

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

**FILED**

**JUN 30 1971**

**SECURITIES & EXCHANGE COMMISSION**

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In the Matter of :

PROVIDENCE CHURCH PLAN, INC. :  
FLOYD M. DAVIS, et al :

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INITIAL DECISION

Washington, D.C.  
June 30, 1971

David J. Markun  
Hearing Examiner

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APPEARANCES: John M. Kelley, Chief Enforcement Attorney, and E. Leo Mast, Attorney, both of the Atlanta Regional Office, for the Division of Trading and Markets.

William F. Lozier, Esquire, of Atlanta, Georgia, for respondent Davis.

BEFORE: David J. Markun, Hearing Examiner

THE PROCEEDING

This public proceeding was instituted by an order of the Commission dated November 25, 1968,<sup>1/</sup> against four respondents pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"). Prior to the commencement of the evidentiary hearing<sup>2/</sup> settlement offers submitted by three of the respondents were accepted by the Commission.<sup>3/</sup> Accordingly, this initial decision has application only to the remaining respondent, Floyd M. Davis. The parties have filed proposed findings, conclusions and supporting briefs pursuant to 17 CFR 201.16 of the Commission's Rules of Practice. The findings and conclusions herein are based upon the record and upon observation of the demeanor of the various witnesses.

FINDINGS OF FACT AND LAW

During the times material in this proceeding - July 1964 until about December, 1965 - respondents Floyd M. Davis ("Davis") was employed as a salesman<sup>4/</sup> with Providence Church Plan, Inc. ("registrant"),

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<sup>1/</sup> The order was amended on October 21, 1970, but the amendment does not concern respondent Davis, the only remaining respondent in this proceeding.

<sup>2/</sup> The hearing was held in Atlanta, Georgia, on February 1 and 2, 1971.

<sup>3/</sup> Securities Exchange Act Release No. 9013, dated November 3, 1970. In support of the offers of settlement of registrant and Booth, registrant, among other things, voluntarily made full restitution to all bondholders who had not received all principal and interest due them, in an aggregate amount of approximately \$180,000.

<sup>4/</sup> Davis first began working as a salesman for registrant in February, 1961. He terminated his employment with registrant in the fall of 1965 to accept a position as executive vice president with Church Investors, Inc., a broker-dealer in Chamblee, Georgia, specializing in the sale of church bonds. Davis was registered as a salesman by Georgia but not the NASD, whose examination he twice failed.

a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act since June 17, 1963.<sup>5/</sup>

The order for proceeding alleges that during the period commencing about July 1964 to about the end of December 1965 Davis willfully violated Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5<sup>6/</sup> thereunder in that, in connection with the offer and sale of bonds of Florida Colonial Manor Retirement Home (Colonial Manor) issued by the Florida Conference of the Pentecostal Holiness Church, Inc. (Church Conference), he, 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, acts, practices and a course of business which would and did operate as a fraud and deceit upon purchasers and prospective purchasers of such securities.

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<sup>5/</sup> Registrant, whose offices are located in Atlanta, Georgia, is engaged primarily in assisting churches in issuing and carrying out church bond sales programs for the purpose of raising funds to construct new buildings or to improve existing facilities. In some cases when the entire issue of bonds is not sold by the church congregation during the program directed by registrant, registrant assists through its salesmen with the sale of the bonds. This proceeding arose, however, out of a best-efforts underwriting by registrant.

<sup>6/</sup> Section 17(a) of the Securities Act prohibits fraudulent offers and sales of securities by use of the mails or other interstate facilities by any persons, whether accomplished through the means of a "device, scheme, or artifice to defraud", through an "untrue statement of a material fact" or an "omission to state a material fact necessary in order to make the statements made, in the light of circumstances under which they were made, not misleading", or through a "course of business which operates . . . as a fraud or deceit upon the purchaser." Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit the same type of fraudulent conduct by any person.

Misrepresentation as to Prior Mortgages

In accordance with the terms of an underwriting agreement dated July 21, 1964, between registrant and Church Conference, registrant undertook on a best-efforts basis to sell an offering of \$2,500,000 of Colonial Manor bonds issued by Church Conference as owner and operator of Colonial Manor.<sup>7/</sup> The bonds, which registrant caused to be printed, were bearer bonds dated August 1, 1964, with interest at the rate of 7%, payable every six months by coupon, in denominations of \$20,000, \$15,000, \$10,000, \$5,000 and \$1,000. The bonds had varying maturity dates, at first ranging from five to thirteen years and later ranging from three years to fourteen years. The paying agent and "independent corporate trustee with power of foreclosure", as stated in a flier and in the offering circular utilized in the distributions, was the Seminole Bank of Tampa, in Tampa, Florida. The purpose of the issue as stated in these documents was to purchase the Colonial Manor property, consisting of a retirement home facility located on approximately seven acres of land in Orlando, Florida. Both the flier and the offering circular stated that such property had an appraised value of \$3,000,000, which had been pledged to secure the bond issue.

The three-page offering circular was twice revised. The first revision resulted in a prospectus dated October 1, 1964. A subsequent

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<sup>7/</sup> The offering, which commenced in August 1964 was made in reliance upon the exemption from registration provided by Section 3(a)(4) of the Securities Act. The bonds never sold well and only \$483,000 worth of the projected \$2.5 million issue was sold before sales were discontinued and interest payments defaulted. Of these sales some \$117,000 worth were sold by Davis to some twenty customers. The Colonial Manor project never became an operating success. The Church Conference went into bankruptcy proceedings and reorganized under a new charter. Registrant voluntarily, with a view toward submitting an offer of settlement to the Commission, made all bond purchasers whole, both as to principal and interest.

and final revision produced an undated prospectus featuring a color cover picture of the Colonial Manor Retirement Home.

The bonds offered and sold were prominently described as "first mortgage" real estate bonds on the flier, on the cover of the offering circular, and on the cover of the prospectus dated October 1, 1964, and were similarly described in the body of the undated prospectus.

Unfortunately for everyone involved, the Colonial Manor Bonds were not in fact first mortgage bonds. Church Conference purchased the Colonial Manor property subject to two existing recorded mortgages. At the time Church Conference entered into a contract to purchase the Colonial Manor property there was a first mortgage on it payable to the Florida State Bank of Sanford (Sanford mortgage) with an unpaid balance of \$1,426,855.75, with interest, and a second mortgage held by General Electric Credit Corporation (GE mortgage) with an unpaid balance of \$226,319.16, plus interest. Church Conference, when it purchased the Colonial Manor property, assumed and agreed to satisfy such mortgages, in addition to paying certain other outstanding sums due various other creditors. Thus, the mortgage dated August 26, 1964, from Church Conference to the Seminole Bank as trustee for the benefit of bondholders was subordinate to the Sanford mortgage and the GE mortgage and constituted only a third mortgage or lien on the Colonial Manor property.

The prospectuses and other literature used in connection with the offer and sale of Colonial Manor bonds were therefore egregiously

deceptive and misleading in describing such bonds as "first mortgage real estate bonds" or "first mortgage bonds". Each of the bonds was designated in bold print "Florida Colonial Manor Retirement Home - First Mortgage Bond - Series One", and respondent Davis, in his sales presentations sometimes showed the bonds to purchasers and prospective purchasers.

While the offering circular and prospectuses used in connection with the sale of such bonds, under the heading "Use of Proceeds", referred to the mortgage or indenture and to the fact that the Seminole Bank "as fiscal agent for the mortgagor" was required to use the proceeds from the sale of the bonds in the sequence set forth, which included first making payments on the Sanford and GE mortgages, this obscure disclosure, buried beneath a lengthy description of the Colonial Manor property, is not one whose legal effect the average purchaser or reader could be expected to realize. At best, it only created an ambiguity which might cause an unusually careful reader and sophisticated investor, or persons trained in such fields as law, accounting, business and finance, to make further inquiry concerning the discrepancy between this statement and the use of the nomenclature "first mortgage bonds". Clearly it was not adequate to overcome the false and misleading use of the terminology "first mortgage bonds".

Apart from that, most of the investor witnesses were not given a prospectus; and Davis, in his sales presentations, orally referred to the bonds as first mortgage bonds.

Of the seven bond purchasers who testified, only two were given

prospectuses, and only one <sup>8/</sup> was told by Davis that there was a prior mortgage on the Colonial Manor property.

The testimony of the bond purchasers conflictssquarely with Davis' testimony that he gave each purchaser a copy of the prospectus and discussed with each the contents thereof, including the existence of the Sanford and G.E. mortgages on the Colonial Manor property and the priority of such mortgages over the mortgage securing the bonds. For a number of reasons, the testimony of the purchasers is credited and that of respondent Davis is not credited. The investor witnesses had sustained no losses, inasmuch as the registrant, in the course of presenting his settlement offer, made the purchasers whole. They therefore had no economic motive to slant testimony against Davis. Their demeanor on the stand indicated they bore Davis no animus. Most expressed continued friendship for him and generally indicated they would not hesitate to purchase securities from him again. Several testified they believed him to be a man of good character and reputation. On the other hand, Davis had an obvious motive for testifying as he did. Apart from the matter of their respective motives or lack of them, the demeanor of the investor witnesses on the stand as compared with that of Davis was such as to call for crediting the testimony of the former and not crediting the testimony of the latter. <sup>9/</sup>

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<sup>8/</sup> Mrs. N.R.W. testified it was her understanding from Davis that there was a construction loan on the property to be paid off, after which the Colonial Manor bonds would have the status of first mortgage bonds. She also received a prospectus. Evidently the reason she received more information was that Davis had sold church bonds to her and her husband previously and knew that they "were very meticulous concerning investments."

<sup>9/</sup> This same conclusion is reached generally respecting testimony on other points where Davis' testimony conflicts with that of the investor witnesses.



False or Misleading Statements Regarding Value of Mortgaged Property

Since it was represented that the bonds were secured by a first mortgage on the Colonial Manor property, and in view of the fact that the only security for the bonds was in fact a third mortgage on the Colonial Manor property, representations as to the value of such Colonial Manor property are material.

The value of such property was overstated orally and in the prospectuses. The best indication of the market value of the Colonial Manor property at the time of the commencement of the bond sales in August, 1964, is the price at which it was purchased from Brailey Odham<sup>10/</sup> by the Church Conference pursuant to a contract to purchase the property dated June 25, 1964, which reflects a full purchase price of \$2,400,000.

Nevertheless Davis told an investor witness that the Colonial Manor property was worth \$3,000,000, or \$500,000 more than the amount of the bond offering.

The prospectus dated October 1, 1964, contains an appraisal of the market value of Colonial Manor property at \$3,000,000 as of September 1, 1964. This estimate or appraisal was based upon 100% occupancy of Colonial Manor by retirees, which was highly unrealistic, especially in view of the fact that the facility had been non-operative and vacant for a period of several months before it was acquired and

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<sup>10/</sup> Odham's effort to operate the property as a nursing home had failed.

put into operation by Church Conference. Colonial Manor did not have any income at the time the bond sales were commenced. The first retiree did not enter Colonial Manor until the Fall of 1964 and the largest number of retirees ever in Colonial Manor at any one time was 16.

Notwithstanding these circumstances, the later prospectus contains an appraisal in which the market value of the Colonial Manor property was estimated to be \$4,000,000 as of May 27, 1965. This appraisal was clearly excessive as borne out additionally by the fact that when Brailey Odham at approximately the end of 1968 sold the property known as Colonial Manor, the selling price was \$2,800,000.

False or Misleading Statements Regarding Maintenance of Escrow Account and Financial Condition of Colonial Manor

The bonds offered and sold contained on their face the statement that "[the maker and its officers] certify that a sufficient amount of the income of [Church Conference] has been assigned to a separate account to pay the interest on this issue of bonds and to retire said bonds as they mature".

Even if that statement had not been expressly made, a sale of the bonds would carry with it an implied representation that the interest on the bonds would be paid as it became due and that the principal of the bonds would be paid at maturity.

A separate account had been set up at the Seminole Bank under the terms of the indenture dated August 26, 1964, between Church Conference and the bank and the proceeds from the sale of bonds, except

commissions, were required to be placed in such account. However, the bank was required under the terms of the indenture to first pay off the two prior mortgages and other indebtedness before paying the principal and interest on the bonds.

In addition, whether Church Conference obtained sufficient funds to pay the full purchase price of the Colonial Manor property depended upon sale of the entire \$2,500,000 bond issue, an uncertain event which should have appeared more unlikely with each passing week as the bond sales continued to lag.

The success of Colonial Manor depended also upon a number of other uncertain factors. One very important factor was the need for operating Colonial Manor at full or near full capacity.

Davis maintained his sales office in the Colonial Manor facility and, being on the premises, he knew or should have known that the operators of Colonial Manor were having difficulty attracting retirees. Davis testified that he wanted to see how Colonial Manor progressed in getting retirees into the home and that he found out that progress was very slow. He also stated that he knew the subscription fees received from retirees were the only significant source of income of Colonial Manor. He realized that these payments were nonrecurring items of income and obligated Colonial Manor to perform in the future.

Davis testified that he questioned the persons operating Colonial Manor about their progress and that he concluded "that unless they got to work they were going to run into difficulty." According to the testimony of the investor witnesses, he transmitted to them only

optimism and confidence in the success of Colonial Manor and in the soundness of an investment in its bonds. There was no investor testimony that Davis pointed out the risk factors involved or the ominous signs that he saw or should have been able to see.

The whole tenor of the prospectus, too, was extremely optimistic and glowing. There is no mention of negative considerations.

For example, in the prospectus dated October 1, 1964, in the appraisal portion, it is stated that bequests from retirees in the retirement home would be "a definite source of income" and "an added assurance to a prospective lender." Other factors taken into account in arriving at the estimate of value of Colonial Manor were that it would be tax free as a retirement home and the cost of operation would be greatly reduced because employees and workers would "accept far less as they are working for a cause". The concluding sentence in the prospectus is: "Every indication points to a most successful operation."

The revised prospectus, on unnumbered page 3 states:

"Florida Colonial Manor is a sound, economic enterprise undertaken by a church which has experienced dedication to the task of this type of ministry. Your investment, while secure itself, will yield a high return as it assists in providing a great humanitarian service."

In the sales by Davis and others of Colonial Manor bonds there was lacking a full and complete disclosure of the true financial condition of the Colonial Manor project that would have been necessary to afford investors an opportunity to make an informed investment decision.

False or Misleading Statements Respecting Guarantee  
by Church Conference

In selling the Colonial Manor bonds Davis told investors that the bonds were backed by the Church Conference. Several investor witnesses testified he told them the Church Conference would back the bonds "100%".

In addition to such oral representations, the prospectuses used in connection with the offer and sale of Colonial Manor bonds contained assurances of Church Conference backing in the form of a letter to <sup>11/</sup>prospective bondholders from officials of the Church Conference.

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11/ "To Prospective Bondholders;

'The Florida Conference of the Pentecostal Holiness Church, composed of 97 churches in Florida and Georgia with its headquarters in Ocala, Florida, has undertaken the ownership and operation of Florida Colonial Manor in order to help supply a need for retirement with dignity. In connection with this manor located in Orlando, Florida, the church has issued First Mortgage bonds which the Church backs with every resource at its command. The Principal and Interest represented by said Bonds will be promptly paid according to the schedule set forth in the Bonds. Any investment you might choose to make will not only be appreciated, but will be backed by the faith, energy, support and resources of the Florida Conference of the Pentecostal Holiness Church. ' [Emphasis added.]

Dr. Byon A. Jones, Supt.

Rev. Nathan Johnson, Treas."

In fact, there was no written agreement or legal obligation on the part of the churches comprising the Church Conferences, or the Church Conference as a body, to guarantee to repay the bonds. The Church Conference did not take any steps to repay any principal or interest on the Colonial Manor bonds after default.

At all times during the sale of the Colonial Manor bonds the financial condition of Church Conference was so poor and its resources so negligible <sup>12/</sup> that its reported commitment to guarantee payment of the bonds or to back them was worthless. Church Conference, a non-profit corporation, is a group of some 80 to 90 churches rather loosely held together, organized primarily for the purpose of holding title to properties which the Church Conference might acquire. With the exception of approximately 6 to 10 churches and a nursing home in Fort Lauderdale, the Church Conference did not hold legal title to any property, i.e. title to other individual churches and related assets was held by the individual churches and not by the Church Conference. <sup>13/</sup>

#### Other False or Misleading Statements

In the course of selling the Colonial Manor bonds Davis made various other false or misleading representations.

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<sup>12/</sup> For its financial support Church Conference depended largely on voluntary contributions in the form of tithes from the individual ministers and the churches in the Church Conference.

<sup>13/</sup> The May 31, 1964 balance sheet of Church Conference contained in the prospectus dated October 1, 1964 erroneously lists as fixed assets land valued at \$659,675 and buildings valued at \$1,780,635, for a total of \$2,440,310. To arrive at this amount, Church Conference included in its balance sheet land and buildings whose title was not vested in Church Conference.

Davis told one witness the bonds were "real good" and that "if there ever was a blue chip <sup>14/</sup> bond that was it." He also told this investor witness that "there wasn't any way to lose . . . ."

Another witness was told by Davis that the bonds were "100% safe, secure", "a good deal", "a real good thing." There was no basis in fact for these statements.

Davis represented to one investor witness that if he should ever run short of cash he could take his Colonial Manor bonds to any bank and borrow 90% of the face value of such bonds. There was no basis in fact for such a representation. In fact most of the investors received only one or two semi-annual interest payments before the bonds went into default.

Another witness, who invested \$7,000 in Colonial Manor bonds, was told by Davis that if he ever needed cash, Davis would resell the bonds for him. Such a representation was calculated to reassure the investor and to allay fear of possible financial distress in the future, but the statement was unfounded and had no basis in fact. Bond sales were progressing very slowly as Davis knew. He had no reasonable basis for such a statement.

Davis also misrepresented, to at least two customers, the pace at which the bonds were selling. He told one customer "they were going like hot cakes." He told another customer that she should buy the bonds quickly before the entire remaining supply might be

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<sup>14/</sup> Another investor testified Davis told him "either they would be blue chip or they already were blue chip."

taken up by a purportedly wealthy potential purchaser. There was in fact no basis for these statements. Sales of Colonial Manor bonds were never brisk; during the entire sales program only a total of \$483,000 in bonds was sold, a period from approximately August 25, 1954 through January 25, 1966, out of the total offering of \$2,500,000. Nor was there any truth to the representation that the remaining supply of bonds was in danger of being bought up by a single purchaser.

#### Use of the Mails and Interstate Facilities

Respondent Davis does not dispute that, as the record establishes, the mails were used regularly and customarily to send confirmations and bonds to purchasers, receive checks from customers in some cases, and otherwise in the course of the distribution of the bonds by registrant and Davis during the relevant period.

#### Willfulness

The above-found untrue statements of material facts and the 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, were willful violations on the part of Davis. He could not avoid responsibility by claiming that many of the misstatements and omissions were contained in the prospectus. A number of the violations resulted from false statements by Davis which were pure inventions. His course of conduct in making misleading optimistic statements and omitting to state unfavorable material facts was embarked on knowingly, and was therefore willful.



"Willfulness" as the term is used in the Exchange Act requires merely that the person selling the securities be aware of his conduct and it is immaterial that he may have thought such conduct was not illegal. <sup>15/</sup> It is well established that a finding of willfulness under Section 15(b) of the Exchange Act does not require an intent to violate the law and that it is sufficient that a respondent intentionally engaged in conduct which constitutes a violation. <sup>16/</sup>

The highly favorable statements made with respect to the bonds by Davis implied that there was an adequate and reasonable basis for them. No such basis existed. Davis participated in the investigation on behalf of the registrant for the purpose of developing information from which registrant could decide whether or not to undertake the Colonial Manor underwriting. He was in charge of the Sales Department of registrant. He hired, trained and supervised Houston, a salesman of registrant in Florida. He was made an assistant vice president of registrant. He spent time on the premises of Colonial Manor as well as in the office of registrant. He discussed with Colonial Manor officials and representatives of Church Conference the progress or lack of progress of the retirement home. The record refutes his contention at the hearing that he was a mere salesman, a mere "messenger boy". He knew that Colonial Manor was not making progress. He knew that his own sales and those of Houston were not proceeding with any great speed and he knew of the progress of registrant's entire sales campaign for the bonds. Yet he disseminated information to prospective investors on

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<sup>15/</sup> E.W. Hughes & Co., 27 SEC 629 (1948), affd. Hughes v. SEC, 174 F.2d 969 (C.A.D.C. 1949).

<sup>16/</sup> Dunhill Securities Corporation, Exchange Act Release No. 8653, July 14, 1969; Tager v. SEC, 344 F.2d 5, 8 (C.A. 2, 1965) and cases there cited.

a high level of optimism that was totally unwarranted in light of the knowledge he had.

The record contradicts Davis' testimony that he advised prospective purchasers of all adverse facts known to him relating to Colonial Manor bonds.

In his testimony Davis claimed that he relied on what others told him and on the information prepared by others without checking the accuracy of such information. However, by the exercise of due diligence he could have become aware of the truth or falsity of such statements. "[I]gnorance of facts set up as defense is unavailing where the defendant, by the exercise of due diligence, could have become aware of his mistakes, especially where others may suffer a loss by his misstatements," <sup>17/</sup>

### Conclusion

The record in this proceeding establishes that during the relevant period respondent Davis willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in the offer and sale of bonds of Colonial Manor to his customers, as more particularly found above.

### PUBLIC INTEREST

The violations committed by respondent Davis are serious and occurred during a period of some 17 or 18 months. Although customers

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<sup>17/</sup> Stone v. U.S. 113 F.2d, 70, 75 (C.A. 6, 1940); U.S. v. Schaefer, 299 F.2d 625, 629 (C.A. 7, 1962).

were made whole against financial loss the credit for this goes to registrant, not respondent Davis.

Several investor witnesses testified to respondent Davis' good character and reputation, and there is no testimony to the contrary in the record. While this is a factor considered in fashioning an appropriate sanction, it cannot eradicate the violations found here to have been committed.

Respondent Davis has been in the securities business since 1961. So far as appears in this record he has not in that time been guilty of any previous violations of securities laws or regulations.

Respondent urges that the lapse of time between the occurrence of the violations and the bringing of the proceeding be considered in mitigation because of possible prejudice to respondent in presenting his defense. It is concluded on the basis of the entire record that there was in fact no prejudice to respondent in this respect.

Respondent contends in his brief that the language of Section 15(b)(7) of the Exchange Act restricts the Commission's authority to bar a person to a maximum period of one year.<sup>18/</sup> There is no merit to this contention, as indefinite or permanent bar orders have been repeatedly upheld by the courts.<sup>19/</sup>

Considering the entire record and all mitigating circumstances urged, the most notable being respondent's absence of any prior

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<sup>18/</sup> The provision states in pertinent part that the Commission may ". . . censure any person, or bar or suspend for a period not exceeding twelve months any person . . . ."

<sup>19/</sup> See Fink v. SEC, 417 F.2d 1058, 1060 (C.A. 2, 1969); Vanasco v. SEC, 395 F.2d, 349, 353 (C.A. 2d 1968).

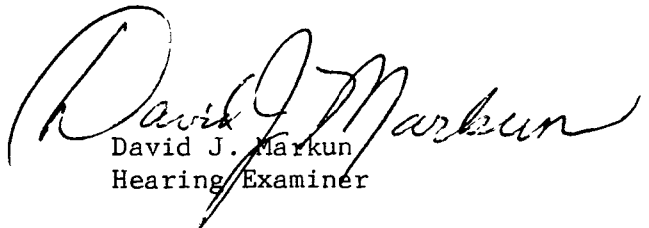
violations, it is concluded that a one year suspension of respondent Davis is appropriate and sufficient in the public interest.

ORDER

Accordingly, IT IS ORDERED that Floyd M. Davis is hereby suspended from being associated with any broker or dealer for one year.

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.<sup>20/</sup>

  
David J. Markun  
Hearing Examiner

Washington, D.C.  
June 30, 1971

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<sup>20/</sup> To the extent that the proposed findings and conclusions submitted by the parties 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 rejected as not relevant or as not necessary to a proper determination of the issues presented.