

(Securities Act Release No. 5295)

ADMINISTRATIVE PROCEEDING FILE NO. 3-3739

SECURITIES AND EXCHANGE COMMISSION Washington, D. C. September 6, 1972

In the Matter of

LEVITZ FURNITURE CORPORATION 212 High Street Pottstown, Pennsylvania

(2-43782)

Securities Act of 1933 Section 8(d)

FINDINGS AND OPINION OF THE COMMISSION

STOP ORDER PROCEEDINGS

Material Deficiencies in Registration Statement

Where registration statement under Securities Act of 1933 was materially deficient in failing to apprise investors that labor union was about to embark on nationwide campaign to organize issuer's employees which issuer had agreed not to oppose and that executive vice-president of issuer had approved union's outlined contract terms and agreed to recommend their approval by issuer, and in failing to describe effects of union's campaign and proposed terms on issuer's business operations, employee relations and income, held, stop order issued suspending effectiveness of registration statement.

APPEARANCES:

Richard H. Rowe and Mario V. Mirabelli, for the Division of Corporation Finance of the Commission.

Daniel J. McCauley, of Blank, Rome, Klaus and Comisky, for Levitz Furniture Corporation.

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These proceedings were instituted pursuant to Section 8(d) of the Securities Act of 1933 to determine whether a stop order should issue suspending the effectiveness of a registration statement filed on April 11, 1972 by Levitz Furniture Corporation ("registrant"), and thereafter amended on May 5 and May 23, 1972. The statement, which has not become effective, relates to a proposed public offering of 600,000 shares of registrant's \$.10 par value common stock. On June 27, 1972, we accepted an offer of settlement submitted by registrant pursuant to which we issued an order suspending the

effectiveness of the registration statement. 1/ We now issue our Findings and Opinion with respect to the issues presented in these proceedings.

The registration statement contained the following description of registrant's labor relations:

“Although only a small portion of the Company's employees are currently represented by unions, there have been several union elections and a few minor work stoppages during the past year, as well as claims filed with the National Labor Relations Board against the Company. The Company has either prevailed in, or satisfactorily resolved, the majority of these claims which were filed during the fiscal year ended January 31, 1972. Since the beginning of the current fiscal year, additional claims have been filed and are still pending. The Company considers its relationship with its employees to be generally satisfactory. Management of the Company is aware of an increase in union activities and anticipates that these activities will continue to increase as the Company continues its expansion program. Management cannot predict what effect these activities may have upon the Company's future employee relations.”

That description, however, was materially deficient in its failure to disclose various facts. On or about March 29, 1972, executives of the International Brotherhood of Teamsters (“IBT”) had informed officials of registrant, including Gary R. Levitz, an executive vice-president and director, that a nationwide campaign to organize registrant's employees would be undertaken by IBT, and the following week executives of registrant, including Levitz, informed IBT that registrant would not oppose the campaign provided authorization was obtained from registrant's board of directors. On April 26, IBT outlined terms of a proposed national labor union contract between it and registrant, and Levitz indicated that the terms as outlined were acceptable to him, and that he would recommend their acceptance to registrant. IBT further indicated that its campaign would begin on or about June 1 by having IBT representatives present at every retail store location of registrant to furnish registrant's employees with the “authorization cards” necessary to obtain National Labor Relations Board certification for the union. On May 3, 1972, at a meeting attended by all of registrant's officers and a majority of its board of directors, Levitz informed those present of the substance of the foregoing. On the next day, he contacted an IBT executive and informed him that registrant would not oppose IBT's campaign if it were deferred until registrant had completed the sale of its securities in the above proposed offering. IBT thereupon agreed to defer its campaign until about July 1.

Thus, as registrant was aware, there was an imminent effort to unionize its employees and a likelihood that they would become organized and that a labor contract along indicated lines would be entered into between the company and the union. Under the circumstances, potential investors who were to be asked to buy stock in registrant should have been apprised of those facts and, to the extent possible, of the effects of IBT's organizing campaign and the proposed labor contract terms on registrant's business operations, employee relations and income. The failure to do so deprived such investors of material information necessary for an informed investment decision, rendered the

registration statement materially misleading, and made appropriate the issuance of the stop order.

By the Commission (Chairman CASEY and Commissioners OWENS, HERLONG and LOOMIS).

Ronald F. Hunt, Secretary

1/ Securities Act Release No. 5266.