UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
J. BRAD DAVID, INC. (8-10598)	
14 Maiden Lane	
New York, New York	

RECOMMENDED DECISION

Washington, D. C.
November 19, 1965

James G. Ewell
Hearing Examiner

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BEFORE: James G. Ewell, Hearing Examiner

APPEARANCES: William Lerner, Elmer Ferber and David Marcus, Esqs., of the New York Regional Office for the Division of Trading and Markets. 1/

David E. Lubell, Esq., of 217 Broadway, New York, New York for J. Brad David, Ltd. and Donald Hecht, individually.

1/ Shortly after commencement of the hearing Mr. Lerner resigned from the Commission's legal staff and withdrew his appearance on behalf of the Division of Trading and Markets.

These are public proceedings instituted on March 18, 1964 pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act) to determine whether the registration of J. Brad David, Ltd. (registrant) should be revoked or whether other appropriate remedial action should be taken by the Commission in the public interest pursuant to the aforesaid Sections of said Act and whether, pursuant to Section 15A(b)(4) of said Act, the Commission should find that Donald Hecht is a cause of such action. 1/

The Commission's order of March 18, 1964 instituting the proceedings aforesaid alleges in substance: 2/

A. 1. That the registrant has been registered as a broker-dealer since April 21, 1962 and is still so registered;

2. That Donald Hecht is president, director and beneficial owner of 10% or more of the registrant's common stock;

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 or regulation thereunder.

Under Section 15A(b)(4) of the Exchange Act, in absence of approval by the Commission, 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 or director of, or any person controlling or controlled by, such broker or dealer, was a cause of any order of revocation, suspension or expulsion which is in effect.

Section 15A(1)(2) of the Act provides for the suspension for a maximum of 12 months or the expulsion from a registered securities association of any member thereof who has violated any provision of the Act or rule thereunder, if the Commission finds such action to be in the public interest or for the protection of investors.

2/ For convenient reference a copy of the Commission's order for proceedings is attached as Appendix "A".

3. That registrant is a member of the National Association of Securities Dealers, Inc. (NASD);

4. That on February 18, 1964 registrant filed a notice of withdrawal of its registration with the Commission, which notice, however, has not become effective.

B. That as a result of an investigation the Division of Trading and Markets (Division) has obtained information tending to show:

a. That during the period from about January 1, 1963 to February 1, 1963 the registrant and Hecht (both of whom will hereafter sometimes be referred to also as respondents), singly and in concert, willfully violated Sections 5(a) and (c) of the Securities Act of 1933[1/] (Securities Act) in that they used the mails and instrumentalities of interstate commerce in the offer, sale and delivery after sale of the common stock of American Fun Fair, Inc.(American) when no registration statement under said Act had been filed or was in effect as to said securities.

b. In offering and selling such securities during said period said respondents, singly and in concert, willfully violated the anti-fraud provisions of Section 17(a) of the Securities Act and of Sections 10(b) and 15(c)(1) of the Exchange Act together with -

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1/ Sections 5(a) and (c) of the Securities Act make it unlawful to use the mails or interstate facilities to sell or deliver a security unless a registration statement is in effect as to such security, or to offer to sell a security unless a registration statement has been filed as to such security.

Rules 10b-5 and 15c1-2 thereunder [1] in that they used the mails and instrumentalities of interstate commerce and in so doing employed devices, schemes and artifices to defraud, made untrue statements and omissions of material facts and thus engaged in a course of business which would and did operate as a fraud or deceit upon certain persons.

C. That as a part of said activities and in connection therewith the registrant and Hecht -

1. Engaged in the distribution and sale of American common stock, an unseasoned and speculative security, without first having made reasonable inquiry as to the true nature and value thereof or such inquiries as would have revealed the background of American Fun Fair, Inc., its operations, earnings and financial condition and failed to disclose such failure to customers;

2. Endeavored to place customers in a position where they were asked to make hasty decisions regarding the purchase of such securities and made false and misleading statements and omissions of material facts to customers, concerning, among other things:

(a) A rise in price of American stock, (b) its earnings and financial condition, and (c) the amount of stock available for sale.

1/ The composite effect of the anti-fraud provisions referred to above as applicable here is to make unlawful the use of the mails or means of interstate commerce in connection with the purchase or sale of any security by the use of a device to defraud, an untrue 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 the use of any other manipulative, deceptive or fraudulent device.

After appropriate notice a hearing was held before the undersigned in the New York Regional Office of the Commission commencing on December 1, 1964 and continuing on various successive dates through May 24, 1965. The record comprises approximately 1600 pages of oral testimony and about 50 documentary exhibits.[1/] The parties were represented as noted on the facing sheet hereof.

Following conclusion of the hearing on May 24, 1965 the Examiner prescribed a schedule for the filing of proposed findings and supporting briefs, which documents were thereafter submitted by counsel on both sides. On the basis thereof and the entire record of testimony and exhibits and from observation of the witnesses the undersigned makes the following findings:

HISTORICAL BACKGROUND

The Respondents

1. The corporate registrant was organized under the laws of New York in March 1962, registered with this Commission in April 1962 and shortly thereafter became a member of the NASD; whereupon it commenced business as a broker-dealer in the over-the-counter securities market.

1/ For convenience, references to the transcript will be designated by "R" and the page number; the Division's exhibits, by "DX" and; respondents' exhibits, by "RX."

2. At all times here pertinent Donald Hecht was president, a director and owner of approximately 98% of the common stock of the registrant and, concededly, dominated and controlled the operations and policies of the company. According to Hecht's testimony the registrant, not being a member of any national securities exchange, was established to put into practice what Hecht described as a novel concept in the securities business wherein and whereby the registrant held out to the public that it was ready, willing and able to execute for customers, transactions for the purchase or sale of any security traded in the over-the-counter market for a flat fee of $5.00 for each such transaction regardless of the number of shares or the price thereof up to $10.00 per share.

3. In furtherance of this policy Hecht testified that he had utilized advertising on a wide scale covering a number of states and had received many inquiries and executed a large number of transactions for customers residing in both nearby and distant states. He claimed that his customers numbered several thousand but presented no documentary evidence thereof. In any event, virtually all of the so-called investor witnesses who testified during the hearing on behalf of the Division stated they had answered registrant's advertisements in newspapers and other publications featuring the flat-rate system described above, thus indicating that registrant's price policy appears to have engendered a certain amount of public appeal and response.

4. The testimony further shows that prior to organization of the registrant Hecht had been engaged in the securities business as a salesman for various brokerage firms for approximately four years and that for several years prior to engaging in the securities business he had been employed as an engineer by an industrial corporation. It appears that Hecht had obtained a Bachelor's degree in Mechanical Engineering and a Master's in Industrial Management Engineering during the last-mentioned period.

5. Finally, the evidence indicates and it is not disputed that registrant, although organized as a corporation, was operated largely on an individual basis under Hecht's sole direction. It employed no salesmen or other employees except a bookkeeper and a part-time secretary.

American Fun Fair, Inc.

6. The record shows that American Uni-Vend Corporation, a company engaged in the manufacture, distribution and marketing of various types of automatic vending machines or devices, developed an amusement area for children comprised of mechanical rides in a setting of miniature buildings representing the legends of the Wild West, including a miniature old-fashioned train and also more modern devices such as airplanes, moon rockets, and the like. The amusement devices aforesaid were set up in a compact fenced-off area dubbed a "Fun Fair" and was intended for installation in large stores and suburban shopping centers throughout the country and eventually on a

nation-wide basis on the theory that families of shoppers with small children would have a convenient facility providing amusement for their children while proceeding with their shopping in the surrounding shops and stores. These amusement centers, or "Fun Fairs", according to the testimony were to be offered and distributed as a kind of package deal for the merchandising organizations described, and were priced at $25,000 per unit or package to wholesale distributors.

7. American Uni-Vend above mentioned organized and set up a division [1/] for the purpose of manufacturing and marketing Fun Fairs and a few prototype units were built for display purposes and solicitation of orders. However, for reasons not disclosed in the record, the marketing of the Fun Fair units did not proceed satisfactorily so that the management of American Uni-Vend sold the rights for their manufacture, together with its entire inventory of parts and materials to one David L. Ratke and two of his business associates for $150,000. A deposit of $25,000 remaining in the bank account of the Fun Fair Division, aforesaid, was turned over to the sellers together with a note for $125,000 due in one year executed by Ratke and associates in payment for the assets described. Shortly after completion of the purchase of the Fun Fair assets Ratke's associates assigned their interest to him in consideration of Ratke's assumption of their obligation under the note, thereby making Ratke sole owner of the

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1/ This division was called Automatic Concessions Corp. and was a subsidiary of American Uni-Vend.

enterprise.

8. Prior to acquisition of the Fun Fair Division of American Uni-Vend Corporation (Uni-Vend) the merchandising of Fun Fair units had been under the supervision of one Phillip van Kuller, Vice President in charge of sales. In June 1962, upon completion of the purchase of the Fun Fair assets, Ratke and associates organized a Delaware corporation called Fun Fair Inc. to take over the operation and to proceed with the manufacture and sale of Fun Fair units. The capitalization of this corporation consisted of 250 shares, of which 100 were issued and outstanding in the hands of Ratke and associates.

9. At the time of the sale by Uni-Vend of its Fun Fair Division, aforesaid, the record shows that orders had been received for four units, two of which had been partially completed. Ratke and associates undertook completion of the latter and upon delivery received $37,500 in payment, half of which was turned over to Uni-Vend in reduction of the purchase money note, reducing the same to $106,250, at which amount it still stood at the time of the hearing. The units above mentioned were completed under a contract with one Patrick Ressa who entered into an agreement with Fun Fair Inc. to proceed with the manufacture of the units in a rented building at Farmingdale, Long Island. Ressa attempted to continue the manufacture of Fun Fair units but, after completing the two mentioned above, was compelled to cease operations due to the fact that he was unable to obtain payment from Fun Fair or Ratke and associates for materials, labor and supplies. In fact, the record further shows that several checks

issued to him were returned by the bank unpaid. As a result Ressa brought suit against Fun Fair and obtained a judgment by default for approximately $21,000. These events of course clearly indicated Fun Fair's lack of working capital which Ratke testified became very acute during October 1962.

10. By reason of the shortage of working capital, aforesaid, the testimony also shows that during December 1962 Ratke contacted one Monroe Caine, with whom he had participated in a number of business ventures, and discussed the possibility of raising the sorely needed capital by the sale of stock to the public. It appears that Ratke and Caine were the owners of a then dormant corporation called D. L. R. Trading Corporation with a capitalization of 100 shares of common stock, of which Ratke owned 84 and Caine 16. It further appears that Ratke and Caine agreed that in order to save the expense of registration of the proposed public offering with this Commission it would be advisable to take advantage of the exemption provided under the Securities Act for an intra-state distribution which, of course, requires that the offering be made only to bona fide residents of New York State. 1/

11. In this regard, Ratke testified that he had been advised by counsel that such an offering would have to be made by a corporation organized under the laws of New York and since Fun Fair, Inc. was a

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1/ The intra-state exemption provided in Section 3(a)(11) of the Securities Act reads:

"(a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within . . . such State or Territory."

Delaware corporation it was agreed that the D.L.R. Trading Corporation (DLR), which had been incorporated in New York state, be reorganized and recapitalized by increasing its authorized capital to 500,000 shares of one cent par value and changing its name to American Fun Fair, Inc. In pursuance of these plans the certificate of incorporation of DLR was amended on January 11, 1963 in the manner indicated and 420,000 shares were immediately issued to Ratke and 80,000 shares to Caine. It was further agreed upon advice of counsel that since the 420,000 shares issued to Ratke represented a majority of the shares (obviously giving Ratke control of the corporation), the 80,000 shares owned by Caine, not being a control block, would not require registration with the Commission - with the result that these shares alone should be distributed in a public offering. The plan described also provided that with the proceeds of the public offering Caine would pay off a small debt which he then owed to Ratke and would also advance to the corporation a loan of sufficient amount to cover the immediate need for working capital.

12. Immediately after the reorganization and recapitalization of DLR into American Fun Fair, Inc. (American), the latter became the sole owner of all of the assets of Fun Fair, Inc. and took over the manufacture and marketing of the Fun Fair units. Van Kuller was made president of American and was issued 20,000 shares out of Ratke's 420,000 shares as an inducement to take over the sales department. This of course reduced Ratke's ownership of American to 400,000 shares.

13. In addition to the foreoing, the record shows that Caine had had certain business transactions with one Andrew Stern, syndicate manager of Mc Mahon-Lichtenfeld & Co., member of the New York Stock Exchange, and as a result of one of these transactions appears to have been indebted to Stern because of nonpayment of a finder's fee in connection therewith. In order to liquidate this debt Caine turned over 1900 shares of American at an agreed value of $2 per share.

14. As a result of the negotiations in connection with the foregoing, Caine and Ratke discussed with Stern the plans for a public offering under the intra-state exemption from registration mentioned above. These conferences with Stern took place in late November and early December in the offices of American and also the office of Bruns-Nordeman & Co. - a member of the New York Stock Exchange. And although Stern denied any personal participation in the plan for public distribution of the remainder of Caine's holdings of 80,000 shares, Ratke stated that such negotiations had taken place in the manner described.

15. In any event, in view of the events which subsequently took place, which will be more particularly described hereafter, the undersigned is of the view that Ratke's version of the matter is the more credible - notwithstanding the further fact that the evidence shows that very few if any shares of American were actually distributed in addition to the 1900 shares transferred to Stern. Indeed, the fact that distribution of the entire block of 80,000 shares owned by Caine never actually took place is believed to have been due to the sale in early January 1963 of the 1900 shares owned by Stern under circumstances

to be described more fully hereinafter, which almost immediately gave rise to complaints to both the Attorney General of the State of New York and to officials of this Commission with the result that further efforts to effect the proposed public offering and distribution were of course abandoned.

16. With the foregoing as background, the issues raised by the order for proceeding will now be discussed.[1/]

FINDINGS OF ULTIMATE FACTS AND CONCLUSIONS OF LAW

Abortive Public Offering

17. The evidence shows that in early January Stern persuaded three over-the-counter broker-dealer firms, with which he maintained close business relationships, to insert quotations in the "pink sheets" of the National Quotation Bureau, under assurance to them that he would protect any bids that they might make up to 4-1/4 for for 100-share lots and on offers up to a total of 1900 shares the amount he had received from Caine. The price of 4-1/4 was specified by Stern notwithstanding the fact that the testimony further shows that Caine had informed Harry Lipner, counsel for Ratke, that he would be willing to

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1/ The Federal securities acts and the Commission's Rules and Regulations thereunder have, of course, been amended from time to time and particularly by the Securities Acts Amendments of 1964 (Public Law 88-467), which amended a number of provisions of the Securities Act and Exchange Act under the effective date of August 20, 1964. However, since this proceeding was instituted on March 18, 1964 and therefore prior to the effective date of August 20, 1964, aforesaid, all references to the provisions of such Acts and Regulations in this recommended decision will be to such provisions as in effect prior to March 18, 1964.

sell shares of American at $1 per share. Ratke likewise testified that it was his belief that the Caine block would be sold to the public at that price. The firms participating in Stern's plan were Elliot Evans & Co. (Evans), A. P. Montgomery & Co. (Montgomery) and Frank Sassa & Co. (Sassa). Accordingly, Stern's manipulative activities at the 4-1/4 price level were obviously designed to create public demand at the highest level which he, as a securities market expert, considered practicable under all the circumstances, in order that he might receive the maximum price for the 1900 shares obtained from Caine.

18. Thus the evidence shows that commencing on January 10, 1963 and continuing on successive dates until trading stopped on or about January 23, 1965, the following quotations were placed in the "sheets" initially on Fun Fair, Inc. and later on American by the following broker-dealers: (See R 1299 et seq.)

Date	Security	Quotation
Jan. 10	Fun Fair	OW and BW (offer wanted - bid wanted) by Sassa, Montgomery and Evans
Jan. 11	Fun Fair	Same as above
Jan. 14	Fun Fair	4-1/4 bid, 5 asked by same brokers
Jan. 15	Fun Fair	" " " " Also 200 offered at 5 by Tweedy, Browne and Riley (Tweedy) but no bid
Jan. 16	Fun Fair	4-1/4 bid, 5 asked by Evans, Montgomery and Sassa. 200 offered at 4-3/4 by Tweedy but no bid
Jan. 17	Fun Fair	None
	American*	4-1/4 bid, 5 asked by Montgomery and Evans only
Jan. 18	American	4-1/4 bid, 5 asked by Sassa and Montgomery
	Fun Fair	4-1/4 bid, 5 asked by Evans 200 offered at 4-3/4 by Tweedy, but no bid (on Fun Fair)

Date	Security	Quotation
Jan. 21	American	4-1/4 bid, 5 asked by Evans, Sassa and Montgomery 200 offered at 4-3/4 by Tweedy, Brown and Riley and no bid
Jan.22	American	4-1/4 bid, 5 asked by Evans 4-1/4 bid, 4-3/4 asked by Montgomery
Jan.23		Nothing

*It will be noted that the first quotations on American occurred on January 17, six days after the initial quotations and after Fun Fair, Inc. was merged into American on January 11, 1965.

19. In addition to these activities and to facilitate the sale of American stock Stern was supplied by Ratke and Caine with sales promotion materials, one of which purported to be a letter to stockholders (DX-2) addressed "Dear stockholder," and mimeographed on plain paper without any type of letterhead. In addition to describing the physical layout of the Fun Fair units, this letter stated that American already has "six contracts now out to both individuals and corporations who are desirous of obtaining Fun Fair distributorships." (Underscore added.) This statement was misleading since the evidence shows that only two units were completed, that only two more were in process of manufacture after it took over the operation from Uni-Vend and that although orders for additional units were under negotiation they never materialized so that no additional sales were ever made and the company was compelled to cease operations. Besides these half-truths it should

be noted that the letter to stockholders further stated that "earnings for the first six months of operation before taxes are $11,726.80 with an additional $52,750 in estimated profits for orders on hand and expected at present." (Underscore added.) The assertion that the company had earnings in excess of $11,000 was of course false and misleading since, as already stated, the company had been paid for only two units and had become so short of working capital that its manufacturing contractor, Ressa, had been unable to continue completion of the remaining two units and had sued Ratke for monies already expended, obtaining a judgment by default, as previously noted, in the amount of approximately $21,000. Furthermore, the statement regarding an expected profit of $52,750 "for orders on hand and expected at present," is equally unjustified and misleading since the orders referred to never materialized.

20. Other sales literature was supplied to Stern including photographs of the Fun Fair units and two brochures prepared by Uni-Vend, which were used virtually verbatim and merely stamped "Fun Fair, Inc.". Additionally, an article prepared by National Franchise Reports on the basis of information supplied by van Kuller was used in like manner and stamped "Fun Fair, Inc."

21. The record also shows that some of the above-described sales promotion material was supplied by Stern to certain broker-dealers including registrant, indicating that Stern was clearly involved in an effort to distribute American shares to the public. Moreover, the fact that Stern attended meetings in the offices of Bruns-Nordeman & Co., members of the New York Stock Exchange and in the offices of American, with Ratke, Caine and others wherein the public offering of American was discussed, shows that Stern, while concentrating most of his effort toward creating a market for disposition of his own 1900 shares, nevertheless participated in the overall plan to distribute the remaining 80,000 shares held by Caine. In fact, Stern testified that Caine sold 1000 shares for $2000 in cash in a transaction that took place in his office. The plans for a public offering were aborted, however, by the difficulties which immediately developed from the sale of the 1900 shares received by Stern from Caine.

22. This is further established by Stern's own testimony wherein he admitted that certain sales made by the brokers who collaborated with him by placing quotations in the pink sheets turned out to be wash sales or fictitious; and in at least one instance involved a sale of 1000 shares to one Paul Williams who failed to make payment, whereupon Stern complained to Ratke since he had been informed that Williams was a close friend of Ratke. On bringing the

matter to Ratke's attention the latter instructed Stern to have the selling broker, which in this case happened to be Stone Ackerman & Co., charge the shares to the account of Vera Ratke, his wife. This was immediately done but both Ratke and his wife failed to make payment for the stock so that Stern was compelled to make restitution to the selling broker at a cost to Stern of approximately $4,000. The record also shows that a number of other instances occurred with similar results so that Stern was admittedly compelled to make restitution of a total of approximately $8,000 to such persons. In any event the false manipulated market in American engineered by Stern quickly collapsed and Stern was immediately discharged by his employer as soon as his activities were discovered.

Registrant's Participation in the American Fun Fair Distribution

23. By way of summary, it will be recalled that although Ratke and Caine had initially operated under the Delaware corporation called Fun Fair, Inc. said corporation was merged into American Fun Fair, Inc., a New York corporation which was reorganized, its name being changed from D.L.R. Trading Corporation to American Fun Fair, Inc. and its capitalization increased from 200 shares of no par value to 500,000 shares of 1¢ par value. All of the latter shares were distributed to Ratke, Caine and van Kuller in the amounts previously stated under the plan to make a public offering of the 80,000 shares allocated to Caine. Likewise it will be recalled that the above-mentioned amendment to the D.L.R. certificate of incorporation was not filed by van Kuller until January 11, 1963 so that the merger of Fun Fair Inc.

into American did not become a reality until that date.

24. With these facts in mind it should be noted that the record shows that the registrant, through Donald Hecht its president, purchased 1000 shares of American from one of his customers named Fred Hesse at a price of 4-1/4 on January 11, 1963, the first day the stock appeared in the sheets. A confirmation of this transaction was mailed to Hesse at his home in Westfield, New Jersey. (See DX 3-A; R.1049-1052). Upon completion of the transaction Hecht claims he made payment to Hesse of the total cost of $4,250 by a check drawn on the account of the registrant for the full amount.[1/] Upon completion of the negotiations leading up to the above-mentioned purchase, Hesse advised Hecht that the shares were on deposit with McMahon-Lichtenfeld & Co., members of the New York Stock Exchange. Hesse thereupon issued instructions to Stern who, it will be recalled, was then syndicate manager of McMahon-Lichtenfeld, to deliver the shares. Thereafter, on January 14, 1963 the registrant received ten 100-share stock certificates in the name of Monroe Caine accompanied by a single transfer power executed by one Arthur V. Briskin to whom, the record shows, the shares had previously been assigned. Registrant, however, refused to accept the shares in this form and returned them to McMahon-Lichtenfeld with a request that each certificate be accompanied by a separate transfer power. As a result, ten new certificates, also in the name of Caine, were delivered to registrant on January 21. The latter certificates had

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1/ Registrant's ledger, however, reflects a total cost of these shares of $4,238.40 with a series of payments of $3000, $100, $550, $100, $487.50 and 90¢ respectively, on various dates, making up the above total (RX-26A).

likewise been assigned to Arthur V. Briskin and a stock power for each, executed by Briskin, was included.

25. On January 15, 1963 the record shows that the registrant through Hecht made a second purchase of 1000 shares of American from the broker-dealer firm of Elliot Evans, Inc. at 4-3/4 and thereafter on January 23 received delivery of such shares consisting of ten 100-share certificates in the name of Ira Haupt & Co. which, at that time, was a member of the New York Stock Exchange.

26. According to Hecht's testimony, he had never heard of American Fun Fair prior to his negotiations with Hesse, which began with a request by Hesse to sell his shares for his own account. Instead of attempting to sell the shares to others, however, Hecht stated that by reason of the activity and interest in the stock by various brokers he decided to purchase the shares for his firm's trading account in anticipation of selling at a quick profit. Hecht further stated that his subsequent purchase of the second thousand shares was made for the same purpose and resulted in the distribution of 1500 shares out of the two 1000-share blocks to various customers at retail in a series of transactions which will now be described.

Retail Sales to Customers

27. Charles J. Musumeci, aged 44, is employed by the Transit Authority of the City of New York and testified that Hecht first mentioned American to him on the telephone on January 14, 1963. In the course of the conversation Hecht urged him to purchase American, stating

that there was a possibility that the stock would experience a one to two-point rise within three or four weeks, due to the fact that the stock was in short supply. The record shows that this witness had been a customer of Hecht's for some time prior to the above-mentioned conversation and had established a confidential relationship with him, so that without further ado he ordered 400 shares at $5 per share on the date above mentioned. The witness further testified that he paid for the stock at a cost of $2000 out of a balance remaining in his account with the registrant.

28. On or about January 17, 1963 during a visit to the registrant's office, Hecht again assured Musumeci that the stock would go up one or two points to 6-1/2 or 7 within the time mentioned above, repeated that the stock was in short supply, and added that he understood American would eventually be taken over by a "Big Board Co." which presumably referred to a company listed on the New York Stock Exchange - frequently referred to in the industry as the "Big Board." The name of such company, however, was not mentioned or recalled by the witness who as a result of this solicitation purchased an additional 100 shares at the same price.

29. In connection with this witness' testimony the record shows that shortly after the above transactions Musumeci received an investigative questionnaire from the Commission which he exhibited to Hecht, whereupon the latter requested that he be permitted to assist in filling it out. The witness complied with this request but did not return the questionnaire to the Commission for the reason that he "had sympathy for Hecht and did not want to hurt him." In addition to the

questionnaire, the evidence shows that this witness later signed an affidavit during a preliminary investigation by officers of this Commission relating to the facts set forth above. On cross-examination, however, certain differences between the affidavit and the questionnaire, which was produced at the hearing, were pointed out. These differences have been considered by the undersigned who has concluded however that they are not material and do not refute the witness' testimony that Hecht had solicited the purchase of the American shares on the basis of representations indicating a price rise in specific amounts within a named period of time - a practice which the Commission has consistently held to be deceptive and fraudulent, describing such activities as a "hallmark" and badge of fraud, particularly when made, as here, regarding an unseasoned security. See Alexander Reid, 40 S.E.C. 986 (1962); Cf. also Mac Robbins & Co., Inc., 40 S.E.C. 497 (1962).

30. In this connection it should also be mentioned that much testimony was devoted to determining whether, in referring to Hecht's alleged statement that the stock was in "short position," the witness meant short supply in the over-the-counter market or, more literally, a shortage in inventory or a short position in registrant's trading account. In this regard, since the witness admittedly had had considerable investment experience and exhibited a fairly comprehensive knowledge of securities transactions it would appear reasonable to infer that the phrase "short position" as used in his oral testimony at the hearing was not intended to apply under the attending circumstances to the condition of registrant's inventory or trading account since this obviously would have no relationship to or effect upon the public market in the security. Conversely, however, statements regarding a

"short supply" of stock in the trading market is a familiar high-pressure device used to stimulate speculative interest and to induce purchases - which, of course, resulted here.

31. Sam Krongold, aged 57, has been employed from time to time as a runner for various broker-dealer firms in New York City and was currently so employed at the time of the hearing by the firm of Russell and Saxe, earning about $50.00 per week. According to Krongold's testimony he had done considerable trading on his own and his son's account for several years and had taken and passed the NASD examination for registered representatives. He further testified that he and his son had organized Krongold & Co., Inc., which became registered with the Commission as a broker-dealer in 1961, but that the firm did not prosper and withdrew its registration in March 1963.

32. In the course of his duties as a runner Krongold called at the office of the registrant to deliver securities and spoke to Hecht who gave him a strong sales talk on American stating, among other things, that a"Big Board"house was in back of it and that he should be able to "make a few points" in no time at all - perhaps in a couple of weeks; whereupon he purchased 200 shares at 4-5/8 on January 14, 1963 for a total of $925. Krongold was thereafter furnished a confirmation of this transaction which described the stock as Fun Fair, Inc. (DX 2-B). On January 28, however, he received a corrected confirmation bearing that date and describing the stock as American Fun Fair, Inc. (DX 2-D). In this regard it should be noted that the record is replete with instances of confusion in the description of the stock - even after January 11, 1963 when American was organized.

33. Krongold further testified that he wanted to take advantage of Hecht's offer to sell his stock for a quick profit and so instructed Hecht; but the latter urged him not to sell and to wait until a certain "group" of American stockholders, with which Hecht was working, planned to sell their holdings pursuant to an alleged agreement.

34. Meanwhile, it appears that Krongold had received delivery of two stock certificates for 100 shares each, which were in the name of Monroe Caine, and that he inquired of Hecht about having the certificates transferred to his own name, whereupon Hecht advised him not to do so because the registrant would "take him out in a week or so." By this time Krongold had made some inquiries about American, discovered that it was virtually worthless, and demanded that Hecht make restitution to him of the $925.00 he had paid for the stock. Hecht agreed provided that Krongold make payment to him of $817.52, which Hecht claimed was owed to the registrant in connection with another transaction. Krongold thereupon gave Hecht a check for that amount and demanded restitution of the amount paid for the American stock. In reply Hecht stated that he was "broke" and would need more time to make payment. This testimony clearly indicates an attitude on the part of Hecht to allay his customer's growing anxiety by false statements regarding alleged inside trading strategy and a promise obviously made in bad faith to rescind the transaction and refund the purchase price.

35. As previously noted, there was of course no basis for Hecht's statement that American would advance one or two points within

a couple of weeks nor likewise that a Big Board member firm was in back of the company. The only possible but distorted basis for such a statement was that Stern of McMahon-Lichtenfeld was promoting the stock (although admittedly for his own personal benefit without participation by that firm) and in so doing was engaged in the manipulative activities heretofore described - hardly a truthful ground for such a representation.

36. Murray M. Smolar, aged 57, is an optometrist and had had several transactions with the registrant from time to time - having been attracted by registrant's flat rate commission policy. This witness testified that Hecht telephoned him early in January 1963 and urged that he invest in American as a fine opportunity to make some money, stating that the company should show large earnings and that it would be good for a quick turnover. As a result, the witness ordered 50 shares at $5 per share, adding that he liked Hecht and had a lot of confidence in him.

37. In the course of the above-mentioned conversation Smolar testified that Hecht also told him that he should make a profit of one or two points in a few weeks, perhaps even a few days; that he, Hecht, had made an investigation of American and knew a lot about the company; that the company's earnings should amount to 50¢ per share in 1963; that there were not many shares outstanding and that, therefore, the stock was very much underpriced.[1/] He then added that these favorable factors were not generally known so that the stock "should go up when the word got out."

1/ Hecht admitted in his testimony that he had never ascertained the number of shares actually outstanding so that this representation had virtually no factual basis.

38. After making the above-mentioned purchase Smolar requested delivery of the stock certificate but never received it. Upon complaining about this Hecht explained that the company was under investigation by the Securities and Exchange Commission and that nothing could be done about it.

39. The statement that the company would earn 50¢ per share in 1963 was without foundation in fact since the record shows that the alleged earnings of $11,726 reported in the financial statement as of November 30, 1962 (RX-5) would amount to less than 2-1/2¢ per share on the basis of the 500,000 shares outstanding; and, further, since the record shows that the company had made no sales and had no additional income such a projection was nothing more than fantasy. Indeed, such assertions when made, as here, to induce purchases were obviously and deliberately fraudulent.

40. When Smolar learned of the SEC investigation and the probable total loss of his investment, he again complained to Hecht who visited him at his place of business and exhibited to him the photographs and sales literature which had been supplied to him by Stern and which it has already been found was misleading, deceptive and fraudulent.

41. Charles Green is in the manufacturing business in New York and testified that Hecht called him in January 1963 and stated that American would be a good investment and that he expected it to go up in price. In fact, he felt very strongly that it should go up within two to four weeks. Green further testified that he

felt quite hesitant about making a purchase but was very busy with his own business affairs at the time and because of Hecht's insistence agreed to purchase 100 shares at $5.00 per share. Upon paying for the stock Green received a confirmation in the mail and, later, a stock certificate in the name of Monroe Caine.

42. Leo Kalb. This witness, aged 38, is a part-time employee in a candy store owned and operated by a relative and claims he earns about $3 per day. He also receives a disability pension from the Government in the amount of $77 a month. Kalb testified that he had had a number of transactions with the registrant and that Hecht called him on the telephone early in January and gave him a sales talk about American, stating that it should increase in value about 50% in six to eight weeks and that he himself was buying the stock. The conversation also involved disposition of proceeds accruing to the witness as a result of the sale of other securities and as a result Kalb ordered 150 shares on January 21, 1963 at $5 per share to be paid for out of such proceeds and received a confirmation of the transaction in the mail. Later, it developed that only 100 shares were delivered for the witness' account, whereupon Hecht stated that he would be unable to supply the remaining 50 shares due to suspension of trading in the stock as a result of an investigation by this Commission.

43. Kalb further testified that he was not shown any literature regarding American and that his purchase had been based entirely upon Hecht's oral representations, adding that Hecht had

told him, in addition to the foregoing, that the earnings of American were 50¢ a share and that earnings before taxes amounted to $100,000; also, that certain listed companies were interested in the stock, including Ira Haupt & Co. The record shows that the latter company had merely acted as a clearing house for McMahon-Lichtenfeld & Co. and is devoid of any evidence that it had any other interest in or relationship with American or the registrant - indicating that Hecht's statement to this witness was at best an unconscionable exaggeration.

Violation of Anti-Fraud Provisions of the Securities and Exchange Act

44. In addition to the false and misleading statements in the letter to stockholders the record shows that Leon Lipner, Certified Public Accountant and brother of Harry Lipner, counsel for Ratke, prepared financial statements (RX-5) as of November 30, 1962 (unaudited) for Fun Fair, Inc., wholly owned subsidiary of American. Said accountant testified that these statements had been prepared solely as a convenience and favor to Ratke to assist him in raising funds for the company from various money lenders and were strictly not for publication. He also stated that the statements had been prepared on plain paper without a heading or other indication showing that he was their author, because of the circumstances described which made it impossible for him to vouch for their accuracy. Notwithstanding, the record shows that the statements were used as a basis for the representations regarding earnings and projected income contained in

the stockholders' letter. They were also supplied to Stern who showed them to Hecht who in turn utilized them as a basis for the sales solicitations described. Moreover, besides the dubious validity of the financial statements, Lipner admitted that the financial condition of Fun Fair was not only unsound but, in the layman's sense of the word, the company was insolvent - adding that "actually I would not have given two cents for the company." (R. 993 - 999).

45. Although Hecht admittedly had discussed American with Stern and had received the sales promotion literature mentioned above he made no effort to contact officials of the company to verify the information set forth therein and did not visit the plant on Long Island to ascertain the nature of the company's current operations. And, while he claims he asked both Stern and Ratke for financial statements, he was not furnished anything except a "sales blurb" prepared in Stern's office (RX-2), containing earnings' figures apparently based in large part on the financial statements prepared by Leon Lipner who further admitted that the figures had not been compiled from the company's books but rather from oral statements supplied by Ratke. With regard to Hecht's request for financial statements Ratke merely advised that if Hecht would come over to the office the latter would show him whatever financial information was available. Hecht, however, did not act on this suggestion.

46. In view of the fact that Hecht had had a thorough education

in business methods, supplemented by several years' experience both as an industrial engineer for a large manufacturing corporation and as a salesman for securities firms besides the experience gained in conducting his own securities business, it is clear that he had or should have acquired an awareness of the importance of securing accurate financial and other material information regarding the operation of the company whose securities he was offering to the public. Thus, his failure to make any diligent or reasonable effort to obtain such information and, instead, rashly proceeding without it in a vigorous sales campaign to distribute the stock to his customers, fully establishes a willful failure to live up to his obligation to deal fairly with such customers. In addition, not only did Hecht fail to obtain material information that diligent inquiry would have revealed but failed also in every instance to disclose to his customers the lack of such information. He likewise neglected to mention such unfavorable factors as the shortage of working capital - a fact that admittedly had been made known to him by both Stern and Ratke, as well as the additional unfavorable factor that the company had been unable to market the Fun Fair units and had virtually ceased operations at the very time he was selling its stock. All of this information could, of course, have been ascertained by diligent inquiry since the company is a local one and its principals were known and readily accessible.

47. From the foregoing it is clear that there was no reasonable basis whatever for Hecht's statements to customers regarding price-

rise predictions or assurances that the stock would be a "good investment" since the facts set forth above which Hecht knew or should have known clearly show that the stock was virtually worthless. His statements were therefore not only reckless but fraudulent under such circumstances

48. The Commission has of course repeatedly held that a broker-dealer is under a duty to make diligent investigation of financial and other material information affecting the value of securities to be offered to the public, and likewise, to disclose any known unfavorable information. Similarly, optimistic representations for the purpose of inducing purchases when made without a reasonable basis are equally proscribed. Thus, in Leonard Burton Corporation, 39 S.E.C. 211 (June 4, 1959) at page 214 the Commission stated:

> "...A prediction by a securities salesman or dealer to an investor that a stock is likely to go up implies that there is an adequate foundation for such prediction and that there are no known facts which make such a prediction dangerous and unreliable. Since such uncertainties were known to ...., the failure to disclose them to the investor rendered the prediction materially misleading."

49. Likewise, in Best Securities, Inc., 39 S.E.C. 931 (June 3, 1960) the Commission held at page 934:

> "Registrant's activity in the present case involved misrepresentations to customers in violation of the anti-fraud provisions of the Securities Acts. Those provisions contemplate, at the least, that recommendations of a security made to proposed purchasers shall have a reasonable basis and that they shall be accompanied by disclosure of known or early ascertainable facts bearing upon the justification for the representations." P. 934.

Finally, the facts and circumstances found above appear to fall squarely within the interdiction so succinctly and comprehensively stated in Mac Robbins & Co., Inc., S.E.A. Release No. 6846 (July 11, 1962) as follows:

> "The making of representations to prospective purchasers without a reasonable basis, couched in terms of either opinion or fact and designed to induce purchases, is contrary to the basic obligation of fair dealing borne by those who engage in the sale of securities to the public."

50. On the basis of the foregoing, the Examiner concludes that registrant aided and abetted by Hecht willfully violated the anti-fraud provisions of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act together with Rules 10b-5 and 15c1-2 thereunder, as charged in the order for proceedings.

Alleged Violation of Sections 5(a) and (c) of the Securities Act 1/

51. At the outset it should be noted that the record shows and it is not disputed that no registration statement was on file or in effect at any time here involved as to Fun Fair, Inc. or American; nor was an exemption applied for or claimed under Regulation A adopted pursuant to Section 3(b) of the Securities Act. Thus, as previously mentioned, Ratke and Caine had planned to sell the 80,000 shares of American which had been issued to Caine under a claimed

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1/ See footnote 1 on p. 3, supra for resume of these provisions.

intra-state exemption requiring that all sales be made to bona fide residents of New York State. When the registrant and Hecht purchased 1000 shares of American from Fred Hesse, however, a confirmation of the transaction was mailed from New York across state lines to Hesse at his home in Westfield, New Jersey. 1/ In this regard, it has been held that a single sale in a state other than the state of issue destroys the intra-state exemption, so that, although this transaction was a purchase by registrant rather than a sale, it is believed to have been a link in the chain of events leading to and being a part of the overall plan for distribution of the Caine block of shares in the manner described in the foregoing. Thus, the record shows that the shares purchased by the registrant had previously been sold by Caine to Hesse, posing under the assumed name of Baron and had been picked up at Stern's office with the latter's knowledge and consent. The sale to Baron (Hesse) was thus one of the steps taken by Stern and Caine, preliminary to engaging in distribution of the remainder of the Caine block of 80,000 shares. Accordingly, the Hesse shares, having been part of the shares emanating from Caine and Ratke, controlling principals of American, they were likewise clearly a part of the overall plan of distribution with the result that the transaction across state lines described above destroyed the exemption for the entire 80,000 share block. Furthermore, inasmuch as the registrant and Hecht have already been found to have participated in that distribution, the subsequent sales of the Hesse shares

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1/ See DX-3-A; also R-23,24.

to registrant's customers were clearly in contravention of the registration requirements of Section 5 of the Securities Act.[1/] Additionally, the second thousand shares purchased by the registrant and Hecht through Elliot Evans & Co. and subsequently sold to customers were also part of the Caine shares having been supplied by Stern through Ira Haupt & Co., which firm at that time, as previously noted, handled all clearances for McMahon-Lichtenfeld & Co. Under such circumstances, it is clear and the examiner finds that the intra-state exemption was not available either to American the issuer, or to the registrant with the consequences already stated.

52. Counsel for respondents, however, urges that an exemption under the provisions of Section 4 of the Securities Act was available to respondents. This Section, in subparagraph (1) - as then in effect - exempts from the registration requirements of the Act "Transactions by any person other than an issuer, underwriter or dealer. . ."; also, "transactions by an issuer not involving any public offering." Subparagraph (2) of said Section (as then in effect) exempts "brokers transactions executed upon customers orders on any exchange or in the open or counter market but not the solicitation of such orders." (Emphasis added.)

1/ See Peterson Engine Co., Inc., 2 S.E.C. 893, 903 (1937); Professional Investors, Inc., 37 S.E.C. 173, 175 (1956); Universal Service Corp., Inc., 37 S.E.C. 559 (1957). In the last cited case the Commission at pp. 563-564 stated:

"Although the sales were made in purported reliance upon the exemption from the registration provisions of the Securities Act provided in Section 3(a)(11) for any security which is part of an issue offered and sold only to persons resident within a single state, the record shows that a sale of stock was made to a nonresident of Texas. The exemption provided in Section 3(a)(11) therefore was not available and, since the securities were not registered, all sales involving the use of the mails or means or instruments of interstate commerce were in violation of the registration provisions of Section 5. (Emphasis added.)

53. Registrant claims that it was not acting as an underwriter in any of the transactions here involved but, rather, solely as a broker-dealer engaged in the purchase and retail sale of stock which was freely tradable in the over-the-counter market and therefore within the exemption provided for brokers transactions in subparagraph (2), supra. Regarding this contention, Section 2(11) of the Securities Act defines the term "underwriter" so as to include ". . . any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking. . ." (Underscore added.) Here, the registrant, having participated in the distribution of the American shares by Ratke, Caine and Stern, all acting in concert as aforesaid, clearly comes within the foregoing definition of "underwriter" which therefore excludes respondents from the exemptive provisions (1) and/or (2), supra. 1/

54. Additionally, Section 2(11) defines the term "issuer" as referred to the said definition as ". . . any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer." (Underscore added.) Thus, since the record shows that Ratke and Caine, controlling stockholders of American, had been business associates for many years and had both attended meetings with Stern regarding the formulation of plans for distribution of the Caine shares - it is clear that the shares purchased by registrant and distributed to the public had been

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1/ Since all of respondent's orders were solicited from customers having no prior knowledge of American, they also fail to come within any of the other exemptive criteria of Section 4, none of which were even claimed.

under the common control of Ratke and Caine. On this point, the Commission has held in a relatively recent case that "persons who engage in steps necessary to the public distribution of shares by an issuer cannot invoke the exemption provided by Section 4(1) of the Securities Act even if they do not come within the definition of 'issuer, underwriter or dealer'." Gearhart & Otis, Inc., S.E.A. Release No. 7329 (June 2, 1964), Cf. also Securities and Exchange Commission v. Culpepper, 270 F. 2d 241, (C.A. 2, 1959).[1/]

55. In addition to the claimed statutory exemptions discussed above, respondents attempt to show that they acted in good faith and were duped by Stern, Caine and Ratke. To support this contention they assert they were justified in believing that American was freely tradable and not subject to the registration requirements of Section 5, supra. On this point, they rely heavily on the fact that other reputable over-the-counter firms were quoting the stock in the

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1/ Exemptions from the general policy of the Securities Act requiring registration are strictly construed against the claimant of such an exemption and the burden of proof is on the claimant to establish his claim. See S.E.C. v. Ralston Purina Co., 346 U.S. 119 (1953); S.E.C. v. Sunbeam Gold Mines Co., 95 F. 2d 699 (C.A. 9, 1938); Gilligan, Will & Co. v. S.E.C., 270 F. 2d 461 (C.A. 2, 1959), cert. denied 361 U.S. 896; S.E.C. v. Culpepper, 270 F. 2d 241 (C.A. 2, 1959).

"sheets" and that according to Stern, Bruns-Nordman & Co., a member firm, had "indicated interest" - although it should be noted that no actual trades or commitments by that firm were cited. Moreover, this argument loses force when it is considered that Hecht made his purchase from Hesse on January 11, the very first day that any quotations at all appeared in the sheets, and when it was actually being quoted incorrectly as "Fun Fair" so that quotations by three over-the-counter houses on that date under an incorrect name could hardly have justified an inference by any reasonable person one way or the other as to whether the stock was registered or exempt or otherwise free of regulatory restrictions against trading. Instead, it should have alerted respondents to the contrary possibility and indicated the necessity of further investigation.

56. Additionally, the record shows that when Hecht made his second purchase of 1000 shares through Elliot Evans on January 15, 1963 [1/] there had been no substantial change in the quotations in the sheets which were made by the same broker-dealers collaborating with Stern in his manipulative scheme, including Evans. More important perhaps than any of the foregoing, however, is Hecht's admission that he failed to make inquiry of officials of the Commission in its New York Regional Office to ascertain whether or not American had been registered or was exempt or otherwise available for trading. Instead, he chose to rely on an obviously thin market - indeed a market based on quotations that were not even correct; and, in spite of his evident sophistication and knowledge of the securities business, assumed the risk of violating the Federal securities laws in the face of facts that clearly should have been a red flag to warn him against such precipitate action.

57. Moreover, his first purchase of 1000 shares was made from a man who was well known in the industry as having been involved in a notorious stock swindle. And, while Hecht denied having knowledge of Hesse's reputation until about two months after the transaction with him occurred, Stern on the other hand testified that Hesse (alias Baron) had told him that he was a silent partner of Hecht and that he could be reached at registrant's office. Stern further testified that on at least one occasion he had telephoned Hesse at the office of the registrant and has spoken to him there.

1/ The confirmation from Evans incorrectly listed the stock as "Fun Fair." (DX-4-A).

58. Another factor to be taken into account regarding the Hesse transaction is that although Hecht testified firmly that he had paid for the stock by a check drawn to the order of Hesse for the full amount of the cost of the securities, namely, $4,238.40 the evidence shows that contrary to this testimony, checks placed in evidence by respondent's counsel indicate that the payment to Hecht had been made peacemeal and by several checks - all of which total substantially less than the cost of the securities. Also, in order to flatten the Hesse account the record shows that Hecht had arbitrarily and without authority from Hesse entered in his books of account a sale of 100 shares of American to Hesse and a consequent write-off of the balance. (See RX-26-A). This discrepancy in Hecht's testimony, revealed as it was by evidence produced in his own behalf, plus the fact that the record shows that Hesse had had business relationships with Hecht prior to the transaction in question, raises serious doubt - in view of Hesse's unsavory reputation - of the good faith of Hecht's claim that he was duped by Stern, Ratke and Caine. Rather, such circumstances tend to support the probability that Hecht knowingly participated in the overall scheme and that the Hesse transaction was one of the initial steps toward its effectuation.

59. In any event, Hecht's contentions to justify disregarding the several red flags[1/] raised by the facts hereinabove set forth clearly fall far short of establishing that he in fact did not participate in the overall scheme of Ratke, Caine and Stern to offer and sell the American shares to the public in violation of Section 5 of the Securities Act. Accordingly, the undersigned is compelled to find that registrant aided and abetted by Hecht used the mails and instrumentalities of interstate commerce[2/] to offer, sell and deliver after sale the shares of American Fun Fair, Inc. in willful[3/] violation of Sections 5(a) and (c) of the Securities Act as charged in the order for proceedings.

1/ See S.E.C. v. Mono-Kearsarge Consolidated Mining Co., 167 F. Supp. 248, (D.C. Utah, 1958) wherein at page 259 the U. S. District Court stated:

> "With all these red flags warning the dealer to go slowly, he cannot with impunity ignore them and rush blindly on to reap a quick profit. He cannot close his eyes to obvious signals, which, if reasonably heeded, would convince him of, or lead him to, the facts and thereafter succeed on the claim that no express notice of these facts were served upon him. (Emphasis added.)

2/ The record shows and it is not disputed that registrant regularly sent confirmations of purchases and sales of American through the mails and in certain instances described in the testimony delivered said stock by mail.

3/ Although there is ample evidence of overt willfulness on the part of respondents it should be noted that the Commission has consistently held that in order to establish willfulness as that term is applied under Sections 15(b) and 15A of the Exchange Act it is only necessary to prove that the persons charged with a duty were aware of what they were doing and it is not necessary for them to have been aware of the legal consequences of their acts. Hughes v. S.E.C., 174 F. 2d 969, 977 (C.A.D.C. 1958); Thompson Ross Securities Co., 6 S.E.C. 1111, 1122 (1940); Carl M. Loeb Rhoades & Co., S.E.A. Release No. 5870 (Feb. 9, 1959); Whitehall Corp., S.E.A. Release No. 5667 (April 2, 1958). See also recent opinion in Gearhart & Otis, supra.

CONCLUSIONS AND RECOMMENDATIONS

Having found that the registrant, aided and abetted by Hecht, willfully violated the anti-fraud provisions of the Securities Act and of the Exchange Act, together with the registration requirements of Section 5 of the Securities Act the next question is what remedial action, if any, should be taken in the public interest. On this question, the evidence shows that the violations were not only willful but flagrant in that unregistered stock of American was sold to respondent's customers by means of false and misleading statements, by optimistic predictions of an early and substantial rise in the market value of the security, without disclosure of unfavorable information regarding the virtual insolvency of the issuer, its lack of working capital and cessation of operations - all of which facts respondents knew or could have ascertained upon reasonably diligent inquiry. Additionally, the record shows that respondents had established through previous transactions with virtually all of the purchasers of American, a relationship of trust and confidence and that respondents took fullest advantage of this relationship in recommending the sale of American on the basis of the representations noted above, having no reasonable basis in fact - a practice that the Commission has long and assiduously condemned as the cases hereinabove cited and many others so fully establish.

Under such circumstances it would appear that the sanction of revocation of registration should be imposed here and, in view of of Hecht's complicity in the violations found, that the Commission should also enter an order finding Hecht to have been the cause of such revocation - in absence, of course, of mitigating circumstances of persuasive force. As to the latter, the record appears to reveal none: For although several witnesses testified to Hecht's good character and reputation such evidence alone cannot outweigh the clear evidence of willful and deliberate fraud established by the record here. Moreover, in view of Hecht's higher education including a Master's Degree in Industrial Engineering, plus his experience of about six years in that field with a large and well-known industrial corporation - and in light of his evident sophistication and acumen in the securities business - the facts revealed by the record leave little room for concluding that he be spared responsibility for his actions. Under all the circumstances, therefore, the undersigned is compelled to recommend that the Commission enter an order pursuant to Section 15(b) of the Exchange Act revoking the registration of the registrant and finding that within the meaning of Section 15A(b)(4) of said Act, Donald Hecht is the cause of such order.

In view of the recommendation that registration of the registrant be revoked because of the misconduct found above, it follows that registrant's application to withdraw its registration

should be denied. Additionally, it should be noted that the Division reports in its Brief in support of Proposed Findings that registrant on December 27, 1964 was expelled from the NASD on the ground of failure to comply with a formal written request for information, pursuant to the Rules of its Business Conduct Committee. The issues under Section 15A(1)(2) supra are therefore deemed moot.

The proposed findings submitted by the parties are affirmed insofar as they are consistent with the foregoing and are otherwise denied.

Respectfully submitted,

James G. Ewell
Hearing Examiner

Washington, D. C.
November 19, 1965

APPENDIX "A"

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

MAR 1 8 1964

In the Matter of	
J. BRAD DAVID, LTD. 14 Maiden Lane New York, N. Y.	ORDER FOR PUBLIC PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 15A OF THE SECURITIES EXCHANGE ACT OF 1934
File No. 8-10598	

I

The Commission's public official files disclose that:

A. J. Brad David, Ltd., a New York corporation, hereinafter sometimes referred to as registrant, is registered as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and has been so registered since April 21, 1962.

B. Donald Hecht (Hecht) is president, a director and beneficial owner of 10% or more of the common stock of registrant.

C. Registrant is a member of the National Association of Securities Dealers, Inc. (NASD), a national securities association registered pursuant to Section 15A of the Exchange Act.

D. On February 18, 1964, registrant filed a notice of withdrawal of its registration. This withdrawal has not become effective.

II

As a result of an investigation, the Division of Trading and Markets has obtained information which tends to show and it alleges that:

A. During the period from about January 1, 1963 to February 1, 1963, registrant and Hecht, sometimes hereinafter referred to as respondents, singly and in concert, wilfully

violated Sections 5(a) and (c) of the Securities Act of 1933 (Securities Act) and that said respondents, directly and indirectly, made use of the means and instruments of transportation and communication in interstate commerce and of the mails to offer to sell, to sell, and to deliver after sale securities, namely, the common stock of American Fun Fair, Inc. (American) when no registration statement has been filed or was in effect as to said securities under the Securities Act.

B. In offering for sale and selling the aforesaid securities and during the aforesaid period of time, respondents, singly and in concert, did wilfully violate Section 17(a) of the Securities Act in that respondents, by use of the means and instruments of transportation and communication in interstate commerce and of the mails, directly and indirectly, employed devices, schemes and artifices to defraud, obtained money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in transactions, practices and a course of business which would and did operate as a fraud and deceit upon certain persons. As a part of the aforesaid conduct and activities registrant and Hecht, among other things, would and did:

(1) engage in the distribution and sale of American's unseasoned and speculative securities without first having made such reasonable and diligent inquiry as to the true nature and worth of these securities, as would have revealed the background of the issuer, the circumstances surrounding its organization, and the history of American as to its operations, earnings, dividends, current financial condition and other similar matters;

(2) engage in the distribution and sale of such securities to customers without disclosing their failure to have made the inquiries described above and their failure to obtain and disclose such material adverse information;

(3) endeavor to place customers in a position where they were asked to make hasty decisions to buy such securities upon the basis of unsubstantiated representations and without having disclosed to them material facts concerning the true nature and worth of these securities;

(4) offer to sell, sell and deliver after sale the securities of American when no registration statement had been filed or was in effect with respect to any securities of American under the Securities Act;

(5) make false and misleading statements of facts and omissions to state material facts to purchasers and prospective purchasers of American stock in connection with the activities described in paragraphs (1) through (4) above and concerning, among other things:

(a) rise in price of American stock;

(b) earnings and financial condition of American;

(c) amount of American stock available for sale; and

statements and representations of similar object and purport.

C. In engaging in the acts, practices and courses of business described in paragraph B of this Section II, respondents wilfully violated and aided and abetted in wilful violations of Sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934 and Rules 10b-5 and 15c1-2 thereunder, in the manner and by the means specified above.

III

In view of the allegations made by the Division of Trading and Markets, the Commission deems it necessary that public proceedings be instituted to determine:

(a) whether the allegations set forth in Section II are true and in connection therewith to afford respondents an opportunity to establish any defense to such allegations;

(b) what, if any remedial action is appropriate in the public interest pursuant to Section 15(b) and 15A of the Exchange Act; and

(c) whether, pursuant to Section 15A(b)(4) of the Exchange Act, Donald Hecht should be found to be a cause of any such action.

IV

IT Is ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof to be held at a time and place to be fixed and before a hearing officer to be designated by further order, as provided by Rule 6 of the Rules of Practice of the Commission (17 CFR 201.6).

IT IS FURTHER ORDERED that J. Brad David, Ltd. file an answer to the allegations contained in this order for proceedings within 15 days after service upon it of said order, as provided by Rule 7 of the Commission's Rules of Practice (17 CFR 201.7). If said registrant fails to file an answer as required by this rule within the time provided, the proceedings may be determined against such registrant by the Commission upon consideration of this order for proceedings, the allegations of which may be deemed to be true.

Any other person named in this order for proceedings may become a party hereto by filing a notice of appearance herein within 15 days after service upon him of this order. If he files a notice of appearance, he is hereby directed to file an answer within 15 days after the filing of such notice as provided by Rule 7(b) of the Commission's Rules of Practice (17 CFR 201.7).

This order shall be served upon J. Brad David, Ltd., and Hecht personally or by registered mail forthwith.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter, except as a witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule-making" within the meaning of Section 4(c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of that section delaying the effective date of any final Commission action.

By the Commission.

Orval L. DuBois

Orval L. DuBois
Secretary