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UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

In the Matter of
ALBION SECURITIES COMPANY, INC. 52 Broadway New York, New York
File No. 8-7831

RECOMMENDED DECISION

Sidney Ullman
Hearing Examiner

Washington, D. C.
July 31, 1964

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SECURITIES AND EXCHANGE COMMISSION

In the Matter of ALBION SECURITIES COMPANY, INC. 52 Broadway New York, New York File No. 8-7831	RECOMMENDED DECISION

BEFORE: Sidney Ullman, Hearing Examiner.

APPEARANCES: Haig M. Casparian, David W. Smith and Charles Snow, Esqs., New York Regional Office, for the Division of Trading and Markets.

Irwin L. Germaise and Saul Horing, Esqs., New York, New York, for Albion Securities Company, Inc., (William) Murray Dailey, John F. Dailey, Jr., and Anthony Gravino.

Irwin Roth, Esq., New York, New York, for D. Richard Engel.

George A. Rein and Aaron Lang, a/k/a Aaron Lichtenstein, pro se.

I. NATURE OF PROCEEDINGS

These public proceedings were instituted by order of the Commission dated May 3, 1963 ("Order"), issued pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether to revoke or, pending final determination, to suspend the registration as a broker and dealer of Albion Securities Company, Inc. ("registrant" or "Albion"); whether pursuant to Section 15A(1)(2) registrant should be suspended or expelled from the National Association of Securities Dealers, Inc. ("NASD"), a registered securities association; and whether, within the meaning of Section 15A(b) of the Exchange Act, the Commission should find that (William)Murray Dailey or John F. Dailey, Jr., officers of registrant, Anthony Gravino or Lewis Cohen, co-managers of registrant, or its salesmen, D. Richard Engel, Aaron Lang, a/k/a Aaron Lichtenstein, George A. Rein, Murray Peters, James De Pasquale and John Phillip Dailey, Jr., or any of the above-named, are causes of any order of revocation, suspension or expulsion which may be entered in this proceeding.[1/] Inasmuch as registrant has

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1/ Section 15(b) of the Exchange Act, as applicable here, provides that the Commission shall revoke the registration of a broker or dealer if it finds that it is in the public interest and that such broker or dealer or any officer, director, or controlling person of such broker or dealer has willfully violated any provision of that Act or of the Securities Act of 1933 or any rule thereunder.

Section 15A(1)(2) of the Exchange Act provides that the Commission may suspend for not more than twelve months or expel from a national securities association any member who has violated any provision of the Exchange Act or has willfully violated any provision of the Securities Act of 1933 or any rule thereunder, if it finds such action to be necessary or appropriate in the public interest or for the protection of investors.

Under Section 15A(b)(4) of the Exchange Act, in the absence of the Commission's approval or direction, no broker or dealer may be admitted to or continued in membership in a national securities association if the broker or dealer or any partner, officer, director or controlling or controlled person of such broker or dealer was a cause of any order of revocation, suspension, or expulsion which is in effect.

been expelled from the NASD by that association, the issue of its expulsion or suspension therefrom is now moot in these proceedings.

The Order,as issued,also named as a respondent and raised similar questions with respect to Alan Kornbluth, d/b/a Alan Kaye Enterprises, a broker-dealer and member of the NASD who had been one of registrant's salesmen. However, negotiations for settlement of the charges against Kornbluth were undertaken by his attorney with counsel for the Division of Trading and Markets (then the Division of Trading and Exchanges) ("Division") prior to the commencement of the hearing in these proceedings before the undersigned on October 15, 1963. These negotiations eventually were successfully concluded, and by order of the Commission dated January 10, 1964, the proceedings were severed and dismissed insofar as they related to Kornbluth. In accordance with the settlement, the withdrawal of Kornbluth's registration as a broker-dealer was permitted to become effective. See Securities Exchange Act Release No. 7214, January 10, 1964.

In brief, the Order states that information obtained in an investigation by the Division tends to show, and the Order alleges, certain violations of the Securities Act of 1933 ("Securities Act") and of the Exchange Act, and of the Rules thereunder, by registrant, its officers and salesmen. The violations relate for the most part to registrant's participation as underwriter in an offering of the common stock of Edlund Engineered Products, Inc. ("Edlund"), made during the period January 9, 1961 to March 28, 1961 pursuant to a claimed Regulation A exemption from the registration requirements of the

Securities Act,[2/] and to acts which occurred from the date January 9, 1961 to about December 31, 1961. Most of the alleged violations concern and have reference to activities in the sale of Edlund stock, and are charged under the anti-fraud provisions of the Securities Act and the Exchange Act and Rules thereunder.[3/]

Pursuant to an order of the Examiner made on motion of the Division, the initial question for consideration following the hearings held before the undersigned commencing October 15, 1963 and continuing, after an extended recess, until November 14, 1963, was whether, pending final determination of the question of revocation of Albion's registration, it was necessary or appropriate in the public interest or for the protection of investors to suspend its registration as a broker-dealer.[4/] Throughout the course of the hearing, the Division as well as Albion, (William) Murray Dailey,

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2/ Regulation A, adopted under Section 3(b) of the Act, provides for exemption from registration when an issuer offers securities with an aggregate public offering price not exceeding $300,000 provided, among other things, that the issuer files with the Commission a notification and an offering circular containing certain minimum information.

3/ The anti-fraud provisions referred to are Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5, 10b-6, and 15c1-2 (17 CFR 240.10b-5, 10b-6 and 15c1-2) thereunder. The effect of these provisions is to make unlawful the use of the mails or facilities of interstate commerce in the sale or purchase of securities by means of a device to defraud, a false or misleading statement of a material fact, or any act, practice, or course of business which operates or would operate as a fraud or deceit upon a customer, or by means of any other manipulative, deceptive, or fraudulent device.

4/ Section 15(b) of the Exchange Act provides with respect to suspension of registration as a broker or dealer:

> "Pending final determination whether any such registration shall be revoked, the Commission shall by order suspend such registration if, after appropriate notice and opportunity for hearing, such suspension shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors."

John F. Dailey, Jr. and Gravino, all of whom were parties to the proceeding, were represented by counsel. Engel was represented by counsel who was present during portions of the hearing, and on motion of his counsel Engel was made a party to the proceeding. Similarly, Lang and Rein, although not represented by counsel, were present during portions of the hearing, and each was made a party to the proceeding at his individual request by order of the Examiner. The other persons named in the Order were not made parties.

At the conclusion of the hearing, the Division filed proposed findings of fact, conclusions of law and a brief in support thereof on the issue of the suspension of the registration. However, no documents were filed by or on behalf of registrant or any other party. On December 12, 1963, the Hearing Examiner issued a Recommended Decision in which he stated that there had been a sufficient showing of misconduct on the part of Albion, its officers and employees, to make it necessary and appropriate in the public interest and for the protection of investors to suspend the broker-dealer registration pending final determination of the question of revocation, and he recommended the issuance of an appropriate order. Under date of March 4, 1964, the Commission issued its Findings, Opinion and Order ("Opinion") in this matter, in which it was stated:

> "No exceptions were filed to the examiner's recommended decision, and in accordance with Rule 17(a) of our Rules of Practice any objections which might have been made will be deemed to have been abandoned and may be disregarded. Following that Rule, we adopt the findings and conclusions of the hearing examiner . . ."

The Opinion thereafter set forth in summary form the findings and conclusions of the undersigned and ordered that the registration of Albion as a broker and

dealer be suspended pending final determination whether it should be revoked.

Accordingly, there remain for determination at this time the question of revocation and the questions whether the officers, managers and salesmen named above are causes of the order of suspension already issued or of the revocation which may be ordered by the Commission.

Supplemental findings of fact, conclusions of law and a brief in support thereof have been filed on these issues by counsel for the Division in accordance with a time schedule previously fixed by the Examiner at the conclusion of the hearing, but no documents have been filed by or on behalf of any respondent. Counsel for registrant and for some of the other respondents has advised, however, that his clients do not waive a Recommended Decision by the Hearing Examiner.

The Recommended Decision previously issued on the question of suspension of Albion's registration set forth in some detail, among other matters, the nature of registrant's organization and its methods of conducting business, brief background descriptions of its officers and managers and their relationships with Albion, the methods and practices followed in the sale of Edlund stock, and the devices and schemes which constituted violations of some of the securities laws and Commission rules, as charged in the Order, and which supported the recommendation of suspension. The Recommended Decision, to the extent not herein modified, and the Opinion of the Commission are both incorporated herein by reference and made a part hereof. The Opinion is also annexed hereto as Appendix I.

It is necessary and appropriate, nevertheless, to repeat, in the instant Recommended Decision, many of the findings and conclusions previously made, in order that they may serve as a background and basis for an understanding and meaningful evaluation of offenses committed by registrant and by the officers,managers and salesmen who are charged with being causes of the revocation recommended herein and of the suspension previously ordered by the Commission. In addition, new or supplemental findings and conclusions of law are added, particularly with respect to activities of the persons named as causes and one offense by registrant which was not treated in the earlier Recommended Decision.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Registrant was the underwriter on a best-efforts basis of an offering of 100,000 shares of the common stock of Edlund at $3 per share, pursuant to a filing made under Regulation A. The offering commenced on January 9, 1961 and was completed on March 28, 1961. Several broker-dealer firms participated with Albion in the offering.

2. (William) Murray Dailey is President, a director and the owner of all the common stock of registrant. He did not participate in the routine daily operations of Albion and rarely visited the office. He is a resident of and a business man in Albion, New York. His brother, John F. Dailey, Jr., ("Dailey") is Secretary-Treasurer, a director, and Chief Executive Officer of registrant. Dailey is an attorney, admitted to the Bar of the State of

New York in 1930. During 1961 he devoted at least 50% of his time to the practice of law, which he conducted at Albion's office suite.

3. Neither of the Dailey brothers had any experience in the securities business prior to the formation of Albion in 1959, and because of this lack of experience Gravino and Cohen were hired by Dailey to conduct the operations of the firm. The responsibility for hiring the salesmen was left substantially to Gravino and Cohen, although no hiring or firing of salesmen took place without the approval of Dailey.

4. As indicated in more detail in the prior Recommended Decision, no adequate investigation of the salesmen or of their backgrounds or qualifications was made prior to their being hired by registrant. Similarly, no adequate investigation was made of the qualifications or integrity of Gravino or Cohen or of their prior employment records when they were hired by registrant, as indicated in the earlier Recommended Decision.

5. Albion was expelled from the NASD on July 26, 1963, for its failure, among other reasons, to make adequate investigation of its salesmen and the resultant improper certification of their applications to the NASD. In the same proceeding, the registrations of (William) Murray Dailey and John F. Dailey, Jr., as registered representatives were revoked and Gravino and Cohen were censured and their registrations as registered representatives suspended for two years.

6. Edlund was a Florida corporation chartered in October 1959 for the purpose, among others, of designing, manufacturing and selling metal products and other types of engineered products. Its plant and office were in Miami, Florida.

7. On November 25, 1960, Edlund filed a notification with the Commission, pursuant to a Regulation A exemption, covering the offer and sale of the

above-mentioned 100,000 shares of its common stock at $3 per share. Herbert E. Edlund, William H. Buchanan and Rohland D. Collins were the promoters, officers and stockholders of the company.

8. On October 19, 1961, after sustaining operating losses in every month from October 1960 through September 1961, Edlund filed a Petition for Reorganization under Chapter X of the Bankruptcy Act. The petition recited the institution of many lawsuits against Edlund and threats of other suits by its creditors, as well as threats of actions for foreclosure and replevin of property. On the same day a Trustee was appointed by the Court. On February 12, 1962, Edlund was adjudicated a bankrupt.

9. The Division produced 26 investor-witnesses who, during the period January 9, 1961 to December 26, 1961, had purchased a large number of shares of Edlund stock at prices ranging from the offering price of $3 to a high of approximately $5 and a low of 30 cents. The witnesses testified to transactions had with registrant's salesmen named in the Order and with the co-managers, Gravino and Cohen. A large majority of the transactions were conducted by telephone. The mails were utilized by registrant in transmitting confirmations of sale, stock certificates, offering circulars, and brochures relating to the Edlund stock.

10. As indicated in the earlier Recommended Decision and in the Opinion, registrant engaged in a high-pressure sales campaign, principally through telephone solicitations, using lists of names purchased for that purpose and

boiler-room tactics, in the course of which many extravagant, false and misleading representations concerning Edlund, its operations and its prospects, were made to customers and prospective customers, in promoting the sale of Edlund stock prior to, during and subsequent to the offering period.

11. Registrant also caused to be printed and widely distributed to the public, market letters containing material misstatements with respect to contracts which Edlund had allegedly secured for the sale of aircraft parts and components to airlines. These brochures were received in the mail during the Spring and Summer of 1961 by many of the witnesses who testified at the proceeding. In fact, Edlund had never received the orders from the airlines mentioned. One of the market letters also contained material misrepresentations and misstatements with respect to a coin-operated laminating machine which was stated to be in production.

12. Improper activities by the salesmen of Albion were encouraged and induced by Gravino and Cohen, as co-managers or sales managers of the firm, as a part of a scheme under which large amounts of Edlund stock were sold to the public without proper concern or regard for its intrinsic value or for the company's prospects. As part of a scheme and device to defraud the public, registrant's salesmen were misinformed and misled by Gravino and Cohen with respect to the nature of Edlund's operations, products, alleged contracts and prospects for success. The salesmen, in turn, failed to take reasonable and proper steps to keep themselves adequately informed of the true nature of the Edlund business and its products. Conversely,

they passed on to customers and prospective customers, in the high-pressure sales campaign conducted through repeated telephone solicitations and otherwise, the extravagant, false and misleading information; they sold stock to customers without regard for their finances, temperaments or investment objectives, loaded some customers' accounts with Edlund stock and urged customers not to sell their Edlund stock, failed and neglected to inform customers of known or easily ascertainable adverse factors concerning Edlund, and in other ways detailed either in the earlier Recommended Decision or infra, violated their duties to the public. More specifically, the employees of registrant mistreated the investing public as follows.

D. Richard Engel

13. Engel was employed by Albion as a registered representative or salesman from September 1960 through April 1962 and sold approximately 15,000 shares of Edlund stock while so employed.

14. Prior to his employment at Albion, Engel was a door to door salesman of vacuum cleaners. He had no prior securities experience and he received no formal securities training at Albion at or subsequent to the time of his employment. He was told by Gravino that if he wanted to learn more about the stock market he should read books on the subject.

15. Engel used the same high-pressure tactics in selling Edlund stock as he previously had used in selling vacuum cleaners. He received a list of names from Albion and would continue to telephone persons with unusual and frequently annoying persistence, as long as he felt it was possible that he might make a sale. In discussing his sales to a Mrs. Ann Monroe, he

stated: "Why I called eleven times - - if I feel I can call people without harrassing them I would call 100 times." In fact, however, his calls were harrassing to several customers who testified in the proceeding. Because of Engel's almost total lack of understanding and appreciation of the basic values of a company and its business, and his inability to make an adequate evaluation of Edlund's financial situation and of the risks involved in the purchase of its speculative stock, he accepted with blind faith misinformation given him by Cohen and Gravino regarding Edlund and its prospects, and enthusiastically passed the same on to customers and prospective customers. His tactics in selling "were to use every possible lead I had" and he attempted to sell Edlund stock to almost everyone with whom he came in contact. He saw no reports and no figures on Edlund other than those in the offering circular, and perhaps to some extent because of his inadequacy and naivete he made no serious effort to investigate or evaluate the company independently. In any event, he felt that the information given him by his superiors was "gospel." He also mailed to his customers the market letters or brochures containing the misinformation discussed above.

16. Engel continued to sell Edlund stock even after he came to believe at a subsequent time that "the whole thing smelled fishy, this Edlund deal."

17. Gravino and Cohen from time to time helped Engel and other salesmen close their sales by speaking to customers on the telephone, thus exerting added pressure on persons with too little sales resistance in the face of promises of quick and certain profits.

18. Customers of Engel, whose testimony the Examiner credits, testified that he made the following false statements, among others:

(a) "Edlund had contracts for the production of parts for the missile program;

(b) Edlund manufactured a laminating machine which would produce earnings approximating $3,000,000;

(c) The price of Edlund stock probably would triple in a year; and

(d) Edlund stock should rise to about $10 in six months."

19. Engel was not interested in knowing the financial condition of his customers, was not concerned with their financial ability to buy speculative securities or with their temperament or disposition in respect of the type of securities that might be suitable for acquisition by them. His single concern, at least with respect to many of his customers and prospects, was to make sales. Perhaps with respect to his relatives, to whom he sold Edlund stock, his primary concern was to develop for them profits which, at least at the earlier stages of his career at Edlund, he naively believed were readily and almost certainly attainable.

20. On March 23, 1961,Alexander Ratner purchased 50 shares of Edlund at $4 per share after receiving several telephone calls from Engel soliciting the purchase and advising that Edlund was a promising company, that its stock was good, that Ratner could buy it at the "right price", and that the current price would move much higher.

21. Shortly after the purchase Engel again called Ratner and advised that more shares of Edlund were then available, that the price had risen and that it was advisable that Ratner buy more stock. Engel also stated

that the company had signed some production contracts for the missile program and that it was doing very well. Ratner purchased an additional 150 shares at $4.50 per share. During these transactions with Ratner, Engel also stated that he had an "inside track" on Edlund with information on the company coming from Albion, and that only a limited number of shares were available.

22. Thereafter, Ratner spoke on the telephone with Engel from time to time until July 1961. In one of these conversations Engel advised that it was difficult to obtain information on Edlund since it was an over-the-counter stock. In July he stated that Edlund was in some difficulty and was not living up to expectations. Since the price had dropped, Ratner was urged to buy more stock in order to "average down a little bit." Engel also advised that he would let Ratner know when the stock should be sold. Accordingly, on July 24, 1961, Ratner purchased 200 additional shares at $2.50 per share.

23. Thereafter, again at the suggestion of Engel, on September 27, 1961 Ratner purchased an additional 100 shares at $1.50 per share. In connection with this sale Engel advised that the company "seemed to be in dire straits" and that this was Ratner's last chance to recoup some of his loss.

24. Despite the fact that Ratner had originally advised Engel that he had only about $500 with which he could speculate, Engel induced him to buy Edlund stock in an amount exceeding $1,500.

25. Monroe Rosenbaum, Engel's stepfather, is a taxi-cab driver in New York City, who purchased 100 shares of Edlund on November 30, 1960 at $3 per share through Engel. He purchased 200 additional shares in March 1961 at $3 per share, 100 shares at $2 per share on May 11, 1961, and an additional

500 shares at 50 cents per share on November 3, 1961.

26. These purchases were the result of and followed conversations Rosenbaum had with Gravino and Cohen, while Engel was present. Cohen and Engel advised that they expected the price of the stock to rise. Eventually, on December 12, 1961, Rosenbaum sold all of his shares through Albion at 50 cents per share.

27. Leonard Knapp is a cousin of Engel who purchased 100 shares of Edlund at $3-5/8 per share on May 22, 1961, following a telephone conversation in which Engel induced Knapp to visit Albion's office, at which time he bought the stock. Engel passed on to Knapp a copy of Albion's market letter containing misinformation on Edlund, and advised that Edlund had orders from aircraft companies and manufactured a laminating machine, the earnings from which would approximate $3,000,000. Engel continued to telephone Knapp, advising, in part, that Edlund's price would triple in a year.

28. In August 1961, Engel told Knapp that although the price of Edlund stock was lower, the company was in good condition and the decrease in price was attributable to the generally lower trend in the securities markets at that time rather than to any situation related to Edlund. Knapp purchased an additional 100 shares on August 21, 1961 at $2-1/4 per share. At no time did Engel pass on to Knapp any information reflecting adverse conditions at Edlund or any inability to obtain financial information on the company.

29. On June 26, 1961, Ann Monroe, a housewife, purchased 100 shares of Edlund at $3-5/8 per share through Engel. Engel had made about 11 telephone calls to Mrs. Monroe over a two week period, during which he urged the purchase

of Edlund, stating that it had terrific possibilities and that it could go to $10 within six months. He orally "guaranteed" that she would make money with Edlund, and advised that his mother had purchased 600 shares, that his uncle and he, himself, had purchased shares, and that his mother had personally inspected the Edlund plant.

Aaron Lang, a/k/a Aaron Lichtenstein

30. Lang was employed as a salesman by Albion for approximately the entire year 1961, and he sold approximately 18,000 shares of Edlund during that time. Prior to his employment at Albion, Lang had worked for the following brokerage firms.

M. J. Reiter Co., Mineo & Co., York Securities, and General Investing Corp.

31. In selling Edlund stock, Lang, as did other salesmen, telephoned persons whom he did not know but whose names were given him by his superiors at Albion. He mailed copies of Albion's market letters to the customers without verifying or inquiring as to the source of the information in the documents. He advised his customers that the stock had a good chance to rise, and this advice was based on the information in the market letters and on information received from superiors at Albion and from the principals of Edlund to whose unfounded claims the Albion salesmen were exposed. He told his customers that Edlund had a coin-operated laminating machine and advised at least one customer that the machine would "revolutionize the business." He accepted without further inquiry all information which he received from his superiors and other salesmen at Edlund, testifying that "I accepted it because these [representations] are the things told to the public by all the salesmen."

32. On March 6, 1961, Dr. Joseph Campanella purchased 100 shares of Edlund at $3 per share following a telephone call from Lang. In order to pay for this purchase, Dr. Campanella was induced by Lang to sell 50 shares of a stock which he had previously purchased. On March 17, 1961, Dr. Campanella purchased an additional 50 shares of Edlund at the suggestion of Lang at $3.50 per share and in order to pay for this purchase he was induced to sell 50 shares of another stock. During the telephone conversations between Lang and Dr. Campanella, Lang stated that the potentialities of Edlund were very good, that the company would do quite well, and that it would declare dividends in the future. In June or July 1961, Dr. Campanella received copies of Albion's two market letters on Edlund.

33. Benjamin Kasner, an acquaintance of Lang, purchased 500 shares of Edlund on March 6, 1961, at $3 per share after a telephone call from Lang in which the latter advised that he had a "hot" stock for Kasner, which he also described as "terrific." He guaranteed that Kasner would not lose money by buying the stock. He also stated that the stock would go up a few points in the next couple of weeks and that he would sell it for Kasner when it did. Shortly thereafter, Kasner heard that the price had risen to $4 per share and he called Lang to have the stock sold. Lang induced Kasner not to sell and promised greater profits if he held the stock.

34. Thereafter, Kasner learned that the price of the stock was down to approximately $2.25 and again called Lang for the purpose of having it sold. Lang induced him to hold on to the stock, again promising that he would make money on the transaction.

35. On December 21, 1961, Kasner called Albion to speak with Lang about the stock and was advised that Lang was no longer with the firm. At that time he spoke with Lewis Cohen, who pressured Kasner into buying an additional 1,000 shares of Edlund at 30 cents per share. Subsequently, Kasner called Cohen, stating that he'd learned that Edlund was in bankruptcy. Cohen told Kasner to hold on while he checked, returned to the phone and confirmed Kasner's information, and thereupon agreed to cancel the purchase. He returned Kasner's check for $300.

36. Stephanie Janousek, a rather elderly machine operator, obviously was neither financially nor temperamentally qualified to buy speculative common stock. She had purchased stock from Lang while he was working for a prior employer and the price had declined. When she called Lang to inquire about this stock Lang advised that he now had a stock on which she could make profits which would compensate her for her previous loss. Although Mrs. Janousek advised that she was "scared to buy any small stocks", Lang's persistence, repeated calls, and representations that Edlund had secured a large order from the United States Government and that the stock would double or triple in price ultimately broke Mrs. Janousek's resistance. She bought 100 shares of Edlund at $3-5/8 per share on June 21, 1961 for a total sum of $362.50, an amount which she could ill afford to lose.

37. Lang made perhaps 15 or 20 telephone calls to David Fanaroff during a two week period, following which Fanaroff purchased 200 shares of Edlund at $2-5/8 per share in July 1962. Thereafter, in November 1961, when the price had fallen to 50 cents per share, Lang advised Fanaroff to buy more in

order to even up, again predicting the price of the stock would rise to $5 or $6, at which time Lang would "dump it." Fanaroff bought 500 shares at 50 cents per share on November 3, 1961, after Edlund had filed under Chapter X. Lang testified that he did not remember whether he knew of or whether he informed Fanaroff of the Chapter X proceedings at that time.

George Rein

38. Rein was employed by Albion as a salesman from January 1961 to December 1961 and sold approximately 8,000 shares of Edlund. Rein had sold securities during the 1920's and 1930's, had left the business, and returned to it in 1960. Prior to his employment at Albion he had been employed by four brokerage firms for each of which he had sold a particular security then being underwritten. Rein left these employments because the respective underwritings were over or he took a new job because the new firm had an underwriting which was interesting to him and which he thought he could sell. Each of these four employments lasted for approximately three or four months at the most. At Albion he was given leads and was told to call people on the telephone. He stated that 90% of the people whom he called he did not know and never did meet.

39. On March 29, 1961, Rein sold 100 shares of Edlund at $3-7/8 per share to Howard Amann, whom he called on the telephone and advised that Edlund was an up and coming company and that Amann had an opportunity to get in "on the ground floor" and that he had a limited number of shares which he could let Amann have. He also stated that Edlund had a process for a coin-operated laminating machine. Rein made approximately five telephone calls to Amann during the evening hours prior to the latter's purchase of the stock. Thereafter, in December 1961, Amann purchased an additional 300 shares of Edlund

from Rein at 30 cents per share. Rein did not advise Amann that Edlund was on the verge of bankruptcy or had filed a petition for Reorganization under Chapter X. However, Amann had received in the mails a notice of the Reorganization, which he may or may not have read. In any event, soon after this purchase Rein did call Amann and volunteered that the purchase should not be made, and he returned the check Amann had forwarded for this last purchase.

40. Rein advised a Mrs. Reyman that Edlund manufactured products for various aircraft companies and that the price of the stock would go to about $10 per share. Mrs. Reyman bought 100 shares at $3 per share on January 16, 1961. In April 1961 Mrs. Reyman called Albion and spoke to Lewis Cohen, advising that she wanted to sell the 100 shares of Edlund. She testified that the price of the stock was then $4.50 per share and that Cohen advised that Edlund was doing very well and that she would make a mistake by selling the stock. He asserted that the price would go to $10, that Edlund was merging with a West Coast company, and that the stock would be listed on the West Coast exchange. He also stated that because of the merger in contemplation, Albion could not sell her Edlund stock at that time, and he urged her not to sell the stock until after the merger, stating that he would notify her at that time. As a result of this conversation Mrs. Reyman bought 100 shares of Edlund at $4.50 per share instead of selling the shares she bought in January.

41. Prior to August 1961, Rein telephoned Seymour Gross several times, urging the purchase of Edlund stock. He advised that a merger was in contemplation but that he could not reveal the name of the company with which Edlund was merging, because if the name were known the price of the Edlund stock would "surge." He recommended that Gross sell his Harbison-Walker stock

to provide funds for the purchase of Edlund and Gross followed this advice, purchasing 200 shares at $2 per share. Rein assured Gross that there was no chance of the merger not going through, and that he would make money on the transaction.

42. Harry Zuller was called by Rein in March 1961 and was advised to sell his Speedway stock, previously purchased from Albion, and to buy Edlund because "it would be going up in a short while and there would be a profit" on the purchase. Zuller bought 100 shares at $3-3/8 on March 16,1961.

43. Sydney A. Pape was called by Rein in June 1961 and was sold 50 shares of Edlund at $3-5/8. Rein represented that the company was in a position to benefit in the space age and missile fields and that the stock would increase in price.

Murray Peters

44. Murray Peters worked for Albion for approximately four months following his employment with Jacwin & Costa, Inc., Valley Forge Securities and several other brokerage firms.

45. On May 28, 1961, Peter Glita was working in a bakery. Murray Peters telephoned Glita's employer, thereafter spoke to Glita, and sold him 100 shares of Edlund at $4-1/4 per share. Peters stated that Edlund had a laminating machine which would be placed in public locations. He stated that Edlund was a good stock and should go up in price. He said nothing about operating losses which Edlund had sustained consistently during 1961. Nor did he know anything about or inquire into Glita's financial condition, or his ability or disposition

to buy a speculative stock, and Glita did not volunteer such information.

46. On May 10, 1961, Stanley Posluszny bought 100 shares of Edlund at $4 per share; he bought 50 shares on May 31, 1961 at $4 per share; and 50 shares on July 14, 1961 at $2-7/8 per share. Peters called Posluszny approximately ten or twelve times concerning Edlund during the months of May through July 1961, and in these conversations repeatedly made statements to the effect that Edlund had extremely good management and brilliant engineers, had in production 10,000 coin-operated laminating machines which would be placed throughout the United States in public locations; had developed an anti-noise muffler for jet aircraft; had developed an automobile muffler which would prevent the creation of carbon monoxide and which had been tested against and found superior to approximately twenty others. Peters also stated that he expected the price of the Edlund stock to rise to between $16 and $20 a share within a few months.

47. Charles Rutenberg, a school teacher in Elmira, New York, was telephoned by Peters and asked to buy 100 shares of Edlund. When Rutenberg demurred, Peters represented that Albion would not be selling a new customer a "turkey". Rutenberg believed this to be logical and bought the 100 shares on June 22, 1961, at $3-5/8 per share.

48. In September, George Rein called him and advised that the price of the stock had gone down and suggested the purchase of another 100 shares. Rutenberg testified that the implication in the conversation was that Albion was going to push the stock and he would recoup his loss. He bought 100 shares from Rein at $1-3/4 on September 27, 1961. Thereafter, in November, Rein dissuaded Rutenberg

from selling the stock, advising that the company was doing all right.

James De Pasquale

49. De Pasquale was a salesman for Albion from July 1960 to December 1961, during which period he sold approximately 18,000 shares of Edlund. Prior to this employment he had worked as a salesman under Gravino and Cohen, as co-managers of Palombi Securities, Inc.

50. At the time he was hired, Gravino and Cohen knew that Palombi Securities, Inc. was being investigated by the NASD and that De Pasquale was involved. Dailey also knew this at that time or shortly thereafter. De Pasquale's registration as a registered representative was subsequently revoked when Palombi was expelled by the NASD. (See Securities Exchange Act Release No. 6961, November 30, 1962.)

51. On March 23, 1961, Joseph Schoeb bought 200 shares of Edlund at $3-7/8 per share as a result of a telephone call from De Pasquale in which the latter referred to Edlund stock as "something hot, something good." He also told Schoeb the stock would go up to $5 or $6 or even better, and that Edlund was engaged in making frames or something similar for airplanes and that it had contracts with TWA. Schoeb received copies of both market letters sent out by Albion.

52. On April 25, 1961, Peter Avadikian, of Potsdam, New York, bought 100 shares of Edlund at $4.50 per share as a result of telephone calls from De Pasquale, who told him that Edlund was a sound company, that its price was "ready to move up" and that it should double in about two weeks. Following his purchase, Avadikian left on a honeymoon and during his absence De Pasquale called and spoke to his brother, advising that Edlund was a good buy and that the price was right. Although Avadikian's brother was not authorized to purchase on behalf of Avadikian, he nevertheless, as a result of the urging of De Pasquale, purchased in his brother's name an additional 100 shares at $3-5/8 per share on June 26, 1961.

53. Sometime in July, Avadikian spoke with De Pasquale about Edland and was advised that "it has not started moving yet but it will." In his conversations with De Pasquale, Avadikian was never told about the financial condition or operating losses of Edlund, and De Pasquale never inquired about Avadikian's financial condition, income or ability to buy speculative securities.

54. On February 28, 1961, Martin L. Cohen, a program planner and electrical engineer, bought 125 shares of Edlund at $3 per share under the following circumstances. Cohen had heard of Edlund from De Pasquale several months prior to the offering date, when he called Albion as a result of having seen some publicity or an advertisement. When he later received Edlund's offering circular he decided that he would not buy the stock. However, De Pasquale advised that someone in the Albion organization had been to Florida and had made an investment with the company and had direct contact with Edlund's management.Cohen testified that De Pasquale said it was a sound investment, "a good investment and that the stock would increase, and I believed him." De Pasquale told Cohen that he had put aside 200 shares for him, although Cohen never ordered the stock. Cohen nevertheless gave his permission for the transaction described above.

55.As a result of subsequent calls from De Pasquale, on June 6, 1961, Cohen placed another order for the purchase of 150 shares of Edlund stock at $3-3/4 per share. De Pasquale had told Cohen that Edlund was one of the few companies making nose cones for missiles and that its proximity to Cape Canaveral would be helpful to it.

56. Cohen was never informed of the financial difficulties under which Edlund was suffering and De Pasquale never advised him that the company had suffered severe losses for several months prior to the time Cohen purchased the stock in June 1961.

57. On March 1, 1961, George Schoeneman, of Rochester, New York, purchased 125 shares of Edlund at $3 per share. He heard of Edlund in a telephone call from De Pasquale in January 1961, during which Schoeneman agreed to take 300 shares. However, he thereafter cancelled the order because of the illness of his wife and the need for money to pay hospital bills.

58. In March 1961, Schoeneman was called by De Pasquale and agreed to buy a large number of shares of North American Contracting. However, he received only 500 shares of that stock, a smaller amount than he had ordered, and he received also a confirmation for the purchase of 125 shares of Edlund stock at $3 per share. De Pasquale explained to him during a telephone conversation that he could not obtain the full amount of North American Contracting and had, therefore, substituted 125 shares of Edlund to make up the difference.

59. Schoeneman thereafter agreed to the substitution of Edlund stock after De Pasquale told him that Edlund was "a sure thing", that it had Government contracts and that the stock would possibly rise to $6 to $12 in three to six months. Subsequently, De Pasquale advised Schoeneman to hang on to his Edlund, again representing it as "a sure thing." Schoeneman was never told about Edlund's financial condition or operating losses.

60. On February 15, 1961, Joseph Calipari, of Potsdam, New York, purchased 250 shares of Edlund at $3 per share. Calipari heard of Edlund for the first

time in a telephone call from De Pasquale in February 1961, during which he was advised that Edlund operated a manufacturing plant for jet exhaust systems, that the stock had unlimited possibilities and that there was no limit as to what it would be selling for. When Calipari stated that he was not "cash - rich" and could not purchase the stock, De Pasquale recommended that he sell his American Motors stock to obtain the funds. Calipari did so.

61. In several telephone calls which Calipari subsequently received from De Pasquale, he was told the company was doing well and had a tremendous growth rate, and he was induced to purchase another 350 shares at $4-5/8 per share in April 1961. De Pasquale never advised Calipari that Edlund had been suffering financial losses during 1961.

John Phillip Dailey, Jr. ("J. Dailey, Jr.")

62. J. Dailey, Jr. is a nephew of (Wiliam) Murray Dailey and his brother John F. Dailey, Jr. ("Dailey"). He was employed as a salesman at Albion from September 1961 to sometime in the Spring of 1962. Prior to that time he was a trainer of horses and had never participated in any aspect of the securities business. He had never received training in accounting, bookkeeping, or any related subjects either before or after passing the NASD examination for registered representatives. He testified that he could read a financial statement but could not understand one.

63. In selling Edlund stock in the after-market during his employment, he relied largely on what he heard about the company from the representatives of Edlund during meetings of the Albion salesmen and what he heard about Edlund around

the Albion office. As a result, he relayed to customers misinformation about the potential and the products of the company.

64. On August 7, 1961, Rocco Marciano bought 100 shares of Edlund at $2 per share and received a confirmation by mail. Marciano knew J. Dailey, Jr. personally and prior to the purchase had received from him many telephone calls during which J. Dailey, Jr. stated that Edlund was doing missile work and developing nose cones, that there was a great possibility of a stock split and the possibility of a rise of a few points and a chance for Marciano to make a profit. Subsequent to his purchase, Marciano had further conversations with J. Dailey, Jr., both on the telephone and in person, during which time he wanted J. Dailey, Jr. to sell the shares he'd bought. The salesman advised, however, that Edlund was in "some sort of financial difficulty", that the stock could not be sold, and that the price was too far down but that it would be "picking up" again. At the time of the sale of Edlund to Marciano, J. Dailey, Jr. did not advise of Edlund's financial condition or that it was suffering operating losses.

65. J. Dailey, Jr. testified that sometime in the Spring of 1962, a representative of Edlund met with Albion's salesmen, advising that Edlund had just received an O.K."by the FCC or FTC or one of the aviation commissions", and with this approval Edlund could sell parts to "the different outfits that used airplane parts." This information was false, but J. Dailey, Jr. could not be certain at the hearing that he had transmitted it to his customers. However, he did state in answer to a question whether he discussed with any of his customers or potential customers the information on

the office.He testified: "Well, I just explained to them what we were told about the stock. That is about all we could tell anyway."

66. J. Dailey, Jr. sold some of the Edlund stock to his mother-in-law when its price was either $2 or $2.50 per share. He testified: "She can afford stock like I can. . . . She is a widow and didn't have very much money. I believe she bought 50 shares, and it was shortly thereafter we were informed it was going under reorganization."

67. J. Dailey, Jr. also indicated that he probably informed Rocco Marciano about the "approval" of the parts and that "the stock was pretty cheap." He also stated that Cohen sometimes came to the salesmen and said: ". . . this is what we hear about the company but you can't say anything until it is authenticated." The caveat was undoubtedly ineffectual, and Cohen of course knew or should have known it would be.

68. J. Dailey, Jr. described some of the incentive awards which Albion gave to its salesmen during the time he was there. For example, he received two or three $25 bonds for sales activity in competition with the other salesmen, and he stated that the firm gave $5 for selling 100 shares of stock to a new customer, and a Government bond to a salesman who sold 1,000 shares of stock in one day.

Anthony Gravino

69. As stated above and in the prior Recommended Decision, Gravino and Cohen operated as co-managers of Albion. They commenced their employment in the Summer of 1960, following their joint employment first at N. Pinsker & Co., Inc. and thereafter at Palombi Securities Co., Inc., having operated as

co-managers at both of these firms.[5/] Prior to his employment at Palombi, Gravino had worked at Scott Taylor & Co., Steven Randall & Co. and Midland Securities. The registrations of all of these prior employers have since been revoked by the Commission for their violations of the anti-fraud provisions of the Federal securities laws.

70. In their capacity as co-managers, Gravino and Cohen, along with the Dailey brothers, were in control of the Albion business, as indicated in the prior Recommended Decision, but this fact was not disclosed on Albion's application for registration as a broker-dealer and no amendment to the application was ever made to reflect control by Gravino or Cohen.

71. Gravino, Lewis Cohen and Dailey, as well as Mr. Jacobson, formerly syndicate manager of Albion, and Stanley Kanarek, an attorney for Albion, all participated in the negotiation of the Edlund underwriting with the principals of Edlund. Gravino knew that Edlund was a "job shop" at that time.

72. Prior to August 1961, at which time Albion received Edlund's financial statement as of May 31, 1961, showing that the firm had been sustaining losses, the only financial statement Gravino had seen was the one in the offering circular. Efforts to obtain later financial statements of Edlund were made by various persons in the Albion organization, including Gravino, over a period of many weeks, but they met with no success until August 1961. Although Gravino then knew that Edlund had been losing money and that it had

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5/ Gravino testified that Cohen and he were partners and shared all earnings, Cohen spending most of his time in supervising the Albion office and salesmen and producing earnings, while Gravino looked for new issues to sell and contacted other broker-dealers. The evidence indicates that their functions overlapped substantially.

not perfected a coin-operated laminating machine, he continued to recommend the stock to customers and to pass on to and expose the salesmen to misinformation concerning the company, its products and its prospects for success. 6/

73. Even after a visit to Edlund's plant in August or September 1961 by Dailey, Gravino and Stanley Kanarek, at which time it was learned that Edlund was in serious financial difficulty, the sales of Edlund stock continued. The basis for continuing the sales was stated, in Gravino's testimony, to be an expectation that the company would be merged into a company listed on the Salt Lake City Stock Exchange.

74. Gravino, Cohen and Dailey were instrumental in causing the preparation and distribution by Albion of the market letters mentioned above, which are more fully described in the prior Recommended Decision. Information in the market letters came from financial publications, from a Miami newspaper article, from one or more magazine articles, from Edlund principals and from the offering circular. No efforts were made by Gravino or others in the Albion organization to verify the information in the market letters prior to distribution to the public.

75. Albion's management, including Gravino, refrained from disclosing to the salesmen the information which they obtained concerning the poor financial statement of Edlund and the losses which the company was sustaining, the inability of Edlund to market a coin-operated laminating machine, and other

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6/ The principals of Albion, including Gravino, were told over an extended period of time by the principals of Edlund, that the coin-operated laminating machine was not perfected but that it was expected that bugs would be ironed out "in the near future."

negative aspects of Edlund's business and operation. Conversely, they passed on to the public, without serious effort to verify it, all information which they heard from Edlund's management and from any other source which supported the selling program. For many years Gravino had been connected with brokerage houses which sold speculative securities on the basis of false information disseminated by issuers and other sources. He was an experienced and sophisticated promoter and salesman,who recognized the unreliability of such information.

76. William Scharfman, a butcher, bought 100 shares of Edlund from Albion on March 1, 1961 at $3 per share. Subsequently, Scharfman received from Albion the market letters. He also saw in Gravino's office a Florida newspaper containing an article indicating that Edlund was manufacturing a coin-operated laminating machine which would be installed in supermarkets. Gravino had advised Scharfman that Mr. Edlund was a "genius in engineering", that Edlund had contracts with large aircraft companies, and that it would make a lot of money. Gravino dissuaded Scharfman from selling his Edlund stock and never informed him that Edlund was suffering large operating losses or that its financial condition was in jeopardy.

77. Although Gravino and some of the salesmen testified that Gravino cautioned the salesmen not to relate to customers or prospective customers any information concerning Edlund other than what appeared in the offering circular, the fact is that the salesmen were exposed by Gravino and others in control of the Albion organization to a great deal of oral and written information concerning the company and its purported products at sales meetings,

parties given by Albion for representatives of the Edlund organization and in other ways, and it was utterly clear, if not intended, that such caveat would be meaningless.

78. The Recommended Decision on suspension contains additional factual detail indicating the responsibility which Gravino bears for the boiler-room type of sales campaign in which Albion engaged in the sale of Edlund stock and the responsibility he bears for the violations of law detailed therein and in the instant Recommended Decision.

Lewis Cohen

79. Lewis Cohen, after serving with Gravino commencing in June 1960, left Albion's employment in June 1962. Prior to his employment at N. Pinsker & Co. and Palombi Securities, Inc., his employers included J. A. Winston & Co., Steven Randall & Co. and Scott Taylor & Co. The broker-dealer registrations of all of these firms have since been revoked by the Commission.

80. When Cohen was initially employed by Albion he was under a temporary restraining order resulting from his selling of Atomic Mining Corporation stock while at Scott Taylor & Co. Thereafter, he consented to a permanent injunction in that matter, and an appropriate order was issued by the United States District Court for the Southern District of New York on October 19, 1962.

81. In March 1961, Cowles Andrews bought 100 shares of Edlund stock at $4 per share following several telephone calls from Cohen in which he represented Edlund as a growth situation with responsible management, and advised that it was reasonable to expect the price of the stock to rise. Mr. Andrews thereafter received at least one of the market letters sent out by Albion and described in the prior Recommended Decision.

82. Subsequently, in December 1961, Cohen called Andrews and advised that although Edlund had not prospered, it still had reasonable prospects. He suggested that Andrews buy more stock in order to "average down." Accordingly, on December 26, 1961, Andrews bought an additional 100 shares from Albion at 30 cents a share. This, of course, was long after the reorganization proceedings had been instituted, but Cohen gave no indication to Andrews that Edlund was in financial difficulties except to state that it was raising additional capital by selling the stock at a reduced figure and, as indicated, that it had not prospered. (Cohen did not cancel this transaction as he did Kasner's when the latter called and indicated he'd learned of the reorganization.)

83. As indicated above, Cohen's representations to Mrs. Reyman concerning Edlund and the price of its stock induced her to buy more Edlund stock on April 27, 1961 rather than sell the stock as she had intended when she called Albion. Subsequent representations by Cohen to Mrs. Reyman were equally flamboyant and lacking in foundation or support of any kind.

84. Monroe Rosenbaum also was induced by Cohen's unfounded representations to buy Edlund stock, as indicated above. Cohen was the "strong sell" man of Albion and often was called by the salesman to close sales with which they were having difficulty in their telephone conversations. The testimony indicated that he was much less subtle than Gravino in his representations and promises with regard to the prospects of Edlund and the possibility of a rise in the price of its stock.

John F. Dailey, Jr. ("Dailey")

85. After the formation of Albion, Dailey continued the practice of law in an office in Albion's suite and devoted approximately half of his time to the law practice. Approximately 70% of his income was derived from the law during the period Albion was in business.

86. It is apparent from the laxness of Dailey in hiring Gravino and Cohen as co-managers of the Albion business, and from his failure to inquire more fully into their backgrounds, that he had no true appreciation of or regard for the importance of honest management in the securities business. It is equally apparent that Dailey lacked appreciation of or regard for the importance of fair dealing with the investing public.

87. Although some of the salesmen who were hired at Albion had absolutely no experience in the securities business, Dailey took no steps to see that a training program was instituted. He testified:

> "There was no program; I know in some cases where they had no prior experience, they would come in and spend some time sitting in the salesmen's room, talking to the salesmen, talking to Gravino and Cohen, and I presume absorbing the atmosphere of registered representatives."

Dailey should have recognized that if any atmosphere was being absorbed it was an extremely unhealthful one. This applied, of course, to his nephew, J. Dailey, Jr., who, along with other salesmen lacking in experience, were exposed to the boiler-room tactics of men who had spent years in selling stocks by using unwarranted representations, high pressure, and methods generally violative of rules of fair dealing, including those of the NASD.

88. Dailey's failure to verify the information received from Edlund and other information used as the basis for Albion's market letters was consistent with his lack of regard for the importance of truth in the sale of securities. His use of lists of potential customers, including a mailing list composed exclusively of the name of doctors, as a basis for high pressure telephone calls, was consistent with the indifference to the investment needs and objectives of potential customers.

89. All of the deficiencies of the business, beginning with the hiring of Cohen and Gravino, continuing with the employment of salesmen who were either inexperienced or whose backgrounds were comprised of questionable experience at firms of doubtful integrity, and continuing further with the use and dissemination to the public by pressure telephone calls of unverified and untruthful information,are the direct responsibility of Dailey, who could not help but see what kind of business was being carried on in his office.

(William) Murray Dailey

90. (William) Murray Dailey, as President, director and sole stockholder of registrant, acquiesced passively in the conduct of the business by his brother, permitted the employment of Gravino and Cohen and of the salesmen, and took no steps to exercise control and supervision or to insure that the business was being operated properly. He was almost totally removed from the business, physically and in every other sense, except that he would reap the benefits of a profitable investment if operations were successful. For the

Commission to hold, with respect to (William) Murray Dailey, other than that his position of responsibility and control in the firm cast upon him a correllative duty to use that position so as to insure against the kind of improper activity in which Albion engaged,would be utterly impractical and a source of danger to the public and to the securities industry. And the Commission has so indicated in prior cases. Thus, in Aldrich, Scott & Co.,Inc., 40 S.E.C. 775 (1961), the Commission stated, at page 778:

> "A principal officer, director and stockholder of a registered broker-dealer, such as Aldrich, has at the least a duty to keep himself informed of the registrant's financial condition and to take those steps necessary to insure compliance with the Exchange Act. [citing Luckhurst & Company, Inc., 40 S.E.C. 539 (1961).] Aldrich failed to know what should have been known and failed to do what should have been done. Because of his breach of duty, we find that he was responsible for the above-stated violations of registrant." [citing "Luckhurst & Company, Inc., supra; Thompson & Sloan, Inc., 40 S.E.C. 451 (1961); Cf. Lucyle Hollander Feigin, 40 S.E.C. 594 (1961)."]

91. A further aspect of the fraud charged in the Order involves Albion's trading in Edlund stock during the time it was still engaged in the distribution of the offering, in violation of Section 10(b) and Rule 10b-6 thereunder.[7/] As stated in the earlier Recommended Decision, during the period March 8, 1961 to March 20, 1961, Albion made purchases of Edlund stock for its own account at prices in excess of $3 per share and resold such shares to its customers, including some of the witnesses in the proceeding. Under Rule 10b-6, which the Commission adopted in 1955 as an anti-fraud measure, it is a manipulative or

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7/ Section 10(b) is one of the anti-fraud statutes synthesized in footnote 3, supra. Under the Section it is unlawful, broadly speaking, to use, in connection with the purchase or sale of any security, a manipulative or deceptive device in contravention of such rules as the Commission may prescribe. Although Rule 10b-6 was adopted in 1955, as stated above, the Commission noted at that time that it was no more than a formulation of principles which had been generally followed. Securities Exchange Act Release No. 5194, July 5, 1955.

deceptive device for an underwriter engaged in the distribution of a security, "by the use of any means or instrumentality of interstate commerce or of the mails . . . to bid for or purchase" such security "for any account in which he has a beneficial interest . . . or to attempt to induce any person to purchase such security."[8/]

92. The Rule is practicable and workable because of its exemptions.[9/] One of the exemptions (proviso 6) permits "offers to sell or the solicitation of offers to buy the securities being distributed . . . " But as the Division points out, there were 38 or 39 transactions by Albion during the offering period, more specifically between March 8 and March 20, which involved purchases by Albion and sales to its customers in brokerage transactions at prices in excess of $3, and these were not a part of the distribution of shares in the offering. Nor did these sale transactions fall within the exemption afforded by proviso 5, of "brokerage transactions not involving solicitation of a customer's order." One of the transactions involved the sale, discussed in paragraph 42, supra, of 100 shares following Rein's telephone call to Zuller, at $3-3/8 per

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8/ As the Division's Supplemental Brief points out:

> "The Commission has stated that: 'A person contemplating or making a distribution has an obvious incentive to artifically influence the market price of the securities in order to facilitate the distribution or to increase its profitability. We have accordingly held that where a person who has a substantial interest in the success of a distribution takes active steps to increase the price of the security, a prima facie case of manipulative purpose exists.'"[citing "Bruns Nordeman & Co., 40 S.E.C. 652, 660 (1961). Cf. The Federal Corporation, 25 S.E.C. 227, 230 (1947), Halsey Stuart & Co., Inc., 30 S.E.C. 106, 124 (1950)".]

9/ For an excellent discussion of certain allegedly esoteric aspects of the Rule and of its history, see an article by former Commissioner Jack M. Whitney, II, in 62 Michigan Law Review 567, Rule 10b-6: The Special Study's Rediscovered Rule.

share, on March 16, 1961, with a commission charge of $9.75, or a total price of $347.25. Part of the purchase price was paid by Zuller's authorizing the sale of 100 shares of Speedway Food Stores stock, producing a net amount of $198.92, and the balance by Zuller's remitting a check to Albion for $148.33. Thus the exemptions were inapplicable, and the jurisdictional requirements of Section 10(b) and of the Rule were clearly satisfied by this transaction which, according to Zuller's testimony, involved the use of the mails, telephone and commercial bank check.

93. Similarly, on March 17, 1961, Dr. Campanella, as found above in paragraph 32, made a second purchase from Lang at $3.50 per share. This was the result of a telephone call from Lang which Dr. Campanella received at Secaucus, New Jersey.

94. Additionally, the Division points to evidence of a sale to Lothar Brodman of 100 shares of Edlund at $3-5/16 per share on March 15, 1961, as a result of a telephone call from an Albion salesman named Richman, who was not named in this proceeding. The confirmation of the purchase was mailed to Brodman and he made payment by check which he mailed to Albion.

95. And lastly, on this issue, Engel and De Pasquale are also directly implicated in this manipulative device by their above-mentioned sales, respectively, to Ratner at $4 per share on March 23, 1961 (paragraph 20),and to Schoeb at $3-7/8 on the same date (paragraph 51). In the Examiner's opinion all of these salesmen are chargeable with knowledge of the fact that the offering had not been completed when their respective sales were being made at

prices in excess of $3, and of the fact that these sales were not being made in accordance with the offering circular or the terms of the underwriting. The situation is distinguishable from that in Lloyd, Miller & Company, Securities Exchange Act Release No. 7340, June 11, 1964, where the Commission said:

> "Unlike the other individual respondents, Ela and St. Peter were only salesmen, and it does not clearly appear that they knew or had reason to know that registration was required."

and also:

> "It does not appear that Ela and St.Peter knew or should have known that the stock they sold at the price at which it was being publicly offered by the issuer was purchased by registrant from insiders at prices substantially below the offering price."

J. Dailey, Jr. and Peters were not employed by Albion during the offering period and are not involved in this 10b-6 violation. However, Gravino, Cohen, Dailey and (William) Murray Dailey, as persons in control, willfully violated and aided and abetted registrant's violation of Section 10b-6 and the Rule as charged in the Order, as did the several salesmen.[10/]

96. These findings and conclusions with respect to the 10b-6 violation are the only area of violations charged in the Order which were not treated in the prior Recommended Decision, with the added exception, as stated above, of the charge that the individuals named in the Order are causes of any Commission action suspending or revoking Albion's registration. Accordingly,

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10/ The Order charged the violation in the offering and selling of the Edlund stock before Albion completed the distribution. Another aspect of the manipulative or deceptive device was the purchase of the Edlund stock by registrant in violation of the provision of Rule 10b-6 prohibiting an underwriter's purchase for his own account of a security which he is still distributing. Cf. J. A. Latimer & Co., 38 S.E.C. 790 (1958); Bruns, Nordeman & Company, 40 S.E.C. 652 (1961); Sidney Tager d/b/a The Tager Company, Securities Exchange Act Release No. 7368, July 14, 1964.

it would be pointless now to repeat or detail the factual bases of registrant's violations. Citation of extensive additional legal authority supporting the several conclusions of law that the violations occurred seems also an exercise not called for under the circumstances of this case.[11/]

97. The Division's briefs contain excellent and extensive argument and support for its position respecting the violations charged. Moreover, the wealth of authority set forth and cited therein furnishes uncontrovertible basis for the conclusion that all of the individuals are causes of the suspension heretofore ordered by the Commission and of the revocation herein recommended. Much of the following discussion is a condensation of this material.

98. The responsibility of a securities salesman to the investing public has been discussed by the Commission in recent cases. The rule that an investor in securities must "be dealt with fairly, and in accordance with the standards of the profession"[12/] would have little value if it related only to the broker-dealer and not to his salesman employee. The salesman who deals directly with the investor must be held to standards of conduct reasonably designed to afford protection of the public interest. So the Commission

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11/ Merely by way of examples, reference is made to Vickers, Christy & Co., Inc., Securities Exchange Act Release No. 6872, August 8, 1962, to the effect that "Casual interviews and a perfunctory telephone call to a former employer are not the stuff that reasonable investigations [of salesmen] are made of." to the importance of a salesman's respect for the financial needs and investment objectives of his customer and the condemnation of the practice of recommending low priced speculative stocks by telephone to unknown customers, as enunciated in Gerald M. Greenberg, 40 S.E.C.133 (1960);and finally to the plethora of cases condemning the underwriter's acceptance and use, without reasonable basis or verification, of claims expressed by the issuer of a speculative security, as stated in Charles E. Bailey & Co., 35 S.E.C. 33 (1953).

12/ Duker & Duker, 6 S.E.C. 386 (1939).

stated in MacRobbins & Co., Inc., Securities Exchange Act Release No. 6846, July 11, 1942, aff'd. sub nom. Berko v. Securities and Exchange Commission, 316 F. 2d 137 (C.A. 2, 1963), that:

> "Whatever may be a salesman's obligation of inquiry, or his right to rely on information provided by his employer, where securities of an established issuer are being recommended to customers by a broker-dealer who is not engaged in misleading and deceptive high-pressure selling practices, that situation is not presented here. Certainly, there can be little, if any, justification for a claim of reliance on literature furnished by an employer who is engaged in a fraudulent sales campaign. In our view, a black letter rule providing exculpation of a salesman in such circumstances, because of reliance on his employer, would place a premium on indifference to responsibilities at the point most directly and intimately affecting the investor." 13/

Cf. Ross Securities, Inc., Securities Exchange Act Release No. 7069, April 30, 1963, where the Commission rejected an argument by salesmen that they had reasonably relied on information furnished by the registrant, and held, conversely, that their conduct revealed a gross indifference to their duty to confine their statements to those reasonably based on available information and to disclose their lack of information concerning the issuer's current operations.

99. In summary, it follows from the above that registrant violated Sections 10(b), 15(b) and 15(c)(1) of the Exchange Act and Rules 10b-5, 10b-6, 15b-2 and 15c1-2 thereunder, and that in doing so it was aided and abetted by (William) Murray Dailey and John F. Dailey, Jr., Anthony Gravino

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13/ In the MacRobbins case the argument was made by salesmen that they relied on information supplied by the employer. In the instant case, no proposed findings, conclusions or briefs were filed by any respondent, and no similar defense asserted, except as suggested in testimony of some of the salesmen.

and Lewis Cohen, as persons in control of registrant's business. The violations were willful, within the meaning of that term as used in Section 15(b) of the Exchange Act.[14/] It follows also from the above that Engel, Lang, Rein, Peters, De Pasquale and J. Dailey, Jr. willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 15(c)(1) and Rule 15c1-2 under the Exchange Act, and that as indicated above they aided and abetted the violation of those Acts and Rules by registrant. In addition, the above salesmen, excepting Peters and J. Dailey, Jr.,violated and aided and abetted the violation by registrant of Section 10(b) and Rule 10b-6 of the Exchange Act.

Public Interest: Recommendation

100. Even apart from the several NASD and Commission determinations against registrant, its controlling persons and co-managers, and some of the salesmen it employed, evidence of which was received at the hearing generally as a matter of public interest, there is no doubt that the public interest would require that Albion's registration be revoked for the violations found herein, and the Hearing Examiner recommends that an appropriate order to that effect be issued.[15/] It is also recommended that (William) Murray Dailey, John F. Dailey, Jr., Anthony Gravino, Lewis Cohen, D. Richard Engel, Aaron Lang a/k/a Aaron Lichtenstein, George A. Rein, Murray Peters, James De Pasquale and John Phillip Dailey, Jr., each be named as a cause of the suspension heretofore

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14/ Edna Campbell Markey d/b/a E. C. Markey, 39 S.E.C. 274 (1956); Hughes v. S.E.C., 174 F. 2d 969 (1949).

15/ Albion's proclivity for hiring persons with questionable backgrounds in the securities business is, of course, consistent with its ability to carry out its boiler-room operations.

ordered and of any order of revocation which may issue in these proceedings. 16/

Respectfully submitted,

Sidney Ullman
Hearing Examiner

Washington, D. C.
July 31, 1964

16/ To the extent that the proposed findings and conclusions submitted to the Hearing Examiner are in accord with the views set forth therein they are accepted, and to the extent that they are inconsistent therewith they are expressly rejected.

APPENDIX I

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
March 4, 1964

In the Matter of ALBION SECURITIES COMPANY, INC. 52 Broadway New York, New York File No. 8-7831 Securities Exchange Act of 1934 - Sections 15(b) and 15A	FINDINGS, OPINION AND ORDER SUSPENDING BROKER-DEALER REGISTRATION

The sole issue now before us in these proceedings is whether, under Section 15(b) of the Securities Exchange Act of 1934 ("Act"), it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration as a broker and dealer of Albion Securities Company, Inc. ("registrant"), pending final determination of whether such registration should be revoked.

Following hearings our Division of Trading and Markets submitted proposed findings and a supporting brief, and the hearing examiner recommended that registrant's registration be suspended. No exceptions were filed to the examiner's recommended decision, and in accordance with Rule 17(a) of our Rules of Practice, any objections which might have been made will be deemed to have been abandoned and may be disregarded. Following that Rule, we adopt the findings and conclusions of the hearing examiner which may be summarized as follows:

Registrant was the underwriter on a best efforts basis of an offering of 100,000 shares of stock of Edlund Engineered Products, Inc. ("Edlund") at $3 per share pursuant to a filing made under Regulation A for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933. The offering commenced on January 9, 1961 and was completed on March 28, 1961. There is evidence in the record that registrant, in selling Edlund shares during this public offering and subsequently during the rest of 1961, engaged in a course of business which operated as a fraud and deceit on investors in violation of the anti-fraud provisions of the securities acts (Section 17(a) of the Securities Act, and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 15c1-2 thereunder). Such evidence shows that registrant engaged in a high pressure sales campaign, principally through telephone solicitations, in the course of which many extravagant, false and misleading representations were made.

The misrepresentations included, among others, statements that the price of the stock would double or triple or go as high as $20 per share within relatively short periods of time; that Edlund was producing a coin-operated laminating machine for placement all over the United States from which it would derive millions in earnings; that Edlund had orders from certain large airlines for aircraft parts and components; and that Edlund had a big order from the Federal government. In fact Edlund lost money during the period of registrant's sales, filed a petition in October 1961 for reorganization under Chapter X of the Bankruptcy Act, and was adjudicated a bankrupt in February 1962. Edlund never produced a coin-operated laminating machine and had no orders from the government or the airlines.

We also adopt the hearing examiner's conclusion that there has been a sufficient showing of misconduct to make it necessary and appropriate in the public interest and for the protection of investors to suspend registrant's broker-dealer registration pending final determination of the issue of revocation of such registration.

Accordingly, IT IS ORDERED that the registration as a broker and dealer of Albion Securities Company, Inc. be, and it hereby is, suspended pending final determination whether such registration shall be revoked.

By the Commission (Chairman CARY and Commissioners WOODSIDE, COHEN, and WHITNEY).

(Entered on the date first noted above.)

Orval L. DuBois
Secretary