed. I think I would be wasting the Commission's time if I tried to do it, but with respect to the severity of the sanctions to be imposed to Gerard Re, I respectfully suggest to you that there is an extremely difficult task -- not anything as simple as Mr. Saul suggests. We have had this record meticulously examined in an attempt on our own part to arrive at this difficult quantitative formula.

How guilty is Gerard Re, the son; and there are I think, some 80 witnesses who were examined and I don't propose, I assure you, to go through the testimony of all of those witnesses because only a few of them have anything whatever to say about Gerard Te, the son.

In the testimony of the witness, Semachio, there is absolutely nothing in the record; the testimony of the witness, Allen, the most important witness -- he was the floor broker for Ira Haupt and Company -- was asked certain questions, and I am going to repeat these in haec verba, because they, too, show a pattern.

"Did he ever discuss the transactions in the various companies with Gerard Re?"

“No”, says he. “Most deals were with Mr. Re.”

I emphasize, “ * * * were with Mr. Re.”

When they talked about Re they meant Mr. Re, and that was Jerry Re.

Gerard as there, but never got involved; and then the Examiner put this question to him,

“But he says that was with the apparent knowledge and consent and authority of his son, who stood there.”

Answer: “I would not say that.”

Question: “Did he ever object?”

“No, he never objected”, was the answer.

Now, I don’t call that evidence of complicity. I call that an attempt on the part of the Examiner, a perfectly proper attempt, to get evidence of complicity but still no evidence of complicity. But let’s go on with it.

“Did you ever report directly to him”? Him being the son, “If Jerry was absent? Did you ever discuss any of this with Gerard?”

Answer: “At all times, Mr. Re was there. All of the accounts with individuals with Allen and Ira Haupt were introduced by Jerry Re.”

The next attempt at fastening culpability -- their questioning the witness Kallen.

He was questioned whether he knew Gerard; knew about the finder’s fee that was paid to Mr. Pully.

Answer: “He probably did.”

Question: “Did Gerard help to make mechanics of delivery?”

Answer: “No. No. Through Jerry.”

Again, the only indication of culpability comes from the Examiner. This is a perfectly appropriate question to get some evidence of this kind, but nothing from the witness.

In the current testimony, Gerard never had anything to do with it; never was there; never discussed it. “All I know”, says the witness, “Gerard is a hell of a nice guy.”

That is his testimony.

The witness Van Raalte, the discussion with Jerry Re over the failure of Thompson-Starrett to pay a note of \$75,000 -- a very significant item in this category of crimes:

Question: "Did Gerard Re's son come? Did you talk to him as well?"

That is the Examiner doing his proper job of trying to find who did what.

"Did you talk to him as well?"

Answer: "No, I don't think he ever came. I met him once at the Stock Exchange. Only once."

Right down the line. Gerard not present at conversations; Gerard not present at meetings; never talked to Gerard.

The witness Ballman -- an important witness -- specifically states he met only with Re, Senior; not Gerard.

Question: "Did you ever talk to Gerard about it?"

"No. Not to the best of my recollection."

The witness, Smith, a witness as to whom we shall have something to say. He was questioned regarding Re, Senior's statement that he would take care of him.

He would have to take care of him if he wanted the stock to move.

Not a very wholesome approach.

Question: "Did Young Re say this?"

Answer: "The only person who ever said that to me was Jerry Re."

No mention of Gerard anywhere. He goes on.

"All discussions respecting the Miranda transaction were with Jerry, the Senior."

At one point, he does say he wanted some correspondence and Jerry said to him, "Get hold of Gerard."

Now, they are talking about the \$28,000 note to Miranda.

Question: "Did Gerard enter into these conversations?"

"He may have been present."

Question: "But mostly it was Jerry?"

Answer -- and a very interesting answer, and suggested the reference to Aeneas.

"Mostly Jerry. Very often, the kid tagged along with him."

"I would like", says the Examiner, "your evaluation as to the comparative responsibilities or actions or emphasis or motivation between Jerry Re, the father, and Gerard Re, the son, in all of your dealings with him."

Answer: "I can sum it up, I think, very quickly and say that the old man dominates the son to a point where I think if you asked him to do something he did not want to do, I think he would do it to satisfy his father. I think that the old man dominated him quite thoroughly."

Question: "If the old man was not a part of the organizational setup, that the son might not do the things that otherwise might be done?"

The syntax is not mine.

I am reading it, gentlemen.

Answer: "I think the son would not do the things that the father does."

Question: "Who would you say was the brains? Who was the one who made the decisions?"

"The brains", comes the answer, "The brains would be Jerry. I would say that Gerard is very capable with the work he is doing there. He is very capable. I think he has the respect of the people he works with. I don't know whether the old man enjoys the same respect."

Same witness, later on, talking about another transaction.

"It was Jerry who was issuing the orders. It was Jerry who was issuing the orders. No question about it. I think", says this witness, who had a long association with these people, "I think if Jerry," this hardheaded, truculent father, "I think if Jerry had his mind made up to something, I don't think Gerard could very easily change it once he (Jerry) made up his mind to something. He is pretty dog-headed about it. I think Gerard is very capable and very sincere and I think he is basically honest."

Now, there is one transaction here which is especially interesting, and especially illuminating – a little more illuminating to the Commission and its staff than it is to us. That is the Skiatron transaction because in the Skiatron transaction, we find Gerard, the

son, performing a part that I cannot conscientiously say was ministerial. There, apparently, he had a great many of the important conversations with the man, Levy; the man from whom the so-called insiders' stock was coming, but this is an extremely interesting thing.

In the Skiatron acquisition from Levy, Gerard, who is bracketed with his father, Gerard is very disturbed, and there are conversations with lawyers as to whether what they are doing is perfectly all right or not.

For example, at one conversation, recourse is had to Judge Landis to find out if the transaction is all right and Judge Landis says he would speak to McCormick -- I suppose the President of the Exchange -- and then, in order to consummate the transaction, Levy refers Gerard not to one lawyer, but two lawyers -- Mr. Kurt Whitter, who gives an opinion that the transaction is a perfectly valid one, pursuant to Rule 154, the so-called one percent rule -- that is what they call it here -- the one percent rule and then, when they are not happy with that, they get another opinion from a man named Nemeroff, and there the testimony is most interesting; and this is Mr. Levy's testimony: This is not Gerard talking. This is Levy, the man who sells the Skiatron stock to the Res, the stock which comes into the market; the Section 5 leakage alleged here, and it probably is Section 5 leakage. I am not arguing that point. I am arguing the state of mind of Gerard Re when he takes the stock.

"Well, Kurt Whitter explained to me" -- explained to me -- "explained to me and I also understood from Mr. Nemeroff, our S.E.C. consultant," I hope he means lawyer, but that is what he calls him, "That we could sell stock, you see, on the one percent rule as well as the letter of investment.

Eventually, I learned you could not do both but that was some years afterward. As far as I can recall, it was a part -- I think it was five one-percent, and five investment."

Now, the opinions from these pundits of the bar conditioned the mind of Gerard Re. Re was not supposed to re-examine this question himself. This is the one transaction where I must concede, Gerard did something more than just carry out the old man's orders. This is the one transaction where he did talk to the seller of the stock; the seller referred him to the two lawyers; the two lawyers said, "It is all right." Part was all right because of the application of Rule 154 and part was all right because it was investment letter stock.

Now, to go further with the same transaction, "I understood," says the witness, and he is being examined now in the public hearing before Mr. Hislop and there was a little difficulty about the interpretation of Rule 154 which I have been confused about for some years and he was understandably confused about it. He said, "Well, as I said before, I understood from Mr. Nemeroff and also Mr. Whitter that you could sell stock under the one percent rule."

Question: "Was the one percent rule and Rule 154 ever tied into any conversation you had with your attorney?"

Answer: "Yes, I think all of my transactions with Re, I cleared through Mr. Whitter."

Again, I emphasize, I am not saying he was right or he was wrong. I am talking about willfulness, I am talking frame of mind of a man who is to be punished for his of mind.

"I see", says the Examiner, "As I understood it, then, Mr. Whitter advised you that you could sell stock under the one percent rule, is that right?"

Answer: "Yes, but I also asked Mr. Nemeroff, "our S.E.C. consultant", and then he goes on to describe the mechanics of the transaction.

Just one more reference to it.

"Well, all of these transactions," he is talking about Skiatron transactions where Gerard Re was something more than an office boy, "Well, all of these, as I said in the beginning, I always cleared all deals I had with the Res through my counsel, Mr. Whitter, either on a conference call or", and then he was interrupted.

"On each occasion that you did sell stock as a result of a call from Re, you checked with your attorney first?"

Answer: "Yes."

And, then they go on to describe how the state of mind of Gerard Re was, "Can we do this or can we not do it?" "Let's hear what the lawyers say", and the lawyer said it was perfectly all right to go ahead and do it. If the lawyers were wrong or if the lawyers were stupid, I don't think you can translate that into a state of criminal intent on the part of Gerard Re.

Gerard Re's testimony on the same point is completely consistent with this. I don't think there is even a suggestion that anybody was lying about it. Gerard discusses his conversations with Levy. Levy made the point right from the beginning that all these sales would be reported and they were reported. They would be reported to the Securities and Exchange Commission. He told me he had reported the sales. I believed they came out in the reports; and then he goes on to discuss the conversations with respect to the availability of the 154 exemption and completely consistent with what Levy testified to.

Now, something else about Gerard Re.

I am reminded of one other thing on the point that I just passed from.

Mr. Rotberg, questioning Gerard Re with respect to this:

"You said something about what Mr. Levy had told you before about Rule 154. Could you be a might more specific and tell us what you told him?"

Answer: "I thought I covered it pretty well in the original conversation back in 1956."

He went on to stress the fact that he had talked to Nemeroff who was an ex-Securities and Exchange lawyer and he had discussed it with Whitter and if I wanted, he could get Whitter on a conference mike. I don't know whether he did or not or whether he was in on the conversation, but he said he had this exemption under Rule 154. "He checked it out with counsel; reported the sales to the Security and Exchange Commission, and in fact, he told me, from time to time, he reported the sales in the S.E.C. I know this to be a fact, because I saw it come out in the reports and in the Wall Street Journal."

Nothing furtive. Nothing clandestine. Maybe stupid. Maybe foolish. Maybe misguided; but not clandestine; not furtive; not secret; not hidden; and not intentionally criminal; not intentionally wrong.

Now, the Silver Creek deal, where Mr. Jerry Re had a transaction with a citizen named David Shindler. Questions are put:

"Did Gerard Re," the son, "Did Gerard Re", this is Shindler talking now: "Did Gerard Re have anything to do with this?"

Answer: "I don't think so."

Question: "Did you talk to him about the Silver Creek Deal?"

Answer: "I don't think so."

Now, Wheeler. Wheeler is one of the cohorts, of whom we are told, and apparently Wheeler was one of the cohorts, but Wheeler is testifying fully and frankly now and Wheeler is telling what he knows.

It is from the testimony of Mr. Wheeler that we have to determine in part at least, whether Gerard Re should be guillotined or should not be guillotined here.

Question: Talking about the Highway Trailers transaction, "Do you remember whether Gerard had anything to do with this transaction?"

Answer: "As I recall it, I don't think so."

In fact", says Mr. Cohort Wheeler "In fact, Gerard always had a secondary position in any of these things."

A Mr. Blackstone, who is questioned at some length, and I think the question is significant, too.

“So far as you can recall, all of your dealings with the Res, all of your dealings with the Res, the Specialists in your stock, were with the young fellow?”

“Frankly, I would not describe my contacts with him as actually any dealings. No business deals were discussed. I never mentioned a finder’s fee. It was purely a social meeting.”

The main gist of the conversation that Mr. Blackstone has with Gerard Re is that he liked the company; he tried to do a good job; was continuing to do so. He suggested that stockholders get together to put out a fully registered offer, in one clear action so that there would be a steady market in the stock.

We come to the witness, Kurt Whitter, the attorney for Levy - Skiatron; the man who sold them the Section 5 leakage stock.

By the way, he never gave any written opinions to Skiatron about this particular stock. He cannot recall any specific instances of having given an opinion, to the company but he does say what Levy said and what Gerard said. That he told Levy he could sell the stock two ways; either for investment purposes or under Section 154, the so-called one percent rule.

The witness, Cordano. He says, “Gerard never suggested sales of investment stock to anybody”, and so on, down the line. You find witness after witness who says, “I never talked to Gerard Re, I talked to Jerry Re. I never had anything to do with Gerard”.

One place we find where Gerard was an actor; where he did something more than just carry out orders in the Skiatron situation.

Now, we have an opportunity in this case, in the hearing, to get some expressions of opinion on cross examination from some of the Division’s -- some of the staff’s witnesses, which I think are extremely interesting, on the sole issue of how culpable is Gerard Re, and I think they are worth a little attention.

The witness Cordano, a partner in the brokerage firm of Josephthal and Company -- you remember the brokerage firm with whom one of the so-called dummy accounts was opened up:

Question, by me, here: “As far as you understand, the dominant person you dealt with was Mr. Re, Senior?”

Answer: “Yes, sir,”

“And the younger one was, while he had the title of partner, you did not recognize him as being the boss?”

Answer: “Yes.”

Question: "Re, Senior, was the boss?"

Answer: "Yes."

Jost – formerly a partner in William Hauptman and Company, the firm that acted as a clearing agent for Re, Re and Sagarese, he was being questioned with respect to a group of records for various accounts. He identified the records as being the Re and Re agency records, which was the little label that we used in the hearing.

"They were customers of Mr. Re's", he says.

Question -- this is on direct examination.

"When you say Mr. Re, you mean the partnership?"

Answer: "No. I would say Senior. Jerry A. Re."

Question: "How do you know this?"

Answer: "Well, because we received most of the instructions from Mr. Re, Sr."

Well, that was too good for me to ignore so on cross examination, I asked him a few more questions about it, and I said,

"Mr. Jost, you will remember being questioned about this batch of checks?"

Answer: "Yes, sir."

"And in response to questions put to you on your direct examination, I understood you to say, did I not, that the instructions for the issuance of the checks was in every instance given by Mr. Re, Sr."

I really did not understand that. I apologize for a lawyer's trick but the answer justifies it.

Answer: "That is correct."

That is what he said. That is his testimony, and, "You did not remember a single instance in which Mr. Re, Jr., gave you instructions with respect to the issuance of the checks?"

Answer: "No. I do not recall any."

Question: "Now, generally speaking, when you got instructions, communications, orders, from the firm of Re and Re who was the one that gave them to you? The father or the son?"

Answer: "The father."

Question: "Did you ever get any kind of instruction from the son on any significant matter that you know of?"

Answer: "No. Only in a general course of the specialist business".

And then he went on. I asked him some more and then I said,

"You regarded them as equal partners, percentage-wise?" That was the witness's words, not mine.

Answer: "That is correct."

"What did you mean by the word percentage-wise?"

Answer: "Because I think it was the generosity of Senior to make it an even partnership as far as profits were concerned."

"You mean they were not equal partners, as far as influence is concerned?"

Answer: "No. Never."

Question: "As far as prestige was concerned?"

Answer: "No."

Question: "As far as importance was concerned?"

Answer: "No. No."

Question: "Who was the boss?"

"Re, Senior".

Question: "And was there ever any doubt in your mind who was the boss?"

Answer: "No."

And then Mr. Jost testified about the specialist business.

"When it came to deal with one of the agency accounts and you had a question, from whom would you get the answer"?

"Jerry Re, Sr."

And a very significant question now.

“And if he were not around, whom would you get the answer from?”

Answer: “I would not get the answer.”

A little different from the picture of the son being portrayed as the viceroy, who, in his father’s absence, carries out the same culpable deeds. He would not get the answer if Jerry Re were not around.

“This would apply to any and every agency account?”

Answer: “That is right.”

Question: “What if Jerry Re, Sr., were in Florida? Would you wait until he came back to get the answer or would you ask the younger Re?”

Answer: “I would ask the younger Re.”

Question: “And would you get the answer from him?”

Answer: “No.”

Question: “What would you get from him?”

Answer: “He would say, ‘I will get in touch with my dad’.”

Now, if that is a portrait of equal partners in crime, it is one of the most startling ones I have ever seen in my life and apparently, the Hearing Examiner was impressed by the disparity between the parts played by the father and the part played by the son because the Hearing Examiner spontaneously said he had one question he wanted to ask Mr. Jost.

Mr. Jost, who is in daily contact with these people; Mr. Jost, who is part of the machine that they are using to carry out the things with which they are charged here.

“I have one question” he says. “I am not so sure that the record is clear even now, regarding whom you attempted to get technical information from in the Re, Re organization.” This is the Hearing Examiner speaking, “Is this a correct summation of your testimony. That while you talked with both Junior and Senior on the telephone on occasions, because of the circumstances that they may have answered the telephone when you were calling -- of course, they had no way of knowing who was putting the call in, but that when it came to the technical aspects of any of these trading accounts, you always sought and obtained either directly from Mr. Re, Senior or indirectly from Mr. Re, Junior, the information from Re, Sr. Is that a correct summation of your testimony?”

Answer: “That is true.”

“Very well,” says the Hearing Examiner.

To the same effect, when questioned as to the functions of father and son, Division witness Allen, he said all of his dealings were with Re, Senior. He further testified later on that Re, Jr., never got involved although he may have been present.

Now, my attention is directed to more examples of the same sort of thing. They are in the record. They are referred to in the memoranda which are before you and I think it would just take your time needlessly to categorize them but the picture that emerges is very clear. The picture is that of a strong, self-assertive, truculent, and arrogant old man who ran things the way he wanted them run who had conversations with whom he wanted to talk, when he wanted to talk, and where he wanted to talk. If his son came along, he came along not even as a spectator. I suggest that you will not find one instance in the record, except the Skiatron situation, to which I have already adverted, where the part played by the son was less passive than what I have described.

That was his function.

Now, all well and good. That does not mean that he gets a gold medal for what he did, because it is perfectly easy to say no man, who, having been exposed to the Securities business for a long time, could have sat by and seen what was going on, and understood what was going on, without meriting some kind of -- well, without first justifying the inference that he understood what was happening, except in this case. Except, that in this case, you will find a deliberate, discernible pattern of exclusion of the son from these transactions. He is used as a straw. That is the picture that is presented here.

Now, did he know? Did he understand? Could he have understood?

The one transaction that I can find in this case where he had sufficient information so that he could have understood, and should have understood, is Skiatron, and in that transaction, I must urge on the Commission that he was certainly misled. In the Skiatron transaction, too, you will find that there was what is described -- and these are not my words; these are the words of one of the witnesses -- there was a personality clash between the father and the son, and between the father, later on, and Levy, and that is why Gerard, Jr., the son, took over the conversations with Levy, we are told, because the old man was getting a little too difficult to deal with, or something like that, I don't remember the exact words, but the important thing is that we have all subjected ourselves in this case to the danger of being seduced by these two words, “The Res”.

There just was not any such thing as “The Res.” There was Jerry Re, and a son, and the son did what he was told.

Now, should he be punished? I don't know. I don't know. I have nothing to say about that. It is not for me to suggest the degree of punishment. It is not for me to suggest the type of punishment. It is for me to suggest this, and I think the Commission staff

concedes this. That there is a very, very substantial degree of culpability between the one respondent, and the other respondent, and that when the Commission comes to the difficult, technical task of determining what sanctions to impose, the Commission must not and should not treat them as an entity; treat them as one. It may well be that you gentlemen, in your wisdom, will come to the determination that however lesser is his culpability, it is a serious culpability. I don't think so, I think that the record gives us a picture of a man who, having been given a very severe lesson -- this man has not been in business now for more than a year -- what was once a lucrative, promising, profitable enterprise is no more.

When you come to that task, I think you will find this is a picture of a man who has been given a lesson, who has paid a very substantial penalty, and against whom there should not be invoked the penalty of utter and complete commercial extinction, because that is the penalty that the Division staff is asking for. That is the penalty that they want to impose; that he should be driven out of the one business, the one craft, the one profession, he understands; that he knows; that he has been brought up in.

That, I think, is vastly too severe; just because he had a father who was tough, truculent, and arrogant.

CHAIRMAN CARY: I would like to ask a couple of questions, Mr. Gould.

First of all, how old is this kid to whom you refer?

MR. GOULD: Mr. Chairman, I never called him a kid. It was one of the witnesses who did.

CHAIRMAN CARY: I am sorry. I misinterpreted you.

MR. GOULD: I would not try to practice anything like that on this Division. I think he is thirty-eight.

CHAIRMAN CARY: Thirty-eight; and would you tell us what percentage of profits he received in this firm?

MR. GOULD: It was divided, 48 1/2 percent to the father, and 48 1/2 percent to the son, and the difference to the partner, Saragese.

CHAIRMAN CARY: Would you say that he literally did not know what was going on, or simply that he was completely dominated by his parent. Which would you say is true?

MR. GOULD: Well, I would have difficulty distinguishing between the two possibilities.

I would say that to a very considerable extent, he did not know what was going on; that he was excluded from so much of what the father was doing, that he could not have understood what was going on, and as evidence to that, in my own conclusion, it is so, in

the one transaction that he handled himself, he really went pretty far -- a lot further than I have seen some very responsible businessmen and brokers go -- to make a determination that what he was doing was in accordance with the rules and regulations, and so I don't think he really understood what was going on.

I just think -- I think he could not have understood unless his father exposed more of it to him than he did.

I hope that is an answer.

CHAIRMAN CARY: How long has he been in the security business?

MR. GOULD: Well he has been in for -- since the end of the war, 1945, when he returned from the Military Service he went into his father's business.

COMMISSIONER GADSBY: Did not Gerard keep the books for Jerry?

MR. GOULD: If by that, you mean from being on the floor of the Exchange, well, I think they both did. I cannot say one or the other did, but I don't think that that is too significant, sir, because you could be the actual physical custodian of the books, and not understand any of the operations which are the subject of this case. The mere fact that you had the book would not necessarily explain it to you.

Take the Skiatron stock; unless you knew where the stock came from, the circumstances of its acquisition, the mere fact that you were keeping the book would not necessarily vest you with any kind of a guilty knowledge.

CHAIRMAN CARY: Thank you.

MR. SAUL: Just a few comments, Mr. Chairman.

REBUTTAL ARGUMENT ON BEHALF OF THE DIVISION OF TRADING AND EXCHANGES

By

RALPH S. SAUL, ESQ.

MR. SAUL: I think the test here, as far as Gerard is concerned, is, did he know what he was doing? And I think the record amply supports that.

I just want to read a couple of excerpts from the record.

One excerpt I would like to read was from an affidavit executed by Gerard F. Re, dated March 25, 1960. It is Exhibit 116 KKK in the record, in which Gerard says:

"In a period from about February 1958 to October 1958, I arranged for several sales of Skiatron common by Levy to Miranda, one Charles Grande, and my firm."

Another thing I would like to call the attention of the Commission to, is Gerard F. Re's testimony taken in the private investigation of February 25, 1960. Reading that testimony will reveal that Gerard takes credit for all the Skiatron transactions; that he states that he arranged the transactions between Levy and Grande and Levy and Miranda, and the other thing I think is most important here, is: Did he have knowledge of and participate in the various illegal transactions here?

I think the record again amply supports that.

First, there is the testimony of Grande himself in which he states that many of the transactions, he would have to talk to Gerard to find out about them.

There is the testimony of the other nominee, Wheeler, in which Wheeler states he received most of his instructions with respect to the Miranda account, from Gerard F. Re.

And again, to return to the point that you brought out, Mr. Chairman, Gerard was age 38. I think that that age, he must have known, he did know, what he was doing.

CHAIRMAN CARY: Mr. Gould? Do you have anything further?

MR. GOULD: Thank you, no, sir.

CHAIRMAN CARY: Thank you.

(Whereupon, at 3:50 o'clock, p.m., the Oral Argument was adjourned pending consideration by the Commission.)