ADMINISTRATIVE PROCEEDING
FILE NO. 3-7153

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)
	)
WILLIAM H. MATHIS	)
	)

INITIAL DECISION

Washington, D.C.
August 3, 1990

Brenda P. Murray
Administrative Law Judge

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APPEARANCES: Paul Huey-Burns, Julie K. Lutz and Margaret M. Tolan for the Division of Enforcement, Securities and Exchange Commission.

Mahlon M. Frankhauser, Charles R. Mills and David S. Frye for William H. Mathis.

BEFORE: Brenda P. Murray, Administrative Law Judge

The issue in this administrative proceeding which the Securities and Exchange Commission (Commission) initiated on March 1, 1989, is whether it is in the public interest to sanction respondent William H. Mathis (Mathis or respondent) pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). Mr. Mathis is a registered sales representative for Bear Stearns & Co., Inc. (Bear Stearns), a registered securities broker-dealer.

On January 5, 1984, the Commission filed a complaint in the United States District Court for the Southern District of New York charging Mr. Mathis, Mr. W. Paul Thayer, Mr. Billy Bob Harris and six other individuals with insider trading in violation of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder. The complaint alleged that Mr. Mathis received material, non-public information from Mr. Billy Bob Harris who had received the information from Mr. W. Paul Thayer, at the time Chairman and Chief Executive Officer of the LTV Corporation and a director of the Allied Corporation and Anheuser-Busch Companies, Inc. The complaint charged that Mr. Mathis subsequently tipped others with material, non-public information concerning LTV's tender offer for Grumman Corporation; Anheuser-Busch's tender offer for Campbell Taggert, Inc.; and Allied Corporation's tender offer for Bendix Corporation. The complaint alleged that Mr. Mathis knew or had reason to know that the material, non-public information he received was communicated to him under circumstances which constituted a misappropriation, a breach of fiduciary duty or other duty arising out of a relationship of trust and confidence or other

wrongful conduct. The proceeding was transferred on defendants' motion to the Northern District of Texas. (S.E.C. v. W. Paul Thayer, et al., CA 3-84-0471-R, (N.D. Tex.).

On March 4, 1985, in the United States District Court for the District of Columbia, Mr. Thayer and Mr. Harris pled guilty to the criminal charge of obstruction of justice in that they knowingly and willfully made false and misleading statements to the Commission during the investigation of these matters. Mr. Thayer and Mr. Harris each received four year prison sentences for their actions. (United States of America v. Paul Thayer and Billy Bob Harris, Criminal Action No. 85-00066 (D.D.C.).

As the result of a settlement in CA 3-84-0471-R, on May 7, 1985, the United States District Court for the Northern District of Texas, Dallas Division, issued a permanent injunction and an order of disgorgement in the amount of $555,000 to Mr. Thayer and a permanent injunction and an order of disgorgement in the amount of $275,000 to Mr. Harris. As part of the settlement, Mr. Harris, formerly a registered representative with A. G. Edwards & Co., a registered broker-dealer in Dallas, Texas, agreed to accept a permanent bar from association with any broker or dealer.

Mr. Mathis entered a settlement agreement with the Division in CA3-84-0471-R by letter dated October 7, 1988, on the eve of trial.[1] As part of the agreement, Mr. Mathis signed a Consent and

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[1] Mr. Mathis also settled his involvement in Anheuser Busch Companies, Inc. v. W. Paul Thayer, et al., CA3-85-0974-R (N.D. Tex.), a private action paralleling the Commission's injunctive action.

Waiver by which he, without admitting or denying the allegations made in the complaint, consented to a Final Judgment of Permanent Injunction entered by the United States District Court for the Northern District of Texas, Dallas Division, on November 16, 1988. That injunction restrained and enjoined Mr. Mathis from engaging in transactions, acts, practices and courses of business which constitute or would constitute violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3.

By the terms of the settlement Mr. Mathis was the only witness in this administrative proceeding at the two day hearing on April 19 and 20, 1989. Following the hearing, the parties moved into evidence various portions of depositions, investigative testimony, and materials prepared for the civil cases and the transcript of defendants' pleas in the criminal action, and submitted briefs containing their legal arguments and proposed findings of fact.

The Respondent

Mr. Mathis graduated from Clemson University in 1960 with a Bachelor of Science degree in agriculture. He played professional football for about ten years, and he captained the New York Jets team which won the 1969 Super Bowl. Mr. Mathis began working part-time in the securities business during the off-seasons. He passed the required examination, and in 1970 he joined Bear Stearns as a registered representative in institutional sales. After his retirement from professional sports, Mr. Mathis was one of several people who opened the Atlanta office of Bear Stearns in 1972. In about 1980 or 1982, Mr. Mathis began working in the special

situations business where he is presently employed. He solicits pension funds to use specific investment advisers who will work with him and direct business to the Bear Stearns trading desk in New York.

Contentions and Findings

My findings and conclusions are based on the evidence in this record and on my observation of the witness's demeanor.

The Division contends that the entry of the injunction against Mr. Mathis, by itself, is sufficient to justify a sanction.

Respondent contends that the Commission cannot sanction him on the basis of the consent injunction alone, and he advises that "research has not disclosed a single case in the Commission's history where sanctions have been imposed in the absence of a finding of a violation." (Respondent's Opening Brief 2, Surreply Brief 1-2 n.2) In respondent's view it would be cruel, unfair, and beyond Congressional intent to sanction him in such a way as to deprive him of his livelihood without any finding that he violated the antifraud provisions of the securities laws and regulations. Respondent does not cite any authority for this statement as to Congressional intent. (Opening Brief, 83)

Respondent is wrong that there is no case law to support imposition of a sanction based on a consent injunction where neither the court nor the Commission found that the defendant violated the securities statutes. In Kimball Securities, Inc., 39 SEC 921, 923-24 (1960), the administrative proceeding was based on a consent injunction where there was no trial on the merits and no

finding of violations either by the court issuing the injunction or by the Commission issuing the sanction. The Commission found under all the circumstances, including the serious nature of the conduct prohibited by the injunction, that it was in the public interest to revoke the registrant's broker-dealer registration. In Kimball the Commission stated:

> The proof of the entry of such an injunction, whether based on the defendant's consent or otherwise, and whether the defendant has denied the allegations of the complaint or not, may in itself form a sufficient basis for a finding that revocation is in the public interest.
>
> * * *
>
> Section 15(b) specifically provides that we may revoke the registration of a broker-dealer who is enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of securities if we find such revocation in the public interest. It is not necessary that we find, in addition, that registrant has violated the terms of the injunction or has engaged in wrongdoing.

In addition to Kimball, Midland Securities Corp., et al., 46 SEC 755, 760 n.25 (1977); Gilbert F. Tuffli, Jr., et al., 46 SEC 401, 411 n.51 (1976); Dunhill Securities Corp., Patrick R. Reynaud, 44 SEC 1, 3 (1969); and Cortlandt Investing Corp., et al., 44 SEC 45, 53 (1969) hold that a consent injunction is no less a basis for remedial action than one issued after a trial. See also Balbrook Securities Corp., 42 SEC 496, 498 (1965) where the only evidence that it was in the public interest to deny the broker-dealer registration was the injunction prohibiting applicant from violating specific provisions of the Investment Company Act of 1940 to which applicant consented without admitting or denying the allegations charged in the complaint. The Commission stated that the mere existence of an injunction may support revocation or

denial of a broker-dealer registration where the nature of the acts enjoined and the circumstances indicate that such is in the public interest. In Balbrook the Commission found that under all the circumstances, including the limits on applicant's activities which were to be incorporated as conditions in the order, the existence of the injunction was not sufficient to indicate that denial was in the public interest.

Respondent is incorrect that the decision in Blinder, Robinson & Co., Inc. v. SEC, 837 F.2d 1099 (D.C. Cir. 1988), cert. denied, 109 S. Ct. 177 (1988), supports his position that he cannot be sanctioned on the basis of the consent injunction without a finding of violations. Blinder Robinson is inapplicable to this situation. There the district court issued an injunction and made detailed findings that respondents violated the securities laws and regulations. The question before the appellate court was whether the individual respondent should have been allowed to introduce evidence about his relationship with counsel in the administrative hearing in view of the district court's finding that he had rejected counsel's advice. The appellate court answered the question affirmatively and held that the issue of whether respondents violated the securities statutes which had been before the district court in the civil action was distinct from the issue of whether a sanction was appropriate in the public interest which was before the Commission in the administrative action. The court found that the broad public interest standard required that this Commission allow a respondent to introduce evidence as to any

mitigating factor including the degree of culpability because of the relationship with counsel. No one questions Mr. Mathis's right to introduce mitigating evidence in this proceeding. The issue here is whether it is necessary to find in this administrative proceeding that respondent has violated the securities statutes in order to reach the question of whether he should be sanctioned in the public interest. I find the answer is no because of the case law just cited and for several additional reasons.

First, Section 15(b)(6) which incorporates Section 15 (b)(4)(C) states:

> The Commission, by order, shall censure or place limitations on the activities or functions of any person associated *** with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds *** such censure, placing of limitations, suspension, or bar is in the public interest and that such person *** is permanently or temporarily enjoined *** from engaging in or continuing any conduct or practice *** in connection with the purchase or sale of any security.

The section calls for a sanction where there is an injunction and public interest finding. It does not exclude from coverage situations such as this one where Mr. Mathis entered a Consent and Waiver to the entry of the Final Judgment of Permanent Injunction without admitting or denying the allegations made in the complaint. See, Bruce Paul, 48 SEC 126, 127 (1985) where respondent argued that the Division's case on the issue of sanctions was deficient because it showed only his criminal conviction for filing false income tax returns. The Commission held:

> In this proceeding, as in any other disciplinary proceeding under Section 15(b)(6), it is only necessary

> that evidence be adduced with respect to grounds for remedial action that are specified in Section 15(b)(6) and alleged in the order for proceedings.

The order for proceedings here alleges the permanent injunction entered against Mr. Mathis, and describes the allegations in the complaint which resulted in the settlement.

Second, by definition an injunction is a court ordered prohibitive, equitable remedy directed to a party forbidding the latter to do some act which he/she is threatening or attempting to commit, or restraining him/her from the continuance thereof; a judicial process operating in personam requiring the person to whom it is directed to do or refrain from doing a particular thing. (Black's Law Dictionary 705 (5th ed. 1979)) The injunction is widely recognized as a severe measure with serious collateral consequences. According to a well known text, R.W. Jennings & H. Marsh, Jr, Securities Regulation - Cases and Materials 1549 (6th ed. 1987):

> There are literally dozens of statutory provisions in both the federal and the state securities laws disqualifying a person who has been subjected to such an injunction from engaging in almost any aspect of the securities business, without the prior consent of the appropriate regulatory agency. This is true whether or not the injunction is entered on the basis of a consent by the defendant and without his admitting any of the allegations in the complaint.

The overwhelming proportion of SEC-initiated injunctions are entered by consent with a statement that the defendant neither admits nor denies the Commission's allegations. L. Loss, Fundamentals of Securities Regulation 72 n.3 (2d ed. 1988) The court noted in SEC v. Clifton, 700 F.2d 744, 748 (D.C. Cir. 1983),

that:

> Because of its limited resources, the SEC has traditionally entered into consent decrees to settle most of its injunctive actions. *** While the defendants in such cases give up the right to contest the need for an injunction, they receive significant benefits in return: they are permitted to settle the complaint against them without admitting or denying the SEC's allegations and they often seek and receive concessions concerning *** the collateral, administrative consequences of the consent decree. (emphasis added)

Respondent was represented by counsel when he entered the settlement and agreed to the permanent injunction so we can assume he was aware of the well-established ramifications of his actions. See R. Bemporad, Injunctive Relief in SEC Civil Actions: the Scope of Judicial Discretion, 10 Columbia Journal of Law and Social Problems 328, 341-42 (1974).

Third, because of the language of ¶5 of the settlement, Mr. Mathis was able to introduce evidence which he contends demonstrates that he did not believe he was receiving material, non-public information, that he entered into these transactions on the basis of public rumors and market activity, and that he did not willfully or knowingly violate the law. Paragraph 5 allows evidence

> relating to the extent of a sanction, if any, which should be imposed on Mr. Mathis, including, for example, evidence of mitigating factors, his state of mind at the time he entered into the relevant transactions, whether he received and believed he was receiving material non-public information, whether he entered into some of these transactions on the basis of rumors which were in the public domain and on the basis of market activity and whether he willfully and knowingly violated the law. (emphasis added)

After considering the position of the parties, I interpret

the language of ¶4 of the settlement taken together with ¶8 of the Consent and Waiver to mean that Mr. Mathis agreed not to dispute that the injunction was valid which means that it was "legally sound and effective". (Webster's II New Riverside University Dictionary 1274 (1984)). Paragraph 4 of the settlement provides that respondent would "not collaterally contest the entry of the Judgment, that is, he will not argue that the injunction entered in the civil proceeding is invalid or that the administrative proceeding is not properly based on the existence of the injunction." In ¶8 of the Consent and Waiver of William H. Mathis, respondent unqualifiedly consented to the institution of this administrative proceeding "based upon the Court's entry of the injunctive order to determine the sanction, if any, to be levied against" him. As noted previously, a valid injunction has significance in a proceeding such as this where the issue is whether it is in the public interest to sanction respondent. Under respondent's interpretation the injunction has no significance because respondent did not commit the underlying violations. Respondent had an opportunity to dispute the allegations in the civil case but chose not to do so. Instead he is attempting to try that issue here.

Commission case law and common sense support a finding that respondent should not be allowed to demonstrate that he did not violate the securities statutes in an administrative proceeding based on the existence of an injunction to which he consented where the issue is whether or not a sanction is in the public interest.

Kimball Securities, Inc., 39 SEC 921, 924 n.4 (1960); J. D. Creger & Co., 39 SEC 165 (1959); Kaye, Real & Co. Inc., 36 SEC 373, 375 (1955); James F. Morrissey, 25 SEC 372, 381 (1947) It would be illogical, a waste of resources, and open up the possibility of inconsistent results for the Commission to decide whether respondent violated the statute as alleged in the complaint in the civil action which resulted in the injunction. From the court's view, allowing collateral attacks on consent judgments severely undercuts important notions of judicial efficiency and finality of judgment, renders the concept of final judgments meaningless, and violates a policy of promoting settlements. Thaggard v. City of Jackson, 687 F.2d 66 (5th Cir. 1982), rehearing denied, 693 F.2d 133 (5th Cir. 1982); Ashley v. City of Jackson, 693 F.2d. 133 (5th Cir. 1982), cert. denied, 464 U.S. 900 (1983), and 464 U.S. 1003 (1983).

I find that respondent's evidence designed to show that Mr. Mathis did not commit the violations alleged in the civil action is relevant as a possible mitigating factor going to Mr. Mathis's culpability on the sanctions issue but it does not change the significance normally accorded a valid injunction in an administrative proceeding where the issue is whether a sanction is in the public interest. For all the reasons stated, I find a determination that Mr. Mathis violated the statute and regulations is not a prerequisite to a determination of what, if any, sanctions are in the public interest.

Public Interest

The Division argues that the Commission should permanently bar Mr. Mathis from association with any registered broker-dealer for two reasons. The first is that his evasive and disingenuous testimony to the investigative staffs of the New York Stock Exchange (NYSE) and this Commission shows him to be dishonest.

Prior to his two days of testimony in this hearing, Mr. Mathis was examined about these events on six occasions - by the NYSE by telephone on November 10, 1981, and by the SEC on April 28, 1983, October 19, 1983, May 19, 1987, and June 25-26, 1987. Mr. Mathis testified under oath in all the SEC investigative testimony.

I find that respondent lied and omitted material information in his responses to the investigators. Counsel's explanation that the NYSE investigator asked a specific question as to whether a conversation occurred on a particular date does not explain the number of false and incomplete answers in respondent's testimony. The fact that the NYSE investigator questioned whether Mr. Mathis talked with Mr. Harris on the date Mr. Mathis bought Grumman stock might be a reason why in response to that inquiry Mr. Mathis did not mention his conversations with Mr. Harris about Grumman which occurred on different dates. However, when asked by the SEC investigator in October 1983 whether he had any discussions with Mr. Harris about Grumman stock Mr. Mathis said "I did not. I never mentioned Grumman to Mr. Harris." (Tr. 167) There was no confusion about the meaning of the inquiry on this later occasion.

Mr. Mathis admits that he was inaccurate, evasive, and incomplete in answering questions as to why he purchased Grumman stock. He acknowledges that since he borrowed money from Mr. Harris's father to buy the stock he must have talked to Mr. Harris about Grumman, and he admits that Mr. Harris recommended that he buy Grumman stock. (Tr. 40, 126-27, 158, 161-8, 337)

The preponderance of the evidence is that Mr. Mathis's current position that he bought Grumman stock because Mr. Fowler Cary, a customer, liked Grumman very much and Mr. Cary had heard takeovers rumors about an aerospace company is also a lie. (Tr. 175, Opening Brief 19-22, Reply Brief 10) I find that Mr. Mathis bought Grumman stock because Mr. Harris gave him material information. The evidence supporting this finding is that prior to conversations with Mr. Harris, Mr. Mathis panicked at the prospect of being "stuck with this million dollar position in Grumman bonds" and he "was desperately, trying to place these bonds." (Tr. 133, 135-36) Mr. Harris told Mr. Mathis he should not turn back the Grumman convertible bonds, and that he ought to own Grumman stock. Mr. Harris believes Mr. Mathis bought Grumman, Campbell Taggert, and Bendix stock because he told him do so. Unlike other situations when Mr. Harris recommended stock to Mr. Mathis, these were situations when he told his friend Mr. Mathis he ought to buy. When he gave this advice, Mr. Harris had takeover information from Mr. Thayer. (Deposition of Mr. Billy Bob Harris, July 7-8, 1987, 28, 30, 32, 40-43, 58, 109-110)

After talking with Mr. Harris, Mr. Mathis made no further attempts to sell the Grumman convertible debentures, and a week or ten days later he bought Grumman stock. To buy Grumman stock, Mr. Mathis borrowed $200,000 from Mr. J. W. Berry and, $170,000 from Mr. Harris's father, at Mr. Harris's suggestion. Mr. Mathis paid Mr. Berry $1,844 and Mr. Harris $30,000 in interest for their two week loans. Mr. Mathis has never repaid a loan as generously as he repaid the senior Mr. Harris. The fact that Mr. Mathis paid the senior Mr. Harris so much interest indicates that this money could well have been an indirect payment to Mr. Billy Bob Harris for the information. Mr Mathis's explanation that the high repayment to Mr. Harris was for his kindness while Mr. Berry is very wealthy and did not need the money are unpersuasive. (Tr. 105-09)

Further indication that Mr. Mathis was sure his Grumman purchases would return a profit was that he told Mr. Berry he would repay the loan in a short period of time. (Tr. 108) Mr. Mathis's claim that he was not concerned that the stock price would fall since he watched it daily is implausible (Tr. 108) In addition, Mr. William Brookshire, who worked at Bear Stearns in Atlanta, testified that Mr. Mathis told him he bought Grumman because a friend had good information. (Deposition of Mr. Brookshire on June 1, 1987 at 34-35) Finally, Mr. Thayer believes Mr. Harris named him as the basis for Mr. Harris's advice to Mr. Mathis to buy Grumman, Campbell Taggert, and Bendix. The fact that the senior Mr. Harris lent Mr. Mathis over one hundred thousand dollars to buy Grumman stock convinced Mr. Thayer that Mr. Billy Bob Harris had

tipped Mr. Mathis to the information he had given him. (Deposition of Paul W. Thayer, July 24, 1987, 95-6, 98-101) There has been no showing that Messrs. Brookshire, Harris, and Thayer were not accurate in their recollections and beliefs.

Mr. Mathis's claim that he bought Grumman stock based on Mr. Cary's very high opinion of Grumman is suspect because of the evidence just recited and because Mr. Cary refused to accept one million dollars worth of Grumman convertible (on a one-for-one basis) debentures yielding 11 percent that Mr. Mathis bought for him. Mr. Cary believed Bear Stearns was trying to take advantage of him on the price but the fact remains that he did not think they were a good deal at one point over the limit he set which is what Mr. Mathis ended up paying. Also, Mr. Cary does not recall whether or not he named Grumman as a takeover candidate in discussions with Mr. Mathis about the aerospace industry. (Deposition of Fowler W. Cary, Jr., March 12, 1986, 134-35)

Mr. Mathis earned profits of $528,000 on Grumman securities on transactions that occurred in less than one month, September 17, 1981, until October 12, 1981. He purchased 42,000 shares of Grumman stock the day after Mr. Thayer requested a meeting with the president of Grumman to discuss a takeover by LTV Corp. but prior to a public announcement by LTV of its tender offer. (Exhibit 180)

Mr. Mathis omitted material information in his April 28, 1983, testimony to the SEC investigators when he stated that he was sure that a check for $199,500 represented a secured loan used to pay for his Campbell Taggert purchases, that he did not think he had

any other loans for those purchases, and that he could not recall whether another check for $82,000 represented a loan. (Deposition April 28, 1983, 44-47; Tr. 196-203) In fact the large check represented a $200,000 unsecured loan from Mr. J.W. Berry to buy Campbell Taggert stock, and the smaller check represented $82,000 Mr. Mathis borrowed from Mr. Bert Lance for three days for the same purpose (check was from a company Mr. Lance controlled).

Mr. Mathis claims he did not identify Mr. Lance because no one asked him the source of the $82,000. Respondent's counsel maintains that Mr. Mathis identified Mr. Berry as the source of the $200,000 loan when he testified later on October 19, 1983, that the Division has given no motive why Mr. Mathis would want to hide his indebtedness to Mr. Berry, and that his counsel at the time did not prepare him for his testimony on April 28, 1983. (Opening Brief 62-3)

Establishing motive is irrelevant to my concern which is whether Mr. Mathis gave true and accurate testimony each time he was questioned. I find that he did not. The question posed to him on April 28, 1983 was whether the check for $82,000 was a loan. He answered that it may have been but he doubted it. I find the question specific and the answer untruthful. I reach this conclusion because it is implausible that when answering the question Mr. Mathis forgot that on August 10, 1982, eight months before, he had borrowed $82,000 for three days from Mr. Bert Lance, a well-known individual who he had known only a short time. (Tr. 192-94) This same reasoning applies to Mr. Mathis's failure to

disclose accurately the details of the Berry loan when questioned on April 28, 1983.

Other serious discrepancies support the Division's claim that Mr. Mathis was dishonest in the answers he gave to those investigating these matters. For example, in his April 28, 1983, testimony to the SEC, Mr. Mathis stated that he noticed Campbell Taggert because he monitored the changes in the number of shares sold, that after he noticed the volume moves he checked with a Bear Stearns analyst, Mr. Clint Mayer, who followed the stock, and that he discussed with Mr. Harris that he had bought Campbell Taggert but he did not think he ever discussed the stock price with him. Mr. Mathis did not mention receiving a Business Week article about Anheuser-Busch from Mr. Harris in his April 28, 1983, testimony. Later, he acknowledged that his earlier testimony was incorrect in several respects and that he did not notice the stock because of the changes in volume, that he did not monitor it, that Mr. Harris, not Mr. Mayer, called it to his attention, that he talked with Mr. Mayer about Campbell Taggert after he talked with Mr. Harris, and that when he received the Business Week article he thought Mr. Harris was probably trying to let him know that Anheuser-Busch had targeted Campbell Taggert. (Tr. 207-23, 229-30, 245-49, 252)

Mr. Mathis's position that he did not talk with Mr. Harris about the price of Campbell Taggert or the contents of the Business Week article about Anheuser-Busch, and that he was not certain what Mr. Harris meant to convey by the article is implausible. Mr. Mathis and Mr. Harris were very close friends, they talked with

each other once or more each day, and Mr. Mathis admitted he discussed everything he did with Mr. Harris. (Tr. 326-27) Because of their close relationship, it is reasonable to assume that Mr. Mathis would ask his good friend Mr. Harris about the article if he needed to clarify what point Mr. Harris was trying to make by sending the article to him. Furthermore, if Mr. Mathis did not clearly understand the point Mr. Harris was making there is no explanation for why he gave copies of the article to Mr. Lance and Mr. Butcher, both of whom bought Campbell Taggert stock after Mr. Mathis mentioned it to them. The preponderance of the evidence is that Mr. Mathis lied to the investigators about the information he received from Mr. Harris concerning Anheuser-Busch's takeover of Campbell Taggert. Mr. Mathis acted on this information and profited by $200,000 or $142,000 net on transactions in Campbell Taggert in the period July 7, 1982, to August 24, 1982. Mr. Thayer attended an Anheuser-Busch Board meeting on June 23, 1982, at which Campbell Taggert was mentioned as one of 27 acquisition candidates. (Exhibit 180) Mr. Thayer passed this information on to Mr. Harris. (Deposition of W. Paul Thayer, July 24, 1987, 57, 61; Exhibit 180)

In addition to finding that Mr. Mathis gave false and incomplete testimony in the past, I find his testimony at this hearing to be untrue. (Tr. 270) I make this finding because Mr. Mathis claims that he did not recommend Campbell Taggert to Mr. Butcher, however, Mr. Butcher's associate, Mr. Bowers, who talked with Mr. Mathis at Mr. Butcher's request remembers that, "Well, he [Mr. Mathis] was pretty insistent that I buy the Campbell Taggert,

that he thought great things were going to happen to people who invested in it. I didn't like anybody telling me what to invest in. I don't mind suggestions or ideas, but that was -" (Deposition of Samuel C. Bowers, Jr., April 21, 1987, 66) Mr. Bowers was a bank vice-president and trust department manager when he was deposed. He had no reason to lie about his conversation with Mr. Mathis. On the other hand, Mr. Mathis's testimony is generally unreliable because he has given false testimony and at the April 1989, hearing he often could not remember prior conversations and events, including a conversation with Mr. Bowers about Campbell Taggert. (Tr. 274)

A final instance of false testimony by Mr. Mathis occurred on April 28, 1983, when Mr. Mathis stated that he did not talk with Mr. Harris prior to his purchase of Bendix stock. (Tr. 326) At the hearing in this proceeding, he remembered that Mr. Harris told him that "a white knight might come in and make a bid on Bendix" and he did not know why he failed to reveal this in earlier testimony. (Tr. 325-28) However, Mr. William Brookshire recalls Mr. Mathis talking with him in 1984, after charges were brought against Mr. Thayer and Mr. Harris, about an investment decision process that could have occurred when he purchased Bendix, and volunteering that he bought Bendix as a result of a conversation with Mr. Harris but he "did not know what that information was or why Billy Bob had told him to take a position in the securities." (Deposition of Mr. Brookshire, June 1, 1987, 59-60) Mr. Mathis bought Bendix stock on September 22, 1982, and tendered his shares on September 23, 1982,

for a profit of about $180,000. On September 20, Allied's Board voted to consider buying Bendix. Mr. Thayer was not at the meeting but Allied's president called Mr. Thayer on the morning of September 22, 1982.

Mr. Mathis's reasons for lying or misleading investigating authorities - that he was trying to shield his good friend Mr. Billy Bob Harris, that he was nervous, and that he later corrected his testimony - do not in any way excuse or mitigate his actions. The evidence is that his actions were deliberate. Deliberate deception, obfuscation, an indifference to truthfulness, and/or a lack of candor in dealing with regulatory authorities are serious matters which warrant a sanction. Management Financial, Inc., 46 SEC 226, 236 (1976); Roald G. Gregersen, et al., 46 SEC 387, 394 (1976); Thomas D. Conrad, Jr., 44 SEC 725, 732 (1971); John G. Abruscato, 43 SEC 209, 214 (1966); and Financial Counsellors, Inc., 42 SEC 153, 157 (1964).

The Division's second reason for advocating that it is in the public interest to bar Mr. Mathis from association with any broker or dealer is that he displayed a fraudulent intent in trading securities while in the possession of non-public information. The Division maintains that even if the evidence does not demonstrate that Mr. Mathis knew the information he received from Mr. Harris was confidential and non-public, it shows at a minimum that Mr. Mathis was reckless or exhibited a willful indifference to or conscious avoidance of the source of the information which he acted upon, and that his behavior equates with scienter or a mental state

embracing an intent to deceive, manipulate or defraud. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193-94 n.12 (1976); See SEC v. Musella, 678 F.Supp. 1060, 1062-63 (S.D.N.Y. 1988)

The Division contends that Mr. Mathis's willingness in these circumstances to use information to benefit himself, without checking whether or not the information was legal, shows him to be a person who should not be entrusted with the fiduciary duties incumbent on security professionals. Respondent answers that the Division's position has no support in the record and is astounding because there has been no evidence that Mr. Mathis breached any fiduciary duty.

I find that evidence as to Mr. Mathis's willful or reckless conduct as a registered representative is relevant to his culpability and whether a sanction is in the public interest. For example, there is no reason to disbelieve Mr. Harris's testimony that he told Mr. Mathis to buy Grumman, Campbell Taggert, and Bendix stock with a degree of certainty because he had inside information from Mr. Thayer, and that he told Mr. Mathis that Mr. Cary's opinion that Grumman was a good investment provided Mr. Mathis with a good reason for his Grumman stock purchases. Mr. Harris's last comment was an attempt to prevent information about Grumman being traced back to Mr. Thayer. (Deposition of Mr. Billy Bob Harris, July 7-8, 1987, 31, 40, 42-3, 86, 102, 107-10, 117-18, 120-21, 155, 165) Even assuming Mr. Mathis did not know he was receiving material, non-public information that originated with an insider, this last statement informed him that he would have to lie

about why he purchased Grumman stock because Mr. Harris could not be identified as the source of information. Mr. Mathis went along with the camouflage. He lied in his testimony to the NYSE investigators and identified Mr. Cary as the reason he purchased Grumman stock.

Other instances of willful or reckless conduct by Mr. Mathis include his reliance on information from Mr. Harris after November 1981, when he was questioned by the NYSE about possible irregularities in connection with leaks of inside information concerning LTV's purchase of Grumman. The preponderance of the evidence is that Mr. Harris was the reason that Mr. Mathis held on to the Grumman convertible debentures and bought Grumman stock.[2] (Deposition of Mr. Billy Bob Harris, July 7-8, 1987, 29-30) Mr. Mathis realized a $528,000 profit on the purchase and sale of Grumman securities in less than one month. (Tr. 97) These facts would cause a reasonable registered representative to exercise caution about future information from Mr. Harris. However, less than a year after he had been questioned, Mr. Mathis acted on Mr. Harris's advice to buy Campbell Taggert and Bendix securities without, he claims, asking Mr. Harris the basis of his information

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[2] The Division does not contest Mr. Mathis's claim that he acquired the Grumman convertible debentures because Mr. Fowler Cary rejected them after the order had been filled. (Division's Opening Brief, 28) Mr. Mathis did not mention this claim to the NYSE allegedly because counsel advised him to answer only why he purchased the stock and not go into detail as to why he had acquired the bonds. Tr. 128-29 Mr. Mathis did not mention this claim when he was deposed in the Anheuser-Busch suit and asked why he spent at least two times as much on his Grumman purchases as any of his other purchases in 1979 through 1981. Tr. 341-42

or checking on the source in some manner. Mr. Mathis earned total profits of $380,000 for security positions lasting short periods of time as the result of takeovers of Campbell Taggert and Bendix. On these facts, Mr. Mathis's actions were at a minimum reckless and taken without regard for the applicable rules and regulations. See Brown, Barton & Engel, et al., 40 SEC 1038, 1041-42 (1962) where the events were such that they placed a duty of inquiry on the respondent who was president and controlling shareholder of the registered broker-dealer but he closed his eyes to the obvious danger signals and red flags warning him to go slowly. Mr. Mathis's explanation that he assumed Mr. Harris's information was legitimate because Mr. Harris did not tell him he was disclosing insider information is unacceptable. These facts demonstrate that when it came to acting responsibly so as not to violate the securities laws and regulations Mr. Mathis chose instead to act so as to make a quick profit.

Mr. Mathis's defense that he lost more money on other securities recommended by Mr. Harris than he made on his purchases and sales of Grumman, Campbell Taggert, and Bendix is irrelevant to the allegations at issue. The expert testimony that Mr. Mathis's trading behavior in these three securities was characteristic of his prior trading activity and showed him to be a typical aggressive securities speculator is unpersuasive in view of the evidence detailed in this decision which indicates that Mr. Mathis's actions were in response to information he received from Mr. Harris.

Sanction

The applicable criteria in selecting an appropriate sanction include the egregiousness of the conduct; the recurrent nature of the violations; the need to deter others from similar conduct; the degree of scienter involved; the sincerity of respondent's assurances against future violations; respondent's recognition of the wrongful nature of his conduct; and the likelihood of future violations. Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979); SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978).

Mr. Mathis's conduct which is the subject of this proceeding has been shown to be egregious in several respects. Mr. Mathis is the subject of a permanent injunction not to violate the antifraud and insider trading provisions of the Exchange Act and applicable regulations. There is no persuasive evidence that Mr. Mathis's Waiver and Consent in which he neither admitted nor consented to the charges in the complaint should have any mitigative effect on the injunction. Mr. Mathis has lied or misrepresented his actions in testimony to the NYSE and the SEC, and he profited in excess of three quarters of a million dollars by acting, either knowingly or recklessly, on material, non-public information supplied to him by Mr. Billy Bob Harris who received it from a corporate insider, Mr. Paul W. Thayer, and Mr. Mathis knew or recklessly avoided knowing the source of this information.

An aggravating factor to be considered is that in 1981, Mr. Mathis agreed with Mr. Irwin Rothchild, another Bears Stearns

registered representative, that Mr. Mathis would take the profits and losses and pay interest on $100,000 of the $200,000 Grumman convertible debentures he sold Mr. Rothchild. At the time Mr. Mathis was desperately trying to place these debentures and he says he did not know that this sharing arrangement violated NYSE rules. (Tr. 135-36, 143-4) Mr. Mathis received a copy of the Bear Stearns compliance manual when he joined the company but he was not required to read it and he did not do so. (Tr. 58)

Mitigating factors include the fact that Mr. Mathis acknowledges to some degree the errors in his investigative testimony and is remorseful, he has not been the subject of any other disciplinary action in the almost 20 years he has been active in the securities business, the actions described in this decision appear to be a selfish aberration in a life of accomplishments achieved by hard work and abiding by the rules, and he is willing to accept any restrictions which will permit him to continue participating in the industry. These mitigating factors and the consequences to Mr. Mathis if he violates the permanent injunction indicate a low probability that he will violate the securities laws and regulations and this in turn persuades me that Mr. Mathis should not be barred permanently from association with a broker dealer as the Division recommends.

Considering all these elements and with the objective of deterring Mr. Mathis and others from similar conduct, I conclude, based on a preponderance of the evidence, that it is in the public interest to bar Mr. Mathis from association with a broker or dealer

for a significant period, but that he should be allowed to apply for reentry to the securities business in a supervised capacity under certain conditions. Robert M. Garrard, 46 SEC 294, 297 (1976); Edward J. Mawod & Co., et al., 46 SEC 865, 876 (1977).

I reject respondent's position that he has suffered enough as a result of the Division's six-year attempt to justify its accusations of insider trading violations. The Commission's civil complaint filed on January 5, 1984, was settled on October 7, 1988. There is no evidence that the Division was responsible for the extended time it took to resolve that proceeding.

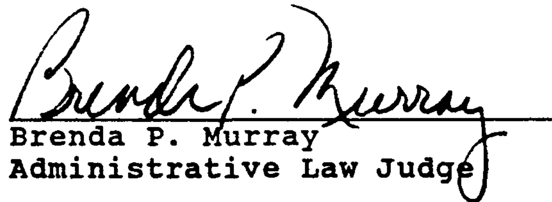
I have considered all proposed findings and arguments submitted by the parties. I accept those submissions to the extent they are consistent with this decision and reject those that are inconsistent.

Order

Based on the findings and conclusions made above, IT IS ORDERED that Mr. William H. Mathis is hereby barred from association with any broker or dealer, provided that after two years he may reapply to the Commission for permission to become so associated in a nonsupervisory position, upon an adequate showing that he will be properly supervised.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice. Pursuant to that rule, this initial decision shall become the final decision of the Commission as to each party who

has not filed a petition for review pursuant to Rule 17(b) within fifteen days after service of the initial decision upon him, unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to a party. If a party timely files a petition for review, or the Commission acts to review as to a party, the initial decision shall not become final as to that party.



Brenda P. Murray
Administrative Law Judge

Washington, D.C.
August 3, 1990