

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3156

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

FILED

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SECURITIES & EXCHANGE COMMISSION

In the Matter of
HENRY GELLIS
FREDERICK MUNZER
HAROLD SHAPIRO

INITIAL DECISION

Washington, D.C.
January 18, 1973

David J. Markun
Administrative Law Judge

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SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

HENRY GELLIS :

FREDERICK MUNZER : INITIAL DECISION

HAROLD SHAPIRO :

APPEARANCES: Lois Saylor Yohann, Marvin G. Pickholz, and Jacob J. Graber, of the New York Regional Office of the Commission, for the Division of Enforcement.

John N. Mitchell, Jr., of Mitchell & Mina, New York, New York, for Respondent Gellis.

Gerald H. Cahill, of Cahill Stone & Driscoll, New York, New York, for Respondent Shapiro and, until completion of the hearing, for Respondent Munzer.

BEFORE: David J. Markun, Administrative Law Judge

THE PROCEEDING

This public proceeding was instituted by an order of the Commission dated July 27, 1971, ("order") against: First William Street Securities, Inc. ("First William" or "registrant"), a registered broker-dealer; Jack Portney ("Portney"), president, treasurer, chairman of the board, and controlling owner of the firm; and seven registered representatives of the firm, under Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act"), charging all respondents with violations of the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with transactions in the common stock of Computer Field Express, Inc. ("Computer Field") and charging registrant and Portney with numerous other violations of the Exchange Act. The proceeding has been resolved as to all respondents except registered representatives Henry Gellis ("Gellis"), Frederick Munzer ("Munzer"), and Harold Shapiro ("Shapiro") through the Commission's entry of orders based upon offers of settlement or on the basis of default.^{1/} Accordingly, this initial decision has application only to these remaining respondents, even though the decision will necessarily, in view of the nature of the charges and of the factual circumstances, also involve certain findings respecting some of the other respondents.

The Division of Enforcement^{2/} ("Division") and Respondents Gellis and

^{1/} Securities Exchange Act Releases No. 9392, November 24, 1971; No. 9452, January 17, 1972; No. 9521, March 9, 1972; No. 9553, April 4, 1972; and No. 9859, November 17, 1972.

^{2/} This Division was formerly the Division of Trading and Markets. Permission to file a brief in excess of 60 pages is hereby given, retroactively, pursuant to authority contained in 17 CFR 201.22(d).

Shapiro ^{3/} filed proposed findings of fact, conclusions of law and supporting briefs pursuant to Rule 16 of the Commission's Rules of Practice, 17 CFR 201.16.

The findings and conclusions herein are based upon the record and upon observation of the demeanor of the various witnesses. ^{4/} Preponderance of the evidence is the standard of proof applied.

FINDINGS OF FACT AND LAW

The Respondents

Respondents Gellis, Munzer, and Shapiro were employed during the relevant period ^{5/} as registered representatives with First William, a broker-dealer firm in New York, New York, which has been registered with the Commission under the Exchange Act since June, 1969. The firm also employed five other registered representatives ^{5a/} during portions of the relevant period.

^{3/} Respondent Munzer was advised by the attorney who had represented him at the hearing that the attorney would not file proposed findings, conclusions, and supporting brief on his behalf and that Munzer should obtain other counsel if he desired that done. Munzer did not obtain other counsel for such purpose nor did he file any proposed findings, conclusions, or brief on his own behalf.

^{4/} The evidentiary hearing was held in New York, New York, during 12 hearing days in January and February, 1972.

^{5/} The alleged violations by Respondents are charged to have occurred during the period running from about February 4, 1970 to about July 1, 1970. Respondent Gellis was employed by First William from about March 9, 1970, through June 26, 1970; Munzer from about February 23, 1970 through June 26, 1970; and Shapiro from about February 16, 1970 through June 26, 1970.

^{5a/} Four of these, Henry M. Roth, Henry Schuner, Eliot Spitz, and Shek Taat Chen, were named as respondents in this proceeding (see footnote 1 above and text thereto, and a fifth, who shared office space with Spitz, was not so named.

Respondents Munzer and Shapiro had been employed as registered representatives with Hirsch & Co., an exchange member firm, for about 2 years before joining First William, and Gellis, 30, a college graduate, had been a registered representative with Reynolds & Co., an exchange-member firm, for 3½ years before coming to First William.

First William's Underwriting of the Computer Field New Issue

Computer Field was incorporated in New York on March 8, 1968, as Gay Fullerton Associates, Inc., and changed to its present name in May, 1968. The Company, located in New York, New York, is, as described in its Prospectus of February 4, 1970:

" . . . a management information service company which offers a range of services to assist its clients in making management decisions. These services may include a determination by the Company of client information needs and the collection, computerized processing and analysis of this information, followed by Company recommendations of possible courses of action. The Company performs its services principally for national manufacturers, advertising agencies and related organizations."

Within two months of the time Computer Field was organized, its owners decided to take it public. In October, 1968, they negotiated with a prospective underwriter, but the negotiations fell through. In October of 1969 they attempted a self-offering, but this effort also failed because of inability to sell the minimum number of shares set in the 1/3 or none offering. Thereafter, in December of 1969, they arranged with First William to bring out the new issue underwriting on a "best-efforts, minimum one-third" basis, offering

100,000 shares at \$5 the share. The effective date of the registration statement, as amended, was February 4, 1970. The prospectus stated that "THESE ARE SPECULATIVE SECURITIES AND INVOLVE A HIGH DEGREE OF RISK" and pointed out that the underwriter, First William, had commenced operations in June 1969 and that its ". . . experience as an underwriter has been limited."

Computer Field opened and began trading on or about April 14, 1970. The "pink sheets"^{6/} show that First William made a two sided (bid and ask) market in the stock during the period April 15, 1970 to May 25, 1970.^{7/} As reflected in the pink sheets the bid quote on Computer Field rose to 12½ on April 23, 1970, dropped to 9½ on April 30, 1970, rose to 10½ on May 7, 1970, and thereafter dropped steadily from May 15 to about \$2 in June and \$1 in July, 1970. At the time of the hearing in this proceeding the stock was no longer quoted in the pink sheets.^{8/}

^{6/} The "pink sheets", published by the National Quotation Bureau, Inc., are the primary medium for the dissemination of wholesale quotations among professionals, who use the sheets to find and communicate buying or selling interest in securities and to judge activity.

^{7/} In both its underwriting activities and its market-making activities respecting Computer Field the mails were utilized in effecting securities transactions including, among others, the transactions handled on behalf of customers of Respondents Gellis, Munzer, and Shapiro, which are discussed below.

^{8/} Exhibits 18, 19. On December 23, 1971, Computer Field filed a petition under Chapter XI of the Bankruptcy Act in the United States District Court for the Southern District of New York showing liabilities exceeding assets by over \$540,000.

On May 19, 1970, Gay Fullerton, president of Computer Field, and Magdalene Diamantis, executive vice president of the company, reached agreement with Portney whereby the two officials of Computer Field personally invested \$30,000 in First William for a 5% interest therein. This was done at a time when First William needed the infusion of additional capital to meet its net-capital obligations.^{9/}

Gellis's False and Misleading Statements To Customers Respecting Computer Field

Respondent Gellis sold approximately 6,500 shares of Computer Field to various customers of his when the new issue came out. Of some 30 customer accounts that Gellis had, he recommended Computer Field to about 25. He told most of his customers who purchased Computer Field when it first came out that they should plan to hold the stock for a period of at least a month, as he had been instructed to say by Portney and Roth. At various times after the market in Computer Field opened in April, 1970, until about the middle of May, 1970, Gellis told his customers that there was a short position of about 15,000 shares in Computer stock and that such circumstance would make the stock go higher. Gellis testified that this advice about a short position was based on information given him by Portney and Roth.

^{9/} On September 3, 1970, First William was adjudged a bankrupt by order of the United States District Court for the Southern District of New York. A Chapter XI Bankruptcy-Act Petition reflected that as of July 22, 1970, First William's liabilities exceeded assets by some \$180,000.

Of Gellis's customers who purchased Computer Field through First William, five testified at the hearing.

G.S. purchased 300 shares of Computer Field on March 24, 1970, at the offering price of \$5 the share on Gellis's recommendation. Gellis had told him that Computer Field would open at about \$7 or \$8 when it started trading after the original issue. He sold his shares on June 10, 1970, through First William at \$8½.

G.K. purchased 100 shares of Computer Field in March, 1970, after Gellis recommended the stock to him and told him it would probably go to around \$10 in about three weeks. When Computer Field had climbed to about \$10 the customer asked Gellis to sell it, but Gellis persuaded him to hold on to it on the representation that the stock would probably go higher. Later, when the stock reached \$13 and the customer again wanted to sell, Gellis again dissuaded him from doing so. After Computer Field dropped back to \$10 the customer insisted it be sold and Gellis assured him it would be, but by the time the sell order was executed the stock had dropped to \$8½. It was about 3 weeks after placing the order before the customer got his confirmation, and he never received the proceeds of the sale because of the deterioration in First William's financial condition by that time.

R.V. purchased his shares of Computer Field stock through Gellis in March, 1970, on Gellis's recommendation and upon his statement that he thought the stock would go up to about \$15 or \$20 in two

to four weeks. Some weeks after the purchase, when Computer Field stock had risen to about \$14, the customer asked Gellis to sell the stock, but Gellis persuaded him not to, saying that the stock would go to over \$20 very shortly. By the time someone called him to suggest selling the stock it had dropped to about \$.50 a share.

C.B., who had earlier dealt with Gellis as a registered representative when Gellis was with Reynolds & Co., opened an account at First William in March, 1970. Gellis told him that the new-issue offering price of Computer Field was \$5 and that within two or three weeks it should go to \$20 or better. The customer purchased 100 shares of Computer Field on March 17, 1970, after obtaining the funds to do so by selling, on Gellis's advice, shares of Dennison Manufacturing, a New York Stock Exchange listed stock. After Computer Field reached \$11 or \$12 and two or three times thereafter, the customer proposed selling his Computer Field shares but each time he was dissuaded from doing so by Gellis. After selling his stock in the latter part of May at $\$8\frac{1}{2}$ his receipt of a confirmation was delayed until June 10th and he never received the proceeds of the sale, notwithstanding repeated demands and inquiries both to Gellis and to Portney, because by that time First William was in bad financial straights.

R.S. purchased 100 shares of Computer Field in April, 1970, through Gellis after the latter had told him it might well double or tripple within a few weeks to a month. This was the first stock

R.S. had ever purchased. When Gellis and the customer discussed the stock after its price had risen to about \$12, Gellis told the customer he anticipated it would go higher. Later, when the stock had dropped to about \$9, Gellis told the customer that the stock had turned sour and that he'd better sell. Gellis told the customer he'd place the sell order at about \$8 or \$9 but the sell order was never carried out by First William. Gellis talked to the customer about two weeks later and said that First William was having financial difficulties at that time and was not meeting its payments on its sell orders, and he therefore sent the customer his stock certificate instead. In late June, 1970, R.S. called First William at a time when the stock had dropped to about \$2 and was told by Portney not to sell his Computer Field because if First William was able to stay solvent it would meet its sell obligation to the customer at between \$8 and \$9 the share. Early the following year the customer sold his Computer Field shares through another broker-dealer at \$1 per share.

Gellis testified at the hearing that at times he suggested selling to some of his customers at the same time he told others to hold on to Computer Field. He justified this disparity in treatment by saying it was part of his effort to equalize things, i.e. it would have been unfair in his view to have sold one person out of the stock entirely while leaving another person holding all his Computer Field stock. However, Gellis conceded that in recommending the purchase of Computer Field to his customers he did not advise them that it might

become necessary to take them out of the stock bit by bit so as not to affect the price of the stock adversely.

Munzer's False and Misleading Statements To Customers Respecting Computer Field

Respondent Munzer sold approximately 3,800 shares of Computer Field to about 15 of his customers.

Munzer conceded that at various times after Computer Field started trading he advised his customers to hold the stock because he understood from Portney there was a substantial short position in the stock and because he considered there was enough interest in the street in the stock to cause it to move higher. In addition, he told some of his customers that Portney was negotiating a deal on the West Coast ^{10/} to sell a large block of Computer Field and that he would buy it back, or buy other shares being offered, at \$10, the effect of which would be to cause a price rise in the stock.

Of Munzer's customers who purchased Computer Field through First William, five testified at the hearing.

H.J. bought 200 shares of the new issue through First William in April, 1970. Munzer told the purchaser he'd tell him when it was

^{10/} The details respecting the alleged West Coast deal and exactly how it was to operate to boost the price of Computer Field are shrouded in mystery to a considerable degree, but the record is clear that vague representations about some such deal and its allegedly beneficial results on the price of the stock were made to many customers of First William by various of its registered representatives, including Munzer.

time to get out of the stock. After the stock had about doubled its \$5 per share purchase price, Munzer persuaded him to hold on to it, indicating it would go higher. Later, after Computer Field had declined in price, Munzer told the customer that First William was no longer "doing business". The customer received his stock certificate for the 200 shares of Computer Field, but he never got his account credit balance of about \$200.

M.H., another customer of Munzer's, purchased 200 shares of the new issue in March, 1970, after Munzer told him the price would go up to 4 or 5 times the \$5 purchase price in a short time. After the price of Computer Field had risen to about \$11 the customer wanted to sell, but Munzer dissuaded him from doing so, saying he could not let him out at once and that he would have to wait because First William could not sell everyone out at one time. After a further, subsequent indication of desire to sell by the customer, Munzer sold 100 of his 200 shares, and later the customer received a stock certificate for his remaining 100 shares.

I.I., a customer whose account was shared by Munzer with Shapiro, was dissuaded on several occasions from selling his Computer Field stock. Munzer testified that he did so on Roth's instructions or suggestions in keeping with what was evidently First William's policy. The customer's stock was ultimately sold at \$8½ but he never received the proceeds thereof, and all he was left with was a claim against an insolvent Computer Field.

C.R. also bought 200 shares of the new issue through First William in March of 1970 on Munzer's recommendation. When the price of Computer Field had climbed to about $9\frac{1}{2}$, the customer called Munzer to sell half of his shares but Munzer dissuaded him from doing so, saying that the price would go higher, close to \$20 the share, because there was a short position in the stock "in the street" and because Computer Field was getting new business. Munzer also told the customer he should hold his stock two or three months before he could expect to see results. Later, the stock had dropped down so far in price that the customer regarded his \$1,000 investment as pretty much a total loss.

Another of Munzer's customers, C.M., purchased 100 shares of Computer Field in March, 1970, after Munzer had called him about three times about the stock. Munzer told him that on the basis of "inside information" that First William had about the stock it definitely felt the stock would double in price within a period of 30 to 45 days. When he purchased he was told he should hold his stock at least 30 or 45 days because of some purchases that some institutional buyers were to make after the stock would be traded. About a week after the customer's purchase of his 100 shares, Munzer called again to attempt to interest him in purchasing additional shares on the basis that the issuer had a big contract in the making which would result in much higher earnings per share. The customer declined to make any further purchase as he had concluded from Computer Field's prospectus that

too much of its business was with one account. Later, after the price of Computer Field had climbed to the \$9 - \$10 range, Munzer again urged the customer to buy more, saying that the stock should go to the \$12 to \$20 range. Although the customer asked to sell at \$9, Munzer persuaded him to hold it for an additional 30 days. Subsequently, when the stock was around \$12 or \$13, the customer directed Munzer to sell, even though Munzer was still recommending further purchases on the representation that the stock should climb further to about \$20. This order to sell was never executed by First William, and after a number of calls to the firm the customer finally got his stock certificate towards the end of June, 1970, by which time the price of Computer Field had dropped to about \$2½.

Shapiro's False and Misleading Statements To Customers Respecting
Computer Field

Respondent Shapiro did not testify at the hearing herein;^{11/} however, certain portions of his prior testimony given in the course of the Commission's investigation that preceeded the institution of this proceeding, offered by the Division, were received as admissions.

Shapiro admitted that he told some of his customers that Computer Field was planning mergers, though he had no basis for that representation other than Portney's unsupported (and untrue) assertion that Computer Field was "merger-minded". The only "acquisition"

^{11/} Respondent Shapiro invoked his constitutional privilege not to testify when called by the Division.

Shapiro was at all aware of was one that had been talked about briefly but which did not go through.

Shapiro conceded that he told various of this customers about the alleged "West Coast deal" under which Portney was to sell a large block of stock on the West Coast after which First William would buy any offered shares at a higher figure and thus boost the price of the stock. ^{12/} He did this to induce his customers to hold their Computer Field stock when they wanted to sell or to induce them to purchase new or additional shares. Shapiro told at least one customer that First William was going to buy a large block of Computer Field stock and hold on to it and that this would have the effect of forcing the price up.

Shapiro also conceded that he told a customer that in a year's time the stock would go from \$5 to \$15 and that on the first day of trading it would be selling at a premium.

Generally, Shapiro told his customers they should hold the stock at least two months until it got established, because the stock was a "thin issue". These exhortations reflected Portney's views, since Portney did not want to see the price of the stock decline.

At various times, Shapiro conceded, he told his customers that the price of Computer Field would rise to \$15 based on the alleged

^{12/} See footnote 10 above. Shapiro also was vague about the details of the supposed West Coast deal. At one point he suggested that the deal may have contemplated sale by Portney on the West Coast of a stock other than Computer Field which sale, however, would have generated cash for First William with which to buy up any shares of Computer Field that might be offered so as to keep up, or work up, its price.

short position in the stock, of which Portney had told him. Shapiro also admitted that when the stock was around \$11 or \$12 he told one or more customers that he thought it would go into the "high teens".

Of his customers who purchased Computer Field, four testified at the hearing.

A.M.N. and his wife jointly bought 100 shares of Computer Field (their first purchase of a "new issue") in March, 1970, through First William. When the stock had risen into the \$11 - \$13 range Shapiro discouraged the customer from selling a couple of times, relying on the alleged short position in the stock. At another point, when the stock was selling at about \$7, Shapiro persuaded the customer not to sell on the basis of the alleged West Coast deal.

Customer I.I., whose account was shared by Shapiro and Munzer, bought 100 shares of Computer Field through First William on March 18, 1970. On several occasions when the customer wanted to sell he was dissuaded from doing so by Shapiro who assured him he could get a better price by waiting. Eventually, the customer's stock was sold at \$8½ but he never got his money for it because of the financial problems that submerged First William.

D.W., a fraternity brother of Shapiro's, purchased 100 shares of the new issue on the latter's recommendation in March, 1970. At some point Shapiro told him some variant of the alleged "West Coast deal". The customer later sold 50 of his 100 shares at Shapiro's suggestion, but he never received the proceeds of the sale, evidently because by then First William was having its serious financial problems.

Shapiro's customer N.S.W. purchased 200 shares of Computer Field through First William jointly with her husband and an additional 100 shares for a "family club" account after Shapiro had told her he expected it to open trading at \$8 and reach \$15 within the year. Before the purchases were made Shapiro told his customer the shares would have to be held at least a month and that failure to do so would mean that she wouldn't thereafter get any new-issue stock from First William. When Computer Field had dropped to \$9½ from its earlier high, Shapiro told the customer that there had been heavy short selling in the stock and that it would go to a new high, possibly in the \$15 to \$20 level, when the short sellers had to cover. When the customer called about mid-May, 1970, wanting to sell the 300 shares of Computer Field, Shapiro advised her to wait because "something was happening in California" regarding the stock and that the stock would thereafter go up to \$10 from its then price of \$7, after which Shapiro would get them out of half their position at \$10 and the other half at about \$8. Shapiro assured the customer he could virtually guarantee that the price would not fluctuate much from the \$7 figure until it rose on the good news from California. In June, Shapiro had to advise his customer that First William was no longer making a market in Computer Field.

Lack of Adequate Basis For, and Fraudulent Character of, Respondents' False and Misleading Representations.

The Commission has repeatedly held that predictions of a specific and substantial increase in the price of a speculative

security within a relatively short period of time are inherently fraudulent and cannot be justified, and it is not necessary that such predictions take the form of a "guarantee" to warrant a conclusion that they are fraudulent. ^{13/} Therefore, the argument made by Respondents Gellis and Shapiro that at least some of their customers understood the Respondents' predictions to be expressions of opinion rather than of fact is quite without validity.

Moreover, both the Courts and the Commission have held that it is a clear violation of the antifraud provisions for a broker-dealer to represent to his customers that any security will soon appreciate in value if he does not have an adequate basis for such representations. ^{14/}

The record fails to disclose any adequate basis for the predictions of rapid and substantial price rise in the price of Computer Field that Respondents make to their customers to induce them to purchase the stock initially and later, when the customers wanted to sell, to induce them to hold the shares (or even to buy additional shares) on the promise that the stock would shortly go substantially higher. Respondents do not make any serious effort to show that such an adequate basis for their predictions in fact existed. They seek

13/ James De Mammos, Securities Exchange Act Release No. 8090, p. 3, June 2, 1967; Charles P. Lawrence, Securities Exchange Act Release No. 8213, p. 3, December 19, 1967; Sanford H. Beckart, Securities Exchange Act Release No. 8269, p. 3, March 8, 1968; Irving Friedman, Securities Exchange Act Release No. 8076, p. 6, May 16, 1967; Hamilton Waters & Co., Inc., Securities Exchange Act Release No. 7725, p. 4, October 18, 1965.

14/ R.A. Holman & Co. v. S.E.C., 366 F.2d 446 (C.A. 2d 1966), at pp. 449-450; S.E.C. v. R.A. Holman & Co., 366 F.2d 456 (C.A. 2d 1966), at p. 458, reh. den per curiam, 377 F.2d 665 (1967); Berko v. S.E.C., 316 F.2d 137 (C.A. 2d 1963) at p. 143. For the Commission's holdings, see decisions cited in footnote 13 above.

to excuse themselves by urging that they were primarily reflecting to their customers what Portney and Roth told them about Computer Field. In this connection Respondents Gellis and Shapiro urge that because their prior experience in the brokerage business had been with exchange-member firms ^{15/} they had no reason to suspect that fraudulent things might be happening at First William, not a member of an exchange, in connection with the underwriting of and market-making transactions in Computer Field. This somewhat novel argument lacks validity for several reasons. First, if anything, the Respondents' prior experience with member firms, presumably well run and supervised, should have given them the kind of experience that should have enabled them instantly to recognize as such the fraudulent operations they became a part of in connection with First William's transactions in Computer Field. Such prior experience, in short, should have heightened rather than dulled their sensitivity to fraud. Secondly, the record simply does not support the kind of naivety on the part of any of the Respondents that the argument implies. ^{16/} Respondents, along with four or five other registered representatives at First William, all occupied a single room at the offices of First William separated only by partial partitions. Each of the registered representatives had an allocation of Computer Field to sell to their customers and all were aware, through Roth and Portney, of

^{15/} Respondent Munzer had like experience before coming to First William.

^{16/} Observation and analysis of the testimony of Respondents indicates a high degree of sophistication on their part and precludes a conclusion that any of the three of them was taken in or deceived by Portney.

Portney's intention of promoting the stock and controlling its price by various devices, including, notably, the inducement of initial purchases by unfounded predictions of early and substantial price rises and, later, by dissuading purchasers from selling the stock by unfounded predictions of substantial price rises to come in the near ^{17/} future.

The record establishes unmistakably that there was no basis in fact for representations that Computer Field was planning mergers or that it was "merger minded."

As to the alleged short position in the stock, which was supposed to force the price up when the short sellers had to cover, there is no satisfactory proof in the record as to the actual amount of short sales at any particular time or of the effect they might have been expected to have on the market price of Computer Field in light of the other factors affecting its price.

Likewise, though a number of customers were told vaguely about a "West Coast deal" that was supposed to drive up the price of Computer Field, there is no satisfactory proof in the record as to the nature of any such alleged deal or whether it actually ever transpired.

Clearly, there was nothing in the financial condition of Computer Field or in its business prospects that warranted the

^{17/} On May 6, 1970, Portney required that each representative either sell 100 shares of Computer Field to a customer or buy that number for his own account. Those who didn't bridle at this tactic (five of the registered representatives) wound up "purchasing" shares of Computer Field that they hadn't really wanted. This Draconian measure was taken by Portney on the same day that his firm sold 6,000 shares of Computer Field on behalf of various customers who, the record suggests, were aiding Portney in his efforts to manipulate the price of Computer Field.

extravagant predictions made by Respondents.

Conclusions

In general summary of the foregoing, the following conclusions of law are reached:

Respondents Gellis, Munzer and Shapiro, during the period from about February 4, 1970, to about July 1, 1970, wilfully ^{18/} violated the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with transactions in the stock of Computer Field, as more particularly found above.

PUBLIC INTEREST

The antifraud provisions which Respondents are found to have violated are vital bastions in the fortress of protection that the Congress has enacted in the public interest for the protection of securities purchasers. While the record does not disclose any prior violations of the securities laws by Respondents, ^{19/} the violations they committed

^{18/} "Wilfully" in the context of the securities statutes and rules means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the Rules or Acts. Tager v. S.E.C., 344 F.2d 5, 8 (C.A. 2, 1965); Gearhart & Otis, Inc. v. S.E.C., 348 F.2d 798, 803 (C.A.D.C., 1965); Securities Forecaster Co., Inc., 39 S.E.C. 188, 191 (1959).

^{19/} Gellis was asked to leave Blair & Co. after a short period of a few weeks employment with them in 1967 because he had falsely answered the question as to whether he had been previously arrested on his Form RE-1 statement filed with the N.Y. Stock Exchange. Gellis testified that he so answered on advice of counsel. (Gellis was acquitted of the charge on which arrested). Under all the circumstances, it is concluded that no weight should be given this incident in assessing sanctions against Gellis.

as shown by this record were egregious. The fraudulent representations were not isolated occurrences — they were made persistently, to numerous customers (many of whom sustained losses), over a considerable period of time and, perhaps most importantly, they were made in aid and effectuation of Portney's scheme to control and manipulate the price of Computer Field stock. As found above, Respondents could not have been unaware of Portney's purposes, particularly when it came to the numerous devices employed to dissuade purchasers from selling their Computer Field shares.

Moreover, as already noted above, Respondents were not without prior experience in the securities business, and the record does not support their contentions that they were "victimized" into erroneous beliefs by Portney (Shapiro's contention) or "unaware" of what was in reality transpiring at First William (Gellis's contention). ^{20/}

In view of the foregoing considerations it is concluded that a permanent bar ^{21/} of Respondents from association with any broker or dealer is required to adequately protect the public interest. This result is mandated both by the aggravated nature of the violations and to afford deterrent effect against similar violations by others in the future.

^{20/} As indicated in footnote 3 above, Respondent Munzer chose not to file any proposed findings, conclusions or brief.

^{21/} It should be noted that a bar order does not preclude the person barred from making such application to the Commission in the future as may be warranted by the then-existing facts. Fink v. S.E.C. (C.A. 2, 1969), 417 F.2d 1058, 1060; Vanasco v. S.E.C. (C.A. 2d, 1968) 395 F 2d 349, 353.

ORDER

Accordingly, IT IS ORDERED that Respondents Henry Gellis, Frederick Munzer, and Harold Shapiro are hereby barred from association with any broker-dealer.

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice.

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (15) days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c) determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.^{22/}



David J Markun
Administrative Law Judge

Washington, D.C.
January 18, 1973

22/ To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the issues presented. To the extent that the testimony of the Respondents is not in accord with the findings herein it is not credited.