

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

FILED

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SECURITIES & EXCHANGE COMMISSION

In the Matter of :

UNITED SECURITIES COMPANY :
OF AMERICA :

8-15516 :

MELVIN Y. ZUCKER :
CHARLES I. BLACK :

INITIAL DECISION

October 24, 1973
Washington, D.C.

Sidney L. Feiler
Administrative Law Judge

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UNITED SECURITIES COMPANY	:	
OF AMERICA	:	INITIAL DECISION
8-15516	:	(Private Proceedings)
MELVIN Y. ZUCKER	:	
CHARLES I. BLACK	:	

APPEARANCES: Terry W. Baker, Esq., of Tonkon, Galen & Baker, 1007
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for United Securities Company of America and Melvin
Y. Zucker.

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Lane B. Emory, Esq., of the Seattle Regional Office of
the Commission, for the Division of Enforcement.*

BEFORE: Sidney L. Feiler, Administrative Law Judge**

* This Division was formerly known as the Division of Trading and
Markets and is so referred to in the record.

** This is a title change. Record references to the undersigned in
the record are as "Hearing Examiner."

I. THE PROCEEDINGS

These proceedings were instituted by order of the Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934, as amended ("Exchange Act") to determine whether certain allegations set forth in the order are true and, if so, what, if any, remedial action is appropriate in the public interest.

The order for the proceedings, as amended during the hearing, sets forth allegations by the Division of Enforcement that during the period from on or about June 1, 1970 to on or about September 9, 1971 United Securities Company of America ("Registrant") willfully violated and Melvin Y. Zucker ("Zucker"), at all relevant times president, treasurer and director of Registrant, and Charles I. Black ("Black"), a registered representative employed by the Registrant during part of the relevant period, willfully aided and abetted violations of Section 7(c)(1) and 7(c)(2) of the Exchange Act and Regulation T prescribed by the Federal Reserve Board thereunder in that Registrant, directly and indirectly, extended, maintained, and arranged for the extension and maintenance of credit to and for customers on securities (other than exempted securities) in contravention of the aforesaid Exchange Act and Regulation T. It is further alleged that during the period from on or about June 1, 1970 to on or about November 30, 1970 Registrant willfully violated and Zucker willfully aided and abetted in the violation of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, in that the Registrant failed to accurately make and keep current certain of its books and records including records relating to customer cash and margin accounts, a record of the computation of net capital as of trial balance dates, and a questionnaire or application

for employment executed by each "associate person" of Registrant. It is also alleged that during the period from on or about June 1, 1970 to October 30, 1970 Registrant and Zucker failed reasonably to supervise other persons under their supervision with a view to preventing violations of the Exchange Act and applicable rules and regulations thereunder, such persons having committed violations of said provisions.^{1/}

Pursuant to notice a hearing was held in Portland, Oregon. The parties were represented by counsel. Full opportunity to present evidence and to examine and cross-examine witnesses was afforded the parties. Proposed findings and supporting briefs were submitted by them. On the basis of the entire record, including the testimony of the witnesses, the undersigned makes the following:

II. FINDINGS OF FACT AND LAW

A. The Respondents

At all times here relevant the Registrant, a wholly-owned subsidiary of United Securities Financial Corporation, a public corporation owned by approximately 300 stockholders, was a registered broker-dealer with its principal office and place of business in Portland, Oregon. It also was a member of the National Association of Securities Dealers, Inc. (NASD), a national securities association registered pursuant to Section 15A of the Exchange Act. It had formerly conducted business and had been known as AEC Securities, Inc.

^{1/} The order also included allegations with respect to two other registered representatives of the Registrant, Ray K. Rabin and Raymond L. Brown, Jr. The cases against these respondents have been disposed of by prior orders of the Commission (Rabin - Sec. Exch. Act Rel. No. 9561, April 11, 1972); (Brown - Sec. Exch. Act Rel. No. 9663 July 5, 1972).

Melvin Y. Zucker, at all times here relevant was the president, treasurer, and a director of the Registrant. He was the chief operating officer of the Registrant during the relevant period and supervised all employees. Zucker's background included work as an accountant and management consultant. He entered the securities business as a partner in Equity Underwriters, a registered broker-dealer in December, 1967. He operated this firm, which had about 1,000 retail accounts, for approximately two years. He continued in the securities business through AEC Securities.

Registrant's registration became effective on March 4, 1970. It commenced operations in April 1970 but its retail operations were on a small scale until June 1970. At that time it had three or four back-office employees, a trader, ten full-time salesmen who worked on the premises and 25 off-premises salesmen who were engaged chiefly in selling mutual funds.

Charles I. Black was employed by the Registrant as a securities salesman on or about July 1, 1970. He had had experience in the securities business since 1967 and prior to his employment by the Registrant had been a partner in a local securities firm, Alcorn & Black, which had ceased doing business because of financial difficulties.

Raymond L. Brown, Jr. also had been a part-owner of Alcorn & Black. He was employed by the Registrant as a securities salesman from about July 1 to October 13, 1970. Ray K. Rabin was employed by the Registrant as a securities salesman from about June 1 to October 11, 1970. He also had had experience in the securities business and prior to his employment with the Registrant had worked for Alcorn & Black.

B. Violations of the Exchange Act by the Registrant and Zucker

1. The Period from on or about June 1, 1970 to on or about October 30, 1970.

a. Improper Extension of Credit to Customers.

The period June 1 to October 30, 1970 was the period of violations originally specified in the order for these proceedings, prior to the amendment enlarging the period of alleged violations. Employees from the Seattle office of the Commission inspected the Registrant's books and records in November 1970. Their examination formed the basis for the allegations in the order that violations of Regulation T prescribed by the Federal Reserve Board pursuant to Sections 7(c)(1) and 7(c)(2) of the Exchange Act with relation to the extension and maintenance of credit to and for customers on securities had occurred from about June 11 to about September 13, 1970.^{2/} A total of 95 violations were found in margin accounts and 18 in cash accounts (Tr. 113-115). The 95 margin account violations were found in 7 accounts (Tr. 115-117; Div. Exhs. 2-9). These 7 accounts were the Linda S. Black account (beneficially owned and controlled by Black), the Frank Kidd account (on which Black was the registered representative); the Linda M. Rabin account (controlled by Rabin), the Leon E. Korn account (Korn was a relative of Rabin and Rabin acted as registered representative in placing orders for that account), the Max Swerdlik account (Rabin was the registered representative for this account also); the Raymond L. Brown, Jr. account (this account was beneficially owned by Brown, himself) and the

^{2/} Section 7(c), in pertinent part, makes it unlawful for any broker or dealer, directly or indirectly, to extend or maintain credit to or for any customer in contravention of rules and regulations prescribed by the Board of Governors of the Federal Reserve System.

Acting under this provision the Board has adopted Regulation T, "Credit by Brokers, Dealers, and Members of National Securities Exchanges."

L. James Kennedy account (Brown was the registered representative for this account). (Div. Exh. 10)³/

The Registrant has not challenged the analyses made in the testimony presented by the Division, as supported by the aforementioned exhibits. However, its position is that from the beginning of its retail operations it used a computer service to develop its records, that many

3 / These violations included 64 violations of Regulation T Section 220.3 (b)(1) (effecting for or with customers in general [margin] accounts transactions in securities, each of which, in combination with the other transactions effected in each of such accounts on the same day, created an excess of the adjusted debit balance of each of such accounts over the maximum loan value of the securities in each of such accounts, or increased such excess, without obtaining before the expiration of five full business days following the date of each such transaction, the deposit into each of such accounts of cash or securities in such amount that the cash deposited plus the maximum loan value of the securities deposited equaled or exceeded the excess so created or the increase so caused).

These violations were found in the Black account (6), the Kidd account (6), the Rabin account (18), the Korn account (9), the Swerdlik account (16), the Brown account (5), and the Kennedy account (4):

Violations were found in 31 instances of the rule prohibiting cash withdrawals from general accounts when the adjusted debit balance of the account involved after such withdrawal exceeded the maximum loan value of the securities in such accounts (Section 220.3(b)(2)). These occurred in 5 of the aforementioned accounts, the largest number being in the Rabin account (13).

Eighteen violations were also found of the rules relating to special cash accounts requiring full cash payment within 7 days after the date on which a security was purchased (Section 220.4(c)(2)) and of the rule prohibiting the purchase or sale of any security to any customer in a special cash account where funds sufficient for the purpose are not already in the account, where nonexempt securities have been purchased in such an account during the preceding 90 days, and then, without having been previously paid for in full by the customer, the security has been sold in the account or delivered out to any broker or dealer (Section 220.4(c)(8)).

errors occurred during the time when it used the computer system, and that it had to terminate its relationship with the computer firm as of August 31, 1970. It presented evidence that Zucker, working with back-office employees, reconstructed the records of the Registrant manually during August and September, 1970. When he found that violations had occurred in accounts owned or represented by Black, Rabin, and Brown, he took immediate steps in October to collect balances due and discharged these men. Black's position, in substance, is that he always believed that there were substantial balances in the Linda Black, and Frank Kidd accounts and that when he had questions about the status of those accounts he could not get accurate information from the Registrant.

Some of the basic background facts are not in dispute. The Registrant (through a predecessor firm, AEC Securities) entered into an agreement on March 6, 1970 for the installation of a data processing service at the offices of the Registrant (Rabin Exh. 14). The system was installed on March 20, 1970 and remained in operation until August 31, 1970. According to David H. Yates, a representative of the service company who was most familiar with the system and who spent much time at the offices of the Registrant, the system that was installed was not designed to check compliance with the provisions of Regulation T, such as margin information (Tr. 439-440). Yates dealt primarily with Mrs. Caroline Lee, who he understood was in charge of bookkeeping at the Registrant.

The system depended on the receipt by the service company of punch-card instructions prepared in the offices of the Registrant from which computer entries would be made and returned to the Registrant in the form of journal pages. There is agreement that problems developed in the system

as used by the Registrant and in the customer accounts, although there is disagreement as to the responsibility for these errors. According to Yates, whose testimony is credited, the Registrant would send the service company information from its order tickets and the service company would send back that information in the form of computer entries, confirmations, stock record inventory, and other bookkeeping reports. Monthly statements were not prepared by the service company although such a run was made for the month of July only for audit purposes and not for distribution to customers (Tr. 459).

Yates, as part of the arrangement with the Registrant, did instruct employees of the Registrant, principally Mrs. Lee, in the use of the system and the obligations of the Registrant in order to make the system work properly. There was agreement that trouble developed in the system. It is not necessary for the purposes herein to assess blame for the problems that developed. Eventually Yates reviewed with a representative of the Registrant the records of the transactions the service company had performed for the Registrant and agreed that there had been 592 errors out of 3,896 entries and agreed to give Registrant credit for these without determining responsibilities for the errors (Tr. 481-482). Yates further testified that two runs of customer accounts were probably prepared for the Registrant but not for the purposes of sending them to customers. He also stated that daily reports would show for any activity in a customer account its long position, short position, and debit or credit balances. The responsibility for maintaining a record of the dates payments were due pursuant to Regulation T was that of the Registrant (Tr. 487-498).

Caroline Lee was in charge of the bookkeeping operations at the Registrant during the period here relevant. She had been employed by Equity Underwriters, a registered broker-dealer, under the supervision of Zucker, from February 1968 until the Registrant commenced operations. She then was employed by the Registrant. Her employment at Equity was her first position in the securities industry. She had no formal training and learned from on-the-job training, starting as a secretary and then doing bookkeeping work.

While Mrs. Lee did such work as typing confirmations, making appropriate records, including the receipt of payments, she testified that she had no knowledge of Regulation T during her employment at Equity, but learned of it from another employee at Registrant after she had been employed there for several weeks. After she learned of Regulation T she wrote letters either to the NASD or the Federal Reserve Board asking for needed extensions.

Mrs. Lee testified that it was her duty to see to it that customers made their payments promptly pursuant to Regulation T. Her practice was that when a customer had not made payments promptly, she would make a note on a memo slip and give it to the salesman handling the account. Sometimes she would give a copy of such a slip to Zucker. Her instructions were to bring any problem to the attention of Zucker (Tr. 840-841). She was aware that the computer records were not giving accurate information on customer balances because on occasions when she would give a notice to a salesman that a customer owed money, he would claim that the records were wrong. On two occasions before July 31 she attempted to set up 4 or 5 of the larger accounts including those of Rabin, Black and

others specifically mentioned in these proceedings as being the source of violations by the Registrant. Continuing her testimony, she stated that when she showed these lists to Zucker with notations that there were large debit balances in them, Zucker was surprised and exclaimed "Oh, my God" (Tr. 843-846). Zucker did talk to the salesman and attempted to go over the lists with them, she stated, and the cash position of the firm improved thereafter.

Mrs. Lee further testified that her primary responsibility during the time when the company was using the computer service was to check that payments were received on time and she had her own system to keep track of the due dates. She testified further that the lists she made to check on accounts would be done by referring to confirmations. In the course of checking whether a customer owed money she would check the computer record to see what money was listed to his credit. If there were no special problems in an account, such as short sales, or other matters, she would consider that there was enough cash on hand to pay for an open trade. If that were not the situation she would bring it to the attention of the particular salesman handling the account. Her testimony is credited.

Zucker was the president of the Registrant during the relevant period and the supervisor of Mrs. Lee and all the other employees. He testified that in the latter part of June 1970 he became aware of problems that were developing in the computer system. He, Mrs. Lee, and David Yates all attempted to solve the problems but without any real success.

Zucker testified that he finally determined to reconstruct the cash balance ledgers manually by referring to the original order tickets

and confirmations. This work was done in August and September and was completed in the beginning of October. Prior to its completion, on August 29, 1970, Zucker had written to Yates that conditions had become intolerable, auditors could not verify the records, and that Registrant would not continue using the service after August 31, 1970 (Rabin Exh. 15). Zucker testified that when the reconstruction of the records was completed he, for the first time, could determine that substantial sums were due in the accounts of Rabin, Black, and Brown and those of their customers and that Regulation T violations had occurred in those accounts. He made a demand for sums due and also terminated the services of these salesmen.

Conclusions

Problems that developed in the computer operations involving the records of the Registrant could have been the result of many factors and could have occurred at different points in the chain of operations. According to Yates, computer operations with the Registrant's records were proceeding satisfactorily until June 1970 when the character of the Registrant's business changed. This was the beginning of the period when Rabin, Black and Brown were added to Registrant's sales staff.

Reference to exhibits in this proceeding clearly evidence the kind of trading carried on by these three salesmen for their personal accounts and for their customers (Div. Ex. 2-8). These contain many short sales and transactions in "puts" and "calls". Inaccurate handling of these transactions undoubtedly contributed substantially to the record problems which developed. Registrant and Zucker contend that they were not aware of the exact state of the aforementioned accounts until they

were finally reconstructed in October 1970, that when questioned about accounts, Rabin and Black maintained that Registrant's records were inaccurate (which they still contended at the hearing).

However, certain factors were present which should have alerted Zucker that serious problems existed in Registrant's accounts, at least from mid-July, 1970, which required prompt remedial action if serious violations of Registrant's responsibilities as a broker-dealer were to be avoided. According to Zucker, Registrant's procedures required that, he review, and he did, all order tickets daily and check each account every two weeks. Also he maintained that Registrant kept its customers accounts on a cash basis during the period involved here and did not extend credit or maintain any margin accounts. Yet the order tickets themselves would have shown that in the 7 accounts mentioned above transactions were taking place which were in the nature of margin trading transactions requiring the furnishing of appropriate collateral by the customers. It is undisputed that neither Rabin nor Brown put any money into their trading accounts.

The amounts involved in these accounts and the number of trades were not small. The Rabin account, in particular, had many trades and the capital deficiency in that account, according to the Registrant's records, reached as high as \$22,563 (Div. Ex. 7).^{4 /} Margin account violations were extensive in the other 6 accounts, as previously noted (Div. Ex. 9, 10).

Zucker, on his own testimony, knew from mid-July, 1970 that the computer records were not accurate and could not be relied on. His bookkeeper had brought problems to his attention. The computer company, while not retained to prepare monthly customer statements, did prepare such

^{4 /} Rabin testified that Zucker told him to generate trades without regard to cash payments or Regulation T requirements. Zucker denied that there was any such arrangement. Even if Zucker's testimony were accepted, and the undersigned credits it, the deficiencies outlined above are undenied.

a run for July for office purposes only (Div. Ex. 24). A perusal of these records would also have shown numerous entries which raised serious questions as to Regulation T compliance. Yet with all these danger signals Zucker took no effective action to stop a trading situation which was out of hand, but allowed it to continue for approximately four months before he called a halt to the numerous violations taking place in customer accounts. 5/

The undersigned concludes that the Registrant from on or about June 1, 1970 to on or about October 30, 1970 violated Section 7(c)(1) and (2) of the Exchange Act and Regulation T and that said violations were willful within the meaning of the Exchange Act. 6/

Violations by the corporate respondent as found here involve actions of personnel of the firm for whose conduct the firm was responsible under the doctrine of respondeat superior. 7/

b. Failure of Supervision

It is alleged in the order for these proceedings that Zucker willfully aided and abetted the violations set forth above and he and the Registrant failed reasonably to supervise other persons under their supervision

5/ During the June-October period Rabin earned over \$20,000 in commissions, of which almost \$8,000 was earned from the Rabin accounts and \$8,400 from the Korn and Swerdlik accounts. Extensive Regulation T violations occurred in these accounts. Black's earnings were \$9,300 including short periods of employment in June and October. These two and Brown generated most of the brokerage business of the Registrant during the relevant period.

6/ Tager v. S.E.C., 344 F. 2d 5, 8 (2nd Cir. 1965), affirming, Sidney Tager, Sec. Exch. Act Rel. No. 7368 (July 14, 1964); Accord, Harry Marks, 25 S.E.C. 208, 220 (1947); George W. Chilian, 37 S.E.C. 384 (1956); E.W. Hughes & Company, 27 S.E.C. 629 (1948); Hughes v. S.E.C., 174 F. 2d 969 (C.A.D.C. 1949); Shuck & Co., 38 S.E.C. 69 (1957); Carl M. Loeb, Rhoades & Co., 38 S.E.C. 843 (1959); Ira Haupt & Company, 23 S.E.C. 589, 606 (1946).

7/ Armstrong, Jones & Co., v. S.E.C. 421 F. 2d 359, 362 (C.A. 6, 1970), cert. den. 398 U.S. 958 (1970).

with a view to preventing violations of the Exchange Act and applicable Rules and Regulations thereunder by such persons (Exchange Act, Sec. 15(b)(5)(E)).

It has been found that over the period from approximately June 1 to October 30, 1970 violations of Section 7 of the Exchange Act and Regulation T prescribed by the Federal Reserve Board occurred in customer accounts maintained by the Registrant. These violations were committed by employees of the Registrant under the direct supervision of Zucker. He was in charge of all operations of the Registrant, including bookkeeping and sales. He knew from sometime in July that Registrants books and records were inaccurate and serious questions had arisen in certain accounts. It is concluded that his failure to take effective action to stop the continuing Regulation T violations constituted a failure of supervision as alleged.^{8/} Registrant also participated in this violation since it was responsible for the activities of its supervisory personnel within the scope of their employment.

c. Violations of Record-keeping Requirements

Every registered broker-dealer, pursuant to the provisions of Section 17(a) of the Exchange Act is required to make and keep such books and records and make such reports as the Commission may prescribe.

^{8/} The essence of the violation found here is a failure of supervision rather than direct participation in violations as connoted by a charge of aiding and abetting. Anthony J. Amato, Sec. Exch. Act Rel No. 10265, p.5 (June 29, 1973); Adolph D. Silverman, Sec. Exch. Act Rel. No. 10327, p. 4, (August 6, 1973).

Pursuant to this authority, the Commission has promulgated Rule 17a-3 specifying books and records required to be made and kept current by every registered broker-dealer. It is alleged in the order that the Registrant, during the period from on or about June 1, 1970 to on or about November 30, 1970 willfully violated and Zucker willfully aided and abetted in the violation of the aforementioned provisions of the Exchange Act and appropriate rules in four respects.

Registered broker-dealers are required to secure and keep on file an application for employment executed by each associated person of such broker-dealer containing certain specified information (Rule 17a-3 (12)). It is not disputed that applications for employment were not executed by three employees. Zucker testified that his failure to comply with the rule was an oversight and that one of the three employees had worked for him at Equity Underwriters and that he knew that another of the employees had been employed with other broker-dealers prior to joining Registrant.

Registered broker-dealers pursuant to the provisions of the aforementioned rule are required to keep records of their net capital (11). One of the investigators who had participated in a review of the records of the Registrant testified that after the inspection he told Zucker that the net capital computations for the months of July and August, 1970, could not be found and that Zucker did not produce them. Zucker testified that he did not understand that he was required to produce those records at that time and that those records were available. They were received in evidence (Div. Exhs. 26 and 27). However, these computations could only have been based on records which admittedly

were incorrect and were not reconstructed until later in 1970. Zucker further testified that even in the reconstruction of customer accounts no attempt was made to itemize separately as to each account of every customer all receipts and deliveries of securities to such account (Tr. 289, 726, 727).

The requirement that records be kept embodies the requirement that such records be true and correct.^{9/} In this connection it is noted that the accountants for the Registrant in the certificate attached to the Registrant's Form X17A-5 report, as of July 31, 1970, which was filed on October 29, 1970 stated, in part, that they were unable to satisfy themselves with regard to receivables and payables and were unable to express an independent accountant's opinion on the accompanying financial statements. In attached notes it was stated that they were unable to verify balances in the customers and dealers accounts and after attempts at reconciliation they were still unable to satisfy themselves. Under these circumstances it is concluded that Registrant failed to comply with the requirements for maintaining records of net capital.

The same infirmities apply to ledger accounts or other records required to be kept for every customer and all purchases, sales, receipts and deliveries of securities to such accounts (3). These records, from approximately July 1 to at least mid-October 1970 were admittedly incorrect and contained many errors which were not adjusted on Registrant's books over a period of four months or more.

^{9/} Lowell Niebuhr & Co., Inc., 18 S.E.C. 471, 475 (1949); Carter Harrison Corbrey 29 S.E.C. 283 (1949); H.B. Cohle & Co., 35 S.E.C. 504 (1954).

Registered broker-dealers, pursuant to the requirements of the aforementioned regulation, are required to keep a record in respect of each cash and margin account containing the name and address of the beneficial owner of such account and, in a case of a margin account the signature of such owner (9). Black testified that he was the beneficial owner of the account carried in the name of Linda A. Black (Tr. 416). In none of the accounts found to be margin accounts was the signature of the beneficial owner obtained. It is, therefore, concluded that in this respect and in the other requirements set forth above the Registrant violated the requirements Section 17a of the Exchange Act and Rule 17a-3 thereunder.

It has been alleged that the violations, if any, were not willful under all the circumstances. The argument has been made that the difficulties with customer account records were due primarily to difficulties with the computer system, that Registrant did not intend to maintain margin accounts at the relevant period and found only later that it had maintained some margin accounts, that computations of net capital have been kept, and that the failure to obtain certain applications for employment was an oversight. Certain of these arguments have been dealt with above and it is noted here with respect to the customer accounts that Registrant permitted a situation to continue for a matter of months under which it was not sure just what its correct records would show as to each customers account and its net capital. It is concluded that under all these circumstances the violations found here were willful.^{10/}

^{10/} See authorities cited in footnote 6, supra.

Zucker, as the Registrant's principal operating officer, had the primary responsibility to see that the Registrant was in compliance with applicable record-keeping rules. Early in the period involved here he became aware of record-keeping problems and permitted those conditions to continue for a number of months. The record-keeping requirements of the Exchange Act are a cornerstone of the regulatory framework. Zucker knowingly permitted very serious violations of these requirements to continue for a number of months. The undersigned concludes that Zucker willfully aided and abetted the violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, as alleged.

d. Violations by Charles I. Black

It is alleged in the order for these proceedings that Black willfully aided and abetted the improper extension of credit to customers by the Registrant. With regard to Black, the focus of this charge is on matters occurring during his employment by the Registrant, from early July to early October, 1970, and with respect to two accounts for which he acted as registered representative, the Linda S. Black and the Frank Kidd accounts. (Div. Exhs. 2 and 5).

Black was the beneficial owner of the Linda Black account and placed all the orders in it. An analysis of this account by Regional Office representatives revealed 6 violations of margin account requirements running as high as \$29,342 at one point, and 5 violations of Section 3(b)(2) of Regulation T (Div. Exhs. 9, 10). In the Kidd account the violations of these sections were 6 and 3 respectively. These analyses were made of the reconstructed accounts and confirmations of the transactions were checked. (Tr. 521).

Black testified that he was never told of any Regulation T violation in the Linda Black account nor was he called upon to deposit more money in it. He challenged the accuracy of the reconstructed account prepared by the Registrant and produced his own revision of statements sent him and a list of claimed errors in his accounts. (Black Exhs. 22, 23 and 24). He also produced statements from Registrant's accountants, dated August 10, 1970, showing a net balance in his favor (Black Exhs. 25, 26 and 27).

It is undisputed that Black started his account with a deposit of \$10,000 (Black contended it was \$12,000). Black testified that he attempted to keep track of his account position, but could not come to any understanding with Registrant as to the status of his account. At one point, he said, his account was split into regular, short, and option accounts (Tr. 420). He complained that there was improper execution of his orders, there was disregard of limits he placed on orders, and he was not notified of the disposition of order slips he submitted (Tr. 514).

Black maintained that the same situation prevailed in the Kidd account which was started with a deposit of \$31,500. He maintained that no demand for additional money deposit in the Black or Kidd accounts was made until October. Ultimately he urged Kidd to take the matter to the Commission.

Black's account evidenced many short sales and sales of "puts". These were the types of transactions which were causing bookkeeping problems for the Registrant. Black stated that he was aware from the beginning of his employment that there were "paper work" problems, but he expected them to be taken care of (Tr. 636). When he talked to the trader or Mrs. Lee

about some mix-up he would be given some excuse (Tr. 526) or was told that the firm was trying to reconstruct its records (Tr. 526, 644). Black testified further that in September he cut down on his trades because he knew there was something wrong in his account.

While there was a lessening of trading in the Black account from mid-September to early October, Black continued his trading from then on until his dismissal. Activity in the Kidd account continued unabated during this period.

During the period of his employment Black's trading activity was concentrated in the Kidd account (where he earned 67.6% of his commissions) and his own account (where he earned 22.4%) (Div. Exh. 11). Within a short time he found that his records could not be squared with those of the Registrant and that he was having difficulties with order tickets, confirmations and record entries in general. The Black and Kidd accounts were substantial accounts with numerous trades. Under these circumstances, Black's continuing to place orders for accounts with knowledge that Registrant's records were in a state of confusion compounded the errors and the difficulties that were taking place. The undersigned concludes that Black aided and abetted the violations of Section 7 of the Exchange Act and Regulation T thereunder, as alleged. In view of his failure to take action for a number of months to clear up his accounts before proceeding to place further orders it is also found that the violations were willful.

e. The Period from on or about November 1, 1970 to September 9, 1971.

Improper Extension of Credit to Customers

The order, as amended, alleges violation of credit extension provisions contained in Section 7 of the Exchange Act and Regulation T prescribed by the Federal Reserve Board from on or about June 1, 1970 to on or about September 9, 1971. The period from on or about June 1 to October 30, 1970 has been considered in a previous section.

After the Registrant had completed the reconstruction of its records in October 1970 further steps were taken to revise its procedures. On November 10, 1970, Jai Pio Ko was appointed Vice-President in Charge of Operations with responsibility for all accounting and related services (Div. Exh. 21). Ko issued a series of instructions over the ensuing months designed to improve operating procedures and avoid violations (Div. Exh. 12, 13, 14, 15, 17, 18 and 16). Staff reorganization also was made, structured to allocate duties and fix responsibilities.

Despite these efforts, violations of credit extension regulations continued to occur. Examiners from the NASD conducted a routine examination of the Registrant's books and records in September 1971. Approximately 1100 special cash accounts were reviewed in various alphabetical groupings with an average of 3 purchase transactions per account for a total of approximately 3300 transactions. The examiners found that between November 1970 and September 1971 there were 74 apparent violations of Section 4(c)(2) of Regulation T (failure promptly to cancel or otherwise liquidate transactions of purchase in customers cash accounts, as to which full payment was not received within 7 business days), and violation of Section 4(c)(5) (a similar failure to close out a transaction to which a 35 day limit was

applicable). In addition it was found that during the period from April to September 1971 Registrant executed 21 transactions of purchase in 8 customer cash accounts which had been frozen under the provisions of Regulation T and without there being sufficient funds in the accounts to cover such purchases, all in contravention of Section 4(c)(8) of Regulation T. A schedule of these violations, as prepared by the NASD examiners was offered by the Division and received in evidence (Div. Exh. 1).

A complaint alleging the above violations and one other was filed with the NASD and after a hearing a Business Conduct Committee concluded that violations of Regulation T as charged had been committed.^{11/} It assessed a penalty of censure and a fine of \$4,000, stating that in assessing the penalty for these violations it had given serious consideration to the length of time Registrant permitted the conditions to exist which caused the violations.^{12/} (Complaint No. SEA - 197). On appeal, the Board of Governors of the NASD affirmed the findings of the District Committee, except for 1 item,^{13/} and, in addition, assessed costs.

^{11/} It eliminated 3 items; nos. 7 and 29 where it found that extension requests had been obtained avoiding violations and #64 where funds has been received in Registrant's branch office on the seventh business day.

^{12/} It found that the days late in receiving payment ranged from 1 to 89 days of which 17 transactions ranged from 10 to 89 days late.

^{13/} Item #20, an item of interest owed to a customer on a bond transaction.

One of the NASD examiners who had participated in the inspection of Registrant's books and records, Robert B. Davies, testified in these proceedings. According to Davies, the examiners inspected approximately 50% of Registrant's total customer accounts. The technique they used was to make "spot-checks" rather than an audit (Tr. 57). The percentage of violations found with respect to the total transactions reviewed was approximately 2.82.

Davies furnished a breakdown of the 74 violations of Regulation T, Section 4(c)(2), as follows:

<u>Transactions</u>	<u>Days Late</u>
16	1
19	2-5
39	more than 5, 11 over 90 days

The Division conceded that 4 of the transactions in this group should be eliminated (nos. 7, 20, 26, 44 Div. Br. p.21). Two of these were also items eliminated in the NASD proceeding. The revised figures for the above categories would be 15-17-36, for a total of 68 transactions.

Ko, who was Vice-President in Charge of Operations at the offices of the Registrant from November 1, 1970, disagreed with some of the alleged violations set forth in the schedule submitted by the Division (Div. Exh. 1). He stated that as to 8 transactions there were funds in a margin account owned by the customer which were sufficient to meet his obligation in a special cash account which could have been transferred over to the special cash account (United Exh. 8, p.3). He produced correspondence with the Federal Reserve Bank of San Francisco which he claimed approved this practice (United Exh. 7-A, B). However, there is nothing in the letter submitted approving such a practice after the expiration of 7 days. Only

those transactions were held to be in violation where the transfer was not made in 7 days. (Tr. 50). It is concluded that the findings of violations as to these items were properly made.^{14/}

Ko also pointed to a number of instances where requests for extensions of time had been cut down or denied, thus resulting in violations. However, this adverse action occurred after a letter had been sent to the Registrant by the NASD dated May 19, 1971 pointing out that there had been a number of extension requests filed by the Registrant and suggesting that the Registrant ". . . maintain a closer scrutiny with regard to these matters with a view towards better control in this area" (Tr. 71-72). A similar letter was sent to the Registrant in September 1971.^{15/} It is found that except for the items eliminated during the course of the NASD hearing and by stipulation of the Division, the Registrant violated the extension of credit provisions as set forth in Section 7(c)(1) and (2) of the Exchange Act and Regulation T prescribed by the Federal Reserve Board. It is further concluded that these violations were willful within the meaning of the Exchange Act.

It is alleged in the order that Zucker willfully aided and abetted the aforementioned violations.^{16/} The evidence does establish that beginning in November 1970 he took action designed to improve procedures of the Registrant. This included the appointment of Ko as Vice-President in Charge of Operations. However, Zucker continued as President and chief operating

^{14/} See, Security Planners Associates, Inc., Sec. Exch. Act Rel. No. 9421, p.4 (Dec. 17, 1971).

^{15/} Div. Exh. 16. It was pointed out in this letter that in the June 1-August 31, 1971 period extension requests from the Registrant were averaging 58 a month.

^{16/} The allegation of failure to supervise does not cover activities during the period of time under present consideration (Tr. 45-47).

officer of the Registrant with responsibility over all operations of the Registrant. Whatever the situation might have been prior to May 19th, 1971, at least from the date Registrant received the letter from the NASD, presumably May 20, 1971, Zucker was on notice that Registrant's current accounting operations were being criticised by the NASD and remedial action was required. However, he did nothing and the violations continued. Under these circumstances the undersigned concludes that Zucker's failure to act constituted an abdication of his responsibilities and that by such conduct he willfully aided and abetted the violations of the credit extension provisions of the Exchange Act and Regulation T committed by the Registrant.

III. CONCLUDING FINDINGS, PUBLIC INTEREST

The Commission, pursuant to the provisions of Section 15(b)(5) of the Exchange Act, so far as it is material herein, is required to censure, suspend for a period not exceeding twelve months or to revoke the registration of any broker or dealer if it finds that such action is in the public interest and that such broker or dealer, subsequent to becoming such, has willfully violated any provision of the Exchange Act, the Securities Act, or any rule or regulation thereunder, or has failed reasonably to supervise, with a view to preventing violations of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision. It also may, pursuant to the provisions of Section 15(b)(7) of the Exchange Act, censure, bar, or suspend for a period not exceeding twelve months any person from being associated with a broker or dealer if it finds that such

sanction is in the public interest and that such person has willfully violated any provisions of the Exchange Act, the Securities Act, any rule or regulation thereunder, or has failed reasonably to supervise another person, as set forth above. Furthermore, pursuant to Section 15A of the Exchange Act it may expel or suspend a member of a registered securities association who has violated any provision of the Securities Acts or rules and regulations thereunder.

It has been found that the Registrant, United Securities Company of America, willfully violated the credit extension provisions of Section 7(c)(1) and 7(c)(2) of the Exchange Act and Regulation T prescribed by the Federal Reserve Board and that Melvin Y. Zucker, its president and chief operating officer, and Charles I. Black, a registered representative employed by the Registrant, willfully aided and abetted these violations.

It has also been found that the Registrant willfully violated and Zucker willfully aided and abetted in the violation of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, in that Registrant failed to accurately make and keep current certain of its books and records.

It has further been concluded that Registrant and Zucker failed reasonably to supervise persons under their supervision with a view to preventing violations of the Exchange Act and rules and regulations thereunder.

The Division urges that in view of the violations committed by the Registrant a substantial sanction should be imposed on it in order that its officers and directors may be motivated to take more effective steps to avoid further violations by the Registrant. It recommends a suspension of the Registrant for 15 business days. It further recommends that Zucker be

suspended from association with any broker or dealer for 90 calendar days and Black for 60 days.

On behalf of the Registrant and Zucker it is argued that any failure to comply with Regulation T while the Registrant's records were kept on a computer system were innocent mistakes and due to the computer company; that Zucker, when he found there were deficiencies in the computer records supplied the Registrant, undertook a manual reconstruction of customer records, and took remedial action when this task was completed. With regard to the later Regulation T violations, it is asserted that these occurred after steps had been taken to strengthen back-office procedures, that Zucker no longer had day to day responsibility in this aspect of Registrant's operations, that some of the violations were minor or debatable, and that the actual violations were a small number of Registrant's total transactions for the period. It is also pointed out that in the aforementioned NASD proceeding Registrant was censured and fined \$4,000. It is contended that in view of the remedial action taken to prevent further violations of Regulation T, losses of \$60,000 suffered as of result of the computer operations, the NASD sanction, and the fact that no other proceedings have been brought against them, no further sanctions in the public interest should be imposed on the Registrant and Zucker.

The fact that the NASD has imposed a sanction on the Registrant for some of the activities found violative of the Exchange Act and Regulation T is no bar to the instant proceeding, although the sanction

imposed by the NASD warrants consideration here.^{17/} Despite claims that the Registrant and Zucker, during the period of computerized record-keeping, had no knowledge of any Regulation T violations or did not know their extent there is evidence both from Zucker himself and a staff assistant that he knew that the records available were not accurate, there were serious questions concerning customer accounts, and order tickets indicated that margin transactions were being processed. Zucker did not take any effective action to halt the violations which were taking place until months after he was aware of them. Of course, a difficult situation existed and Zucker took action which was effective in the long run. However, for a number of months he allowed a chaotic condition to continue when he could have at least taken action to stop trading in a few key accounts which were owned or managed by his registered representatives, until a proper accounting could be made.

The later Regulation T violations were perhaps not as serious as the early ones, but it is significant that despite efforts to improve its Regulation T compliance, violations did occur and some extended for long periods of time and transactions were permitted in accounts which should have been frozen. Under all the circumstances, the undersigned concludes that sanctions should be imposed on the Registrant and Zucker to impress on them the need for more care in performing their respective obligations under applicable statutes and rules, but recognizing that these respondents

17/ See, Lile & Co., Inc., Sec. Exch. Act Rel. No. 7644, p.6-7 (July 9, 1965) where the Commission stated, "We see no impropriety in the NASD's initiation of its proceedings after the institution of the instant proceedings, or in the Division's continuation of the instant proceedings after the institution of the NASD proceedings. Self-regulation to the extent practicable in the securities business is to be encouraged, and the roles of the NASD and this Commission are in a sense complementary. The Exchange Act, however, provides several parallel and compatible procedures for the achievement of its objectives, and the use of more than one avenue is not precluded and is appropriate in many instances." (Footnotes Omitted.)

did make efforts to get Registrant's books and records in order and to avoid violations, although they were not successful. It is concluded that it is in the public interest to suspend the registration of the Registrant as a broker and dealer for 20 business days and suspend its membership in the NASD for a like period.

It is determined that Melvin Y. Zucker should be suspended from association with any broker or dealer for a period of 30 days.

It is urged on behalf of Charles Black that he relied on the Registrant and its staff to advise him of any Regulation T violations in his own account or that of any client, that he was not advised of any problem until shortly before he was discharged, that errors were made in his and the Frank Kidd account and that when Black became aware of these record-keeping problems it was difficult to determine the status of either account. It also is contended that when Black learned of the errors he cut down the number of trades he made.

However, the evidence establishes that Black very early had difficulty with the Registrant's staff over the processing of his orders and the status of his and the Kidd accounts. He had an obligation as an account executive to keep track of his own account^{18/} and when he had problems with his own and the Kidd account he had the duty to take affirmative action to resolve differences between his own records and that of the Registrant instead of relying on back-office procedures which he had good reason to believe were erroneous. Instead he continued to place substantial orders for the above accounts and thereby contributed to the Regulation T violations which occurred. It is concluded that it is in

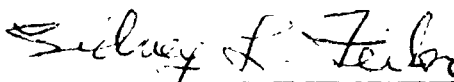
18/ Babcock & Co., Sec. Exch. Act Rel. No. 8905, p.5-6 (June 19, 1970), aff'd sub. nom. Stead v. S.E.C., 444 F. 2d 713, 716, cert den. 404 U.S. 1059 (1972).

the public interest to suspend Black from association with any broker or dealer for 20 business days. Accordingly,

IT IS ORDERED that the registration of United Securities Company of America as a registered broker-dealer is suspended for 20 business days. Its membership in the National Association of Securities Dealers, Inc. is suspended for the same period.

IT IS FURTHER ORDERED that Melvin Y. Zucker and Charles I. Black are suspended from association with any broker or dealer for 30 days and 20 days respectively.

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within fifteen days after service thereof on him. This initial decision pursuant to Rule 17(f) shall become the final decision of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or 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 to review or the Commission takes action to review as to a party, this initial decision shall not become final as to that party. ^{19/}



Sidney L. Feiler
Administrative Law Judge

Washington, D.C.
October 24, 1973

^{19/} All contentions and proposed findings and conclusions have been carefully considered. This initial decision incorporates those which have been accepted and found necessary for incorporation herein.