UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matters of	
HARRIS CLARE & CO., INC.	(8-10474)
HARRIS CLARE & CO.	(8-11753)
TOWNE HARRIS & CO., INC.	(8-10377)
BRUCE SHAPIRO	(8-10474)
MARTIN CLARE MELVIN WINSLOW ROBERT SUMMERS	(8-11753)
HARRIS FREEDMAN	(8-10377)

FILE:
OCT 15 1965
SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

Washington, D. C.
October 15, 1965

Irving Schiller
Hearing Examiner

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BEFORE: Irving schiller, Hearing Examiner

APPEARANCES: Joseph C. Daley, Joel Leifer, Roberta Karmel and Gerald H. Goldsholle, Esqs., for the Division of Trading and Markets.

Bernard Coven and Edward J. Gedalecia, Esqs., for Harris Clare & Co., Inc., Harris Clare & Co., Towne Harris & Co., Inc., Harris Freedman and Martin Clare.

Robert Summers, *pro se.*

These are proceedings [1/] pursuant to Section 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act) to determine whether Harris Clare & Co., Inc. (registrant) willfully violated Section 17(a) of the Securities Act of 1933 (Securities Act) and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder and whether Martin Clare, Melvin Winslow (Winslow), Robert Summers (Summers), Bruce Shapiro (Shapiro) and Harris Freedman (Freedman), singly and in concert, willfully violated and aided and abetted in willful violation of the above-mentioned Sections of the Securities Act and the Exchange Act and whether remedial action is appropriate in the public interest pursuant to Section 15(b) and 15A of the Exchange Act. [2/]

1/ These proceedings were consolidated with proceedings simultaneously ordered by the Commission in the matter of Christopher & Co., Inc., et al (File No. 8-9380) and J. E. Marken & Co., Inc., et al (File No. 8-1057) as to common questions of law and fact. An initial decision will be filed in each of the above-named proceedings.

2/ Section 15(b) of the Exchange Act as applicable here, provides that the Commission shall censure, suspend for a period not exceeding 12 months or revoke the registration of a broker-dealer if it finds that it is in the public interest and that such broker or dealer or any person associated with such broker-dealer has willfully violated any provisions of that Act or of the Securities Act of 1933 or any rule thereunder.

Section 15A(1)(2) of the Exchange Act provides for suspension for a maximum of 12 months or the expulsion from a registered securities association of any member, or for suspension for a maximum period of 12 months or barring any person from being associated with a member thereof if the Commission finds that such member or person has violated any provision of the Exchange Act or rule or regulation thereunder or has willfully violated any provision of the Securities Act of 1933, as amended, or any rule or regulation thereunder.

The order for proceedings alleges in essence that during the period May 1962 through January 1963 registrant, Freedman, Clare, Winslow, Summers and Shapiro, singly and in concert, willfully violated and aided and abetted willful violations of the above-mentioned Sections of the Securities Act and the Exchange Act and the respective Rules thereunder, in the offer and sale of the common stock of Alaska International Corporation (Alaska) otherwise than on a national securities exchange and directly and indirectly employed devices, schemes and artifices to defraud and engaged in a course of business which would and did operate as a fraud and deceit upon purchasers and prospective purchasers of securities.

After appropriate notice, hearings were held before the undersigned hearing examiner. Proposed findings of fact and conclusions of law and briefs in support thereof were filed by the Division of Trading and Markets and by registrant, Harris Clare & Co., Towne Harris, Freedman and Clare.[3/]

3/ Winslow and Shapiro failed to file answers as directed by the order for proceedings and failed to appear at the hearings held thereon. Under the Commission's Rules of Practice, 17 CFR 201.6(e) and 7(e) the two named individuals were deemed to be in default. On July 27, 1965 the Commission rendered its Findings and Opinion and found that Winslow and Shapiro, while associated with registrant, willfully violated and aided and abetted in willful violations of certain provisions of the Securities Act of 1933 and the Exchange Act and Rules thereunder, as set forth in the order for proceedings in connection with the offer and sale of the common stock of Alaska and entered an order barring both individuals from being associated with a broker or dealer.

The following findings and conclusions are based on the record, the documents and exhibits therein and the hearing examiner's observation of the various witnesses.

Registrant was originally registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act on March 11, 1962 under the name of Harris Stevens & Co., Inc. By appropriate amendment filed May 14, 1962 registrant reflected a change in its corporate name to Harris Clare, Inc. Clare & Co., a partnership located at the same address as registrant, was registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act in December 1963. Towne Harris was originally registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act under the name of Thompson Securities, Inc. By appropriate amendment filed February 1964 Thompson Securities, Inc. reflected a change in its corporate name to Towne Harris. Clare & Co. and Towne Harris are members of the National Association of Securities Dealers, Inc. (NASD), a national securities association registered pursuant to Section 15A of the Exchange Act.

Freedman was president and director and owner of 10% or more of the equity securities of registrant from March 1962 until April 1963 and was, and is, a director and owner of 10% or more of the equity securities of Towne. Clare was, and is, a general partner of Clare & Co. and since May 1962 has been employed by registrant as a registered representative. Summers was employed by registrant in July 1962 as a registered representative and in April 1963 became vice president, secretary, a director, and owner of 10% or more of the

equity securities of registrant. Since December 1963 Summers has been a general partner of Clare & Co.

Fraudulent Sale of Alaska Stock

The order for proceedings alleges, among other things, that during the period May 1962 through January 1963 registrant, Freedman, Clare, Winslow, Summers and Shapiro, singly and in concert, made untrue statements of material facts and omitted to state material facts to purchasers of the common stock of Alaska and engaged in acts, practices and a course of business which operated as a fraud and deceit upon purchasers and prospective purchasers of the said securities in willful violation of the anti-fraud provisions of the Securities Act and the Exchange Act.[4/]

Eighteen investor witnesses testified as to the representations concerning Alaska made to them by the above-named persons. In addition, three former employees of registrant testified as to the information they received at registrant's office for dissemination to potential investors and as to the manner in which the firm conducted its business. One of such employees was hired as a research assistant

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4/ The anti-fraud provisions referred to are Sections 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules thereunder. The composite effect of these provisions, as applicable here, is to make unlawful the use of the mails or interstate facilities in connection with the offer and sale of any security by means of a device to defraud, an untrue and 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 or fraudulent device.

and registered representative; the second, a part-time salesman, and the third, a receptionist and typist. The latter also purchased stock of Alaska (in her father's name) on the representations made to her by Winslow and Freedman. The representations made to the investor witnesses included, among other things, that the Alaska stock would increase in price, that it could double or might triple in price or that it would increase three or four times within a period of three months; that Alaska was a hot stock which at one time had been as high as $6, $8 or $10 a share with a good possibility of or words suggesting the likelihood that Alaska stock would return to its former price; that a $500 investment in the said stock could increase to $5,000; and that as a result of inside information which registrant had, the stock would advance to $4 or $5 a share within six months. Three of registrant's salesmen told customers that by purchasing Alaska stock they could recoup prior losses sustained in earlier securities transactions. Four of the salesmen told their customers that Alaska was close to or would possibly merge or that another company would purchase Alaska's properties or that Alaska was taking over companies whose names were being kept secret. Sixteen of the witnesses who testified stated they were informed that Alaska was either a mining company or an oil company or both; that it was engaged in drilling for oil; that it had found what it had expected and as a result would make money; that on property adjacent to that owned by Alaska in Australia oil was discovered; or that Alaska had rich mineral deposits such as uranium and nickel or that it was mining substances needed in atomic research. One customer

was told Alaska was sifting for gold and some of the company's operations were profitable. Two of such customers were advised that Alaska was making money and operating on a profit and one of the customers was told that the company had a million dollars in its treasury; another was informed that as a result of substances found Alaska's earnings would increase. None of the respondents testified at the hearing and the record contains no denial by them of the investor's testimony concerning the foregoing representations.[5/]

There was no reasonable basis for the representations made regarding Alaska's price appreciation, its purported merger, its successful business operations or its earnings. Such statements were either outright false or so artfully stated as to leave customers with the rosy expectations of gain without disclosing any known or reasonably ascertainable adverse information concerning Alaska. To test the validity of these conclusions we shall first examine the knowledge registrant had concerning Alaska and measure such knowledge against the then existing facts concerning Alaska's financial position and the results of its operations.

Registrant determined to sell Alaska stock in July 1962. At that time the firm was looking for a low-priced situation that had growth potential which could be sold to customers as a speculation.

5/ It should be noted that although the Commission has already barred Winslow and Shapiro from being associated with a broker or dealer the hearing examiner has considered evidence concerning their representations to investors while they were employed by registrant.

Freedman, who was president, made the determination to sell Alaska after conferring with Clare and Winslow. Freedman's knowledge of Alaska's business was obtained from the material he received from Alaska consisting of reprints of newspaper articles relating to Alaska's granite and gold properties, a report to stockholders dated September 1, 1961 containing a financial statement at July 31, 1961 and an interim report to stockholders dated June 1962 which had no financial information. From these sources Freedman believed that Alaska had the largest granite quarry in New Mexico, had a lease or an option to lease gold properties in Arizona, some mineral properties and property in Australia. Winslow, who was registrant's vice president, understood Alaska had property in Australia, that it was engaged in mining, exploring for oil and that it had some properties in the Southwest. Freedman was impressed by the fact that the balance sheet for the fiscal year ended July 31, 1961 showed that Alaska's assets exceeded its liabilities and it was not insolvent. In determining to sell Alaska stock all of them gave great weight to the fact that at one time Alaska sold as high as $7 a share and in July of 1962 was selling below $1, and that approximately 25 or 30 brokers appeared to be expressing an active interest in the said stock. There was also evidence that, in the spring of 1962, Clare visited one of Alaska's properties in Arizona and was told by Alaska's president that a pilot gold mining project had been conducted at the property and that samples of gold had been filed with the Bureau of Land Management. Clare was also told at that time that the property had possibilities as

real estate development if a partner could be found to furnish financial help since Alaska did not have money itself to develop the property. During such visit Clare neither requested nor obtained financial statements or information. Alaska's then president testified that Alaska's books and records were available at all times to anyone who cared to examine them and that Clare made no request to look at Alaska's books nor did Clare make any effort during said visit to obtain any information concerning Alaska's total operations.

It is clear from the record the July 31, 1961 balance sheet was the only financial information concerning Alaska which registrant and its representatives had during the period it sold that company's stock. The balance sheet was prepared by a firm of certified public accountants. In a letter accompanying the balance sheet the firm stated that it was unable to render an opinion because, among other things, it was unable to examine original records relating to acquisitions of mineral and oil properties prior to April 21, 1961 and because the company had "revalued oil and gas properties, mineral holdings, stocks in other companies and mining equipment based on appraisals made by geologists, engineers, management and others." Under the liabilities and stockholders' equity portion of the balance sheet the surplus item reflected that Alaska had revalued its assets upward by $2,339,223 and that it had an earned surplus deficit of $2,455,025. Though, as noted above, registrant commenced selling Alaska stock in July 1962 it was not until September 20, 1962 that it

requested Alaska to furnish current financial information and admitted in the letter that the 1961 financial statement which it had was "too generalized to be of any significant value." Registrant also requested detailed additional information as to "the varied properties included in the assets" stating that the "projections of the properties" accompanying the financial statement were "all optimistic." Information was requested as to "the extent to which the individual properties materialized." Alaska acknowledged receipt of the letter but stated that the information requested was not available and would not be until the 1962 financial statements became available. A second request was made for similar information to which no reply was received. Notwithstanding the failure to secure current financial and other information concerning Alaska's operations registrant continued to sell Alaska stock.

The information registrant had concerning Alaska was totally insufficient and inadequate as a basis for making the type of representations which the investors testified were told to them nor for purposes of recommending such stock to investors. Alaska was incorporated in 1957 and during the period registrant sold its stock it was a diversified holding company engaged in the exploration and development of mineral and mining properties and owned or had an interest in developed and undeveloped real estate. The record discloses that on May 5, 1959 Cataract Mining Corp. was merged into Alaska and as of that date Alaska's books and records reflect that it had tax losses carried

forward as follows:

Fiscal Period Ended	Loss	Fiscal Period Ended	Loss
2/28/56	$ 37,276	2/28/58	$1,013,869
		2/28/59	140,276
2/28/57	147,914	5/5/59(Date of Merger)	7,282

Alaska's operations after the merger continued to be unsuccessful. For the fiscal year ended July 31, 1959 Alaska had a loss carry forward of $161,106 and for the period ended July 31, 1960 such loss amounted to $273,797. By the latter part of 1960 Alaska was in a very weak financial position and unable to meet its obligations. During the summer and fall of 1960 the old management negotiated to sell control of the company and on or about April 1, 1961 such sale was effected. The group which acquired control made some loans to Alaska in light of its dire need for cash and embarked on a program of acquiring leases and other property by issuing its own 3-cent par value common stock which it arbitrarily valued at $1 per share. As at July 31, 1961 Alaska had issued and outstanding 6,234,058 shares of its common stock and by July 31, 1962 there were 8,806,288 such shares outstanding.

It is clear from the evidence that from at least 1959 Alaska had no operating profits but sustained losses. For the fiscal year ended July 31, 1960 Alaska had a total income of $10,702 and a loss of $273,797. As at the same period it had an accumulated loss of $1,781,522. For the fiscal year ended July 31, 1961 Alaska's total income amounted to $32,459, which was composed of income from the sale of oil and gas amounting to $20,079 and a refund of prior charges amounting to $12,380. For the same period Alaska expenses amounted to

$1,013,855 and included a write-off of the cost of exploration and development on expired leases amounting to $107,133, the cost of expired mineral leases and permits amounting to $760,788 and the cost of operations on abandoned leases amounting to $14,748. The total loss for the fiscal year ended July 31, 1961 amounted to $981,395. As at the same period Alaska's total accumulated loss amounted to $2,762,917.

Alaska's operations during the following fiscal year continued their unfavorable trend and neither the existing projects nor the properties acquired during the said year resulted in any operating profit.[6/] In fact, Alaska's accumulated loss substantially increased.

6/ Alaska's chief executive officer responsible for the company's operations for the period August 1, 1961 through July 31, 1962 testified that the company set up its operations as projects, all of which incurred expenses far exceeding any income which any project may have had and each of which resulted in an operating loss. Many of the leases were dropped as commercially unfeasible or abandoned as worthless. Alaska's "prime project" was the R-Gold Project located outside Phoenix, Arizona. During 1961 and early 1962 Alaska conducted a pilot gold mining operation. In the fall of 1962 Alaska learned its properties had been "salted." No gold had ever been produced commercially. Alaska's loss on this operation was approximately $60,000. Its next largest project was called the Beryllium Project. The ore mined in this beryllium operation failed to meet the requirements of Alaska's purchaser. Moreover, Alaska needed milling facilities which it was unable to obtain and it was unable to erect its own facilities since it lacked adequate financial means. At any rate it is clear that after May 1962 there was no possibility of commercial production of beryllium by Alaska and the project was dropped with a $25,000 loss. The third largest project related to an oil and gas concession in Queensland, Australia in which Alaska owned a 10% stock interest. Alaska had no money to meet its requirements or pay rentals. No drilling was ever conducted on this project, no oil was ever discovered and no income ever received from operations. (Cont'd next page.)

For the fiscal year ended July 31, 1962 Alaska's gross income amounted to $3,427. For the same period its expenses amounted to $239,065 and included a write-off of the abandoned mineral leases amounting to $88,500, the cost of exploration and development on abandoned leases amounting to $67,713 and the cost of expired oil and gas leases $71,100. The total loss for the fiscal year ended July 31, 1962 amounted to $418,489. In addition, Alaska sustained long-term capital losses amounting to $202,714 and short-term capital losses amounting

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Similarly, other projects either had no income or very little income and all of them necessitated expenditures for development or other operations and each of them resulted in losses by Alaska for the year ended July 31, 1962. Alaska's books reflect that the following projects, which constituted its major operations, were either abandoned or determined to be worthless and written off as losses.

Name of Project	Loss
Big Bug Placer -	$ 36,641
No commercial operation - abandoned	
Frenchman's Gulch -	21,529
Investment abandoned as worthless	
Plaza Hospital Center and Heritage Home -	2,666
Research and exploration on both properties which were abandoned	
Equitable Development -	90,342
Management determined that its investment was worthless	
Centennial Beryllium -	91,982
Project abandoned December 1961	
Cinco Petroleum	134,156
Write-off of investment	
National Growth Corporation	
Loss on investment -	159,259
Loss in value of securities -	191,109
Two oil and gas leases in Alaska and research of oil property in Ohio -	18,446
Banner Oil Corp. -	7,000
Determined by management to be worthless	
Partridge Canadian, Ltd. -	26,291
Determination by management that stock was worthless	

to $6,899. As at July 31, 1962 Alaska's accumulated loss amounted to $3,131,291.

It is obvious that prior to and during the time registrant was selling Alaska's stock the company was continually losing money. However, none of the investor witnesses who testified were so informed. Thus, twelve of the investor witnesses testified they were never told anything concerning Alaska's losses for the years 1961 and 1962. Five of the investor witnesses testified they were informed that Alaska was making money or it was operating at a profit or that it would make money or that it had some profitable operation or that its earnings would increase. The representations made to investors by registrant's principals and salesmen with respect to the nature of Alaska's business were either inaccurate or wholly insufficient. None of the investors were told that Alaska was a diversified holding company engaged in exploration and development of mineral and mining properties both in this country and abroad and that it owned developed and undeveloped real estate. Thus, three of the investor witnesses were told that Alaska was engaged only in a mining operation and one of such witnesses was told that such operation was used in connection with atomic research. One of the investor witnesses was told that Alaska had rich mineral deposits including uranium and nickel and another was told that Alaska was doing special research and that it had found "something" which should result in earnings. Two investor witnesses were told that Alaska was engaged in mining and in oil, three investor witnesses were

told Alaska was engaged in mining gold and one of such witnesses was told that Alaska was seeking oil as well. One of registrant's employees who testified he was engaged as a part-time researcher and salesman testified he was informed that Alaska had granite quarries, gold deposits and property in Australia adjacent to property in which oil was discovered. Finally, one investor was told that Alaska was a land holding company. None of the representations concerning Alaska's business were completely accurate nor did they fully inform potential investors the type of company in which they were being asked to invest. The statements relating to profitable operations or earnings were utterly false.

At the time registrant undertook to sell Alaska stock to investors it satisfied itself that Alaska was in business but apparently had no knowledge of that company's total operations nor of the results thereof nor did it know Alaska's financial condition. Moreover, it made no effort to obtain adequate information as to Alaska's current financial condition or whether it was earning or losing money notwithstanding the fact that the financial statement it had reflected an accumulated loss of $2,762,917. That fact alone should have raised a red flag and put registrant on notice that further investigation was warranted. At least some effort should have been made to determine whether Alaska's hugh losses were still continuing.. Failure to make an effort to obtain adequate information essential to an intelligent evaluation of the securities registrant was offering and selling such

stock to investors by unwarranted representations calculated to deceive prospective investors into believing their investment would be profitable constitutes a reckless indifference as to whether such representations are true or false and registrant is chargeable as if it had knowledge of the falsity. Irwin v. United States 338 F. 2d. 770 (C.A.9, 1964). Three months after registrant started selling Alaska stock it admitted in a letter to the company that the financial statement it had was too generalized to be of any significant value. Moreover, it sought information as to whether any of the properties which Alaska had ever materialized. The record is barren of any explanation for the failure to obtain such information prior to determining to sell such securities. As previously noted, none of registrant's principals or salesmen testified at the hearing nor did registrant offer proof to rebut the testimony by the investor witnesses as to the representations made to them. The hearing examiner credits the testimony of such witnesses.

The Commission has consistently held and the Courts have stated that unfounded predictions as to future levels or price increases unsupported by any reasonable basis of fact are a "hallmark of fraud." Mac Robbins & Co., Inc., Exchange Act Release No. 6846, July 11, 1962, p.15, affirmed sub nom Berko v. Securities and Exchange Commission 316 F. 2d. 137 (C.A.2, 1963); Alexander Reid & Co., Inc., 40 S.E.C. 986 (February 8, 1962). The hearing examiner finds that, in light of Alaska's substantial losses both prior to the date registrant undertook to sell such stock and mounting continually during the period such

stock was being sold, there was no reasonable basis for the predictions of price increase or that an investor's prior losses could be recouped by an investment in Alaska. The hearing examiner further finds that the representations as to earnings or profits or that Alaska had a million dollars in its treasury were completely false. The evidence in the record shows that during the period registrant was selling Alaska stock there was no merger pending nor was there any concrete basis for believing that a merger was imminent. Though much was made of Alaska's gold mining operations the evidence shows that the company never produced gold commercially and in fact no gold mining operations were being carried on after May 1962. Any representations relating to such matters the hearing examiner finds were unwarranted. The hearing examiner also finds that the registrant omitted to state material facts concerning Alaska's losses as well as its inability to obtain current financial or other information, facts which registrant knew or should have known.

Registrant contended throughout the hearing the investors either knew when they purchased Alaska stock that it was a speculation or that they were so informed by the salesman. The element of speculation is inherent in stock investments, but the investor is entitled to have the opportunity to evaluate the risk of loss, as against the hope of lucrative return, from true statements of the financial status of the corporate enterprise in which he is acquiring an interest.[7/]

7/ S.E.C. v. F. S. John & Co., 207 Fed Supp 566 (1962).

Moreover, the Commission has held that the fact that customers may have been seeking speculative securities does not detract from the fraudulent nature of the representations made to them.8/

The hearing examiner concludes that in the offer and sale of Alaska stock registrant willfully violated Section 17(a) of the Securities Act and Section 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder.9/

Findings as to Freedman, Clare and Summers

The representations made to investors referred to above included those made by Freedman, Clare and Summers. Freedman informed investors that Alaska stock could go to $1 in three to six months or that it would increase three or four times in approximately three months or that the stock was good for a short-term gain and better for long-term and pointed out to one investor that the stock had been as high as $10 a share. Freedman also told the employee whom the firm hired as a part-time salesman that potential investors are to be informed that within a period of four months the stock should move up to $1 or $1.25. Clare informed potential investors that Alaska should double in a matter of weeks or that it should rise to $1 a share in a period of six months. Clare also informed one investor that the price of the

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8/ Wright, Myers & Bessell, Inc., Securities Exchange Act Release No. 7415, p.4 (September 8, 1964).

9/ The evidence shows and there is no dispute that the mails were used in connection with the offer and sale of Alaska stock.

stock had at one time been as high as $7 a share and informed such investor that when the stock went to $1 he would pull the investor out of the investment. Clare also informed the aforementioned part-time employee that he should inform his customers that the stock would increase. Summers told investors that the stock has been as high as $4 and $5 a share and would rise again within a period of three months, that he was close to the president of Alaska and that he knew there would be a real movement in the stock soon. Summers represented to one investor that he would guarantee to double his investment by the end of the year and represented that a $500 investment would rise to about $5000. He informed another investor that he had inside information, that the issue would advance and would go to $4 or $5 and told still another investor that the people behind Alaska were going to move the stock and that the reason the stock was selling below $1 was that it was due to their desire to keep the price of the stock down and they did not want to make public the value of the assets.

In addition, all three of the above-named individuals told one or more of their customers that by purchasing Alaska stock they could recover losses sustained in prior securities transactions. Each of the three individuals represented to one or more of their customers that Alaska either had or would have profitable operations. Thus, Freedman represented to at least one of his customers that the company had millions of dollars in its treasury, that it was making money, that Alaska's expenses were down and it was showing a profit. He informed another customer that the company was earning considerable

money. Clare informed one customer that Alaska was making money and was operating at a profit. Summers represented to one customer that Alaska was doing research, that it had found what they expected and as a result would make money and that Alaska would eventually go on an Exchange. This latter representation was a complete fabrication.

None of the three individuals mentioned above informed any of their customers that Alaska had never had any profits but in fact had sustained substantial losses. The failure to disclose that Alaska had sustained substantial losses constituted an omission to state a material fact which each of them knew or should have known. There is no evidence in the record that, prior to undertaking the offer and sale of Alaska stock, any of them made any individual effort to secure current financial or other information regarding Alaska's operations. Although they were all aware of the fact that in September 1962 registrant sought current financial information as well as the status of the various projects that Alaska was involved in and that in fact no current financial or other information was ever received none of them made any effort to halt the sales of such stock.

The hearing examiner finds that, on the basis of the facts concerning Alaska's financial condition and the results of its operations set forth above, there was no reasonable basis for the representations made to investor witnesses by Freedman, Clare and Summers and that each one of them omitted to state material facts concerning Alaska's financial condition and operations which they either

knew or should have known. Moreover, it is evident that none of them disclosed to customers their inability to obtain current information as to Alaska's operations or financial condition. The investor witnesses testified that each of the persons named above in describing Alaska's business represented that Alaska was either engaged in exploration for oil or minerals or both or was mining for gold or that it was only a land holding company. These statements were half-truths and each of the persons named above omitted to furnish investors with an accurate description of Alaska's diversified operations. In fact, one investor witness testified that he was told nothing concerning the business of Alaska except that Alaska was the type of company in which he could double his money by the end of the year. Freedman told one customer that Alaska was engaged in special research, that something had been found as a result of which the company was earning considerable money. Clare told one customer that Alaska was only a mining company.

None of the above-named individuals saw fit to testify in the instant proceeding or controvert any of the statements made by the investor witnesses who testified regarding the representations made to them by each of the above-named persons. It is well settled that, in a noncriminal case, the failure of a party to testify in explanation of suspicious facts and circumstances peculiarly within his knowledge fairly warrants the inference that his testimony, if produced, would

have been adverse.[10]

The Commission has frequently emphasized that inherent in the relationship of every broker-dealer with his customer is the implied vital representation that the customer will be dealt with fairly and honestly.[11]

In the instant case it is evident and the hearing examiner finds that neither Freedman, Clare nor Summers dealt fairly with their customers and in fact made fraudulent representations to them to induce them to purchase the security by promising them quick profits.

The hearing examiner finds that Freedman, Clare and Summers willfully violated and aided and abetted registrant in willfully violating Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder.

Other Matters

Respondents in their brief contend that the hearing examiner erred in refusing respondent's request to direct the Division of Trading and Markets to turn over for inspection all papers in the Division's possession (other than work product). Such request was made at a time when a government witness was on the witness stand who

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10/ 2 Wigmor Evidence (1940), S.E.C. Section 289; Mammoth Oil Company v. U. S. 275, U.S. 13, 52-3 (1927) Cf. N. Sims Organ & Co., Inc. v. Securities and Exchange Commission 293 F. 2d. 78, 80-81 (C.A. 3, 1961) Cert. denied 82 S Ct. 440.

11/ Pinsker & Co., Inc., 40 S.E.C. 285 (1960).

stated that he recalled seeing a four-page brochure relating to Alaska which contained "figures" and a reprint of a newspaper article. After attempting to have the witness further identify the documents, the hearing examiner recessed the hearing and directed the Division to search its files to determine whether it had the documents which the witness testified as having seen in registrant's office. The Division stated on the record it did not have the material mentioned by the witness. Counsel for the respondents further requested the Division to produce all papers in their possession, financial statements, brochures and prospectuses of Alaska obtained by process or otherwise, not their work products. With respect to material taken from respondents the Division stated and respondents did not refute that all such material had been returned to respondents. The hearing examiner ruled that any material such as brochures, prospectuses or financial statements relating to Alaska which were in the public files of the Commission would be made available to respondents. The hearing examiner, in addition, directed the Division to turn over to the respondents any material which the witness then on the stand was able to identify. The hearing examiner, however, denied the broad request for all the documents in the Division's possession.

The hearing examiner has reviewed respondent's claim of error and is of the view that his prior ruling was proper. In essence, respondent's request was tantamount to asking the hearing examiner to direct the Division to turn over all of the files which the Commission had accumulated during the course of its private investigation and make

such material available to the respondents so that respondents could determine whether any such material could be of help to it in the cross-examination of the witness then on the stand or otherwise assist its case. In support of its contention respondents cite Brady v. State of Maryland, 373 U.S. 83 (1963), U. S. v. Shindler, 24 F.R.D. 142 (U.S.D.C., SDNY 1959); U. S. v. Iozia 13 F.R.D. 335 (DCSD NY). None of these cases support respondent's contention. In the Iozia case, the Court held that even the Federal Rules of Criminal Procedure do not authorize a rummaging through the files of the prosecution at will and that to entitle a defendant to production and inspection of documents there must be a showing of good cause. The Court went on to state that good cause requires a showing of four standards including that the documents are evidentiary and relevant and that the application be made in good faith and not intended as a general fishing expedition. In the instant case, respondents failed to demonstrate the existence of any of the standards for good cause laid down by the Court. On the other hand it was obvious that respondents were attempting a fishing expedition in the hope of finding some material which could be of some use to them. In fairness to the respondents the hearing examiner directed the staff to search its files and turn over to the respondents all material which could be identified by the witness on the stand together with all material obtained from the respondents. In denying the request for the production of all of the Commission's private files the hearing examiner was obviously weighing respondent's request against countervailing considerations of protecting confidential sources of information and the method, manner and circumstances of the Commission's acquisition of

the materials. It should be noted that unlike the Iozia case the respondents never made any effort to identify the documents it sought.

In the Shindler case, the Court stated that the defendents had shown good cause for inspection under the standards laid down in the Iozia case. The Brady case is not pertinent to the instant proceeding since in that case the Government sought to repress a confession and the Supreme Court held that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment.

The Commission has held that information or documents obtained by the staff in the course of any private examination or investigation are deemed confidential unless disclosure or production is authorized by the Commission as not being contrary to the public interest. Where a request was made for a copy of a transcript of a witness taken in a private investigation the Commission ruled that such a request was in the nature of a "fishing expedition" and that a sufficient showing had not been made of a particularized need "which outweighed the policy against intrusion into confidential files." (Memorandum Opinion re Linder Bilotti & Co., Inc. (File No. 8-9570) April 2, 1964, citing General Aeromation, Inc., 40 S.E.C. 21 (1961); See also Alexander Reid & Co., Inc., 40 S.E.C. 986 (1962). In the instant case there was no showing by the respondents upon which a determination could be made to overcome the policy against intrusion into the Commission's confidential files.

Public Interest

The sole remaining question is what, if any, remedial action is appropriate in the public interest. During the period July 1962 through January 1963 registrant sold in excess of 140,000 shares to approximately 125 investors. Each of the investor witnesses who testified was contacted by telephone and the pattern of selling was similar in nearly all instances, namely, the lure of quick profits. In addition to the representations heretofore mentioned most of the customers were told Alaska stock had at one time been selling as high as 7 to 10 dollars a share with the obvious intent of implanting in the minds of the investors, nearly all of whom the hearing examiner believes were naive and unsophisticated, practically an assurance that the price of the stock would rise shortly. Registrant attempted to demonstrate at the hearing that the investors had previously purchased securities thereby seeking to infer that they were sophisticated investors and knowledgeable about securities. The hearing examiner rejects such a patently absurd contention. One or two purchases of securities by persons completely untutored in securities analysis or evaluation is hardly a basis for making them sophisticated investors with an understanding of the vagaries of the stock market or the value of a specific security, particularly of a speculative security such as Alaska. When superimposed on such lack of understanding are the artful nuances and implications by salesmen in presenting an unwarranted optimistic picture so as to whet the appetite for a quick profit without disclosing or distorting essential information the hearing

examiner concludes that such a course of conduct can best be characterized as "boiler room" procedures involving as they usually do a concerted high pressure effort, by telephone, to sell a large volume of a speculative or promotioned security without concern for the suitability of such securities in the light of the customers' needs or objectives.[12/] Seven of the investor witnesses testified they were never informed of the inherent risks involved in the purchase of Alaska's stock. Ten of the investor witnesses testified they were never asked what their investment aims or objectives were or indeed if they had any and there is no evidence that such information was in fact obtained from the other investors who testified. Nine of the investor witnesses testified they put faith and reliance on the statements made to them by registrant's representatives.

A course of conduct by a broker-dealer wherein false and misleading statements are made to investors and reasonably ascertainable adverse material information is not disclosed, clearly evinces a complete disregard of the customer's best interests and constitutes a violation of the fiduciary obligations to persons who had been induced to place their trust and confidence in such broker-dealer. The hearing examiner concludes that such a course of conduct amounted to a scheme to defraud which operated as a fraud and deceit on the public in violation of the anti-fraud provisions of the Securities Acts. The hearing examiner finds it is in the public interest to revoke registrant's registration as a broker-dealer.

12/ Mac Robbins & Co., Inc., supra.

We have previously found that Freedman, Clare and Summers have willfully violated and aided and abetted registrant's violation of the Securities Acts. By representing that Alaska's stock would rise and making other unwarranted representations concerning the company's business and operations each of them implied that adequate financial and other information supported the extravagant claims made. None of them sustained the burden of going forward with evidence to establish they had some reasonable basis for their representations. The selling methods employed by each of them is the anthithesis of fair dealing with customers. In addition, Freedman who was president bore an additional responsibility to supervise so as to prevent the type of selling practices engaged in by the other salesmen. Not only did he fail in such supervision but himself engaged in the same type of misleading statements and concealment of material information. Both Clare and Freedman, the record discloses, importuned other salesmen to sell Alaska stock. For example, one of the persons hired as a part-time salesman testified that both Freedman and Clare at informal meetings of the sales force told salesmen "Get out there and do something. We've got a business to run here. We've got to make money." "Get out and sell Alaska." The same employee further testified that Clare asked him to listen while he (Clare) spoke to a potential investor so the employee could learn the techniques of selling. In a conversation which thereupon followed Clare informed a potential investor that he expected Alaska to rise to about $1.25 in a three or four-month period. There is nothing in the record indicating that

either Clare or Friedman ever stressed to salesmen the necessity of informing customers of the inherent risks involved in the purchase of a speculative security such as Alaska. Nor is there evidence that any of them told customers of Alaska's substantial accumulated loss or that no current information concerning Alaska was available. The sales techniques used by each of them fell far short of dealing fairly with customers.

In the light of the record in the instant case the hearing examiner finds that Freedman, Clare and Summers made false and misleading statements to customers regarding Alaska, failed to disclose essential information known to or reasonably ascertainable by them and in general each of them have demonstrated a lack of understanding of their legal and ethical obligation to deal fairly with customers. In their relationship with customers, trust and confidence had been developed between each of them and their customers so that customers relied on the advice furnished and each of them had a duty to act in the customers' best interests. The record demonstrates and the hearing examiner finds that Freedman, Clare and Summers failed to so act. Moreover, Freedman, Clare and Summers are associated with firms which are members of the NASD. Article III, section 2, of the Rules of Fair Practice of that organization provides that -

> "In recommending to a customer the purchase..... of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer on the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

As noted above, neither Freedman, Clare nor Summers made any effort to

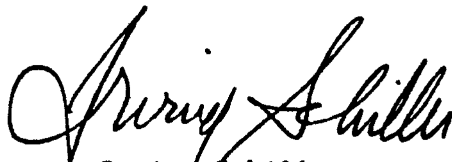
determine whether Alaska was suitable for such customer nor did they ascertain the customer's financial situation or his needs.

The hearing examiner concludes it is in the public interest to bar Freedman, Clare and Summers from being associated with a broker or dealer.

The hearing examiner is required to determine what, if any, remedial action is appropriate in the public interest as to Clare & Co. and Towne. Clare and Summers are the sole partners of Clare & Co. Clare and Summers were found to have willfully violated and aided and abetted registrant's violation of the anti-fraud provisions of the Securities acts and each of them were found to have failed to discharge their fiduciary obligation to treat customers fairly. The hearing examiner concluded that each of them be barred from association with a broker or dealer. Under the circumstances a firm composed of two such persons should not be permitted to deal with the public. The hearing examiner finds that pursuant to Section 15(b) of the Exchange Act, as amended, it is in the public interest to revoke the registration of Clare & Co. as a broker or dealer and pursuant to Section 15A(b) of the Exchange Act it is the public interest to expel Clare & Co. from membership in the NASD.

In light of the findings that Freedman willfully violated and aided and abetted registrant's violation of the anti-fraud provisions of the Securities Acts, that he failed to discharge his fiduciary obligation to treat customers fairly and that he failed reasonably to

supervise persons subject to his supervision with a view to preventing violations of such statutes it was concluded that he be barred from association with a broker or dealer. Under the circumstances a firm in which Freedman owns all of the stock should not be permitted to deal with the public. The hearing examiner finds that pursuant to Section 15(b) of the Exchange Act, as amended, it is in the public interest to revoke the registration of Towne as a broker or dealer and pursuant to Section 15A(b) of the Exchange Act it is in the public interest to expel Towne from membership in the NASD.



Irving Schiller
Hearing Examiner

Washington, D. C.
October 15, 1965