ADMINISTRATIVE PROCEEDING
FILE NO. 3-3253

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
ALBERT HEGLUND, JR.	:
FRED O. PAULSELL, JR.	:

INITIAL DECISION

Washington, D.C.
March 11, 1974

Ralph Hunter Tracy
Administrative Law Judge

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APPEARANCES: Lane B. Emory and Gary A. Swenson, attorneys, Seattle Regional Office for the Division of Enforcement.

William D. Cameron, attorney for Albert Heglund, Jr.

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

This is a public proceeding instituted by Commission order (Order) of September 14, 1972, pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act) to determine whether the above-named respondents committed certain charged violations of the Securities Act of 1933 (Securities Act) and the Exchange Act and regulations thereunder, as alleged by the Division of Enforcement (Division) and the remedial action, if any, that might be appropriate in the public interest.

The proceeding has been determined as to Fred O. Paulsell, Jr. (Paulsell)[1/] and this initial decision is, therefore, applicable only to Albert Heglund, Jr. (Heglund). However, in view of the nature of the charges and the factual circumstances, it will be necessary to make findings concerning Paulsell.

The order for proceeding alleges, in substance, that during the period from on or about June 1, 1967 to on or about October 4, 1967, Paulsell and Heglund willfully violated, and willfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10 of the Exchange Act and Rule 10b-5 thereunder, and that in so doing Heglund caused Paulsell to make false and misleading statements of material facts and to omit to state material facts to sellers and prospective sellers of securities of Unique Zipper Distributing Co. (Unique).

1/ Paulsell submitted an offer of settlement which was accepted by the Commission in Securities Exchange Act Release No. 10282, dated July 13, 1973.

Respondent Heglund was represented by counsel throughout the proceedings and proposed findings of fact and conclusions of law and supporting briefs were filed by the parties. The findings and conclusion herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

Respondent

Albert Heglund, Jr. (Heglund), is a graduate of Washington State College (University) and has been since 1959 a self-employed business consultant, a specialist in marketing. He does business as Albert Heglund & Associates, a Washington corporation, located in Seattle, Washington. Unique Zipper Distributing Co. (Unique), a Washington corporation was incorporated on January 21, 1960 to market in the United States a hidden seam zipper of Japanese manufacture. Near the end of 1960 Heglund was retained by Unique to assist in marketing efforts and to provide business consulting services. In March, 1961, Heglund was elected a vice-president and director of Unique and in 1962 was elected president and continued as such and as a director until the sale of Unique to American Can Company in 1969.

In late 1965 Heglund became acquainted with Fred Paulsell Jr., (Paulsell) who was a vice-president of Smith, Barney & Co., Inc. (Smith, Barney) a registered broker-dealer. Paulsell, an honor graduate of the University of Chicago, had received extensive training in Smith-Barney's New York and San Francisco offices and was a securities salesman specializing in selling securities to institutions. He came to Seattle in late 1965 to open an office for Smith, Barney and sub leased space in Heglund's suite of offices. He learned about Unique from Heglund and in December 1965 when a Unique stockholder named Kenney called the office and said he wished to sell his shares Heglund asked Paulsell if he would be interested in buying them. Paulsell said he was not and believes that Heglund bought them. This was the first discussion Paulsell had with Heglund concerning the purchase of Unique shares. Later, when Paulsell expressed interest in buying Unique stock, Heglund referred him to a stockholder named Currie from whom Paulsell purchased 2,000 shares of Unique in August 1966. This was the only purchase of Unique stock by Paulsell until June 1967, when he became involved in the transactions which are the subject of the Order.

Background of Unique

In 1967 Unique's authorized capital consisted of 200,000 shares of $1 par value common stock. By the close of its sixth fiscal year on January 31, 1967, there were 175,463 shares of such stock outstanding in the hands of approximately 140 to 175 investors who had purchased at prices ranging from $1 to $10 per share. By mid-1965 Unique was insolvent and Heglund found a wealthy investor, Matthew N. Clapp (Clapp) who was willing to invest $100,000 in Unique in return for a 51% interest. To accommodate the Clapp purchase a reverse split was approved on June 5, 1965, whereby stockholders received one share of new $1 par value stock for each 2.75 shares of old $1 par value stock. Clapp and an associate, Jim Buck (Buck), were named to Unique's Board of Directors, which was reduced to 5 members, and on August 24, 1965, Messrs. Clapp and Buck were elected vice-president and treasurer, respectively.

The first six years of Unique's operations, up to January 31, 1967, resulted in annual losses which had a cumulative total of $367,467.91, including $93,820.15 for the fiscal year ending January 31, 1966, and $64,175.11 for the fiscal year ending January 31, 1967.

During the latter part of January and early February 1967, Heglund, Clapp and Buck visited Unique's supplier in Japan with a view to improving relationships. In the latter part of February Heglund returned to Japan and obtained a new agreement with the supplier which resulted in acquiring the product at a price of one-third that previously paid. Although Unique's losses continued through the month of February 1967 ($14,353.80) it had profits for the first time in its history for the months of March and April 1967 in the amounts of $34,792.50 and $29,364.96, respectively.

Heglund, who received the results of the March earnings statement near the end of April, 1967, was soon holding secret preliminary merger or sale discussions with William E. Wright & Son Co., (Wright) of West Warren, Massachusetts. In a letter to Wright dated May 9, 1967, Heglund stated that Unique had been averaging approximately 20 inquiries a week concerning a public offering and had one inquiry regarding an offer of $750,00 for a 10% position. Heglund was generally very optimistic about the improved profit position and the likelihood for continued improvement. However, he requested that any indication of interest be kept confidential.

Unique held its 1967 annual stockholders meeting on May 19, 1967. The minutes reflect 17 stockholders in attendance and, while the financial statement for the fiscal year ending January 31, 1967, was distributed, no information concerning the profitable months of March and April was given out. Neither was there any mention of the new zipper contract which substantially reduced costs or of the fact that merger negotiations were being conducted with Wright. In fact, just prior to the meeting Heglund met with other Unique officials including Walter Stabler (Stabler), vice-president and general manager, Donald Drew (Drew), national sales manager, and Unique's home economist, Mrs. Isham, and instructed them not to discuss any financial figures for the first four months of the current fiscal year, from January 31, 1967, to the date of the meeting.

The minutes of the May 19, 1967 shareholders meeting, submitted by Jim Buck as secretary and approved by Heglund as chairman, state that Stabler, Drew and Isham all talked to the shareholders about their respective areas but make no mention of any discussion of finances or profits. Heglund then distributed copies of the year-end financial statement and, according to the minutes, stated that the break-even point was $94,000, that a debt of $450,000 was being serviced and, in response to a question, that he hoped dividends could be paid in two years. He, also, advised that an annual report to stockholders would be sent out after the next annual meeting.

Paulsell testified that just before the stockholders meeting began Heglund asked him to speak in favor of a stock option plan that they wanted to institute for officers and employees of the company. The minutes show that Paulsell moved that the corporation offer its remaining unissued stock to its employees, officers and directors at its par and apparent market value of $1.00 per share, to provide additional incentive to place the company upon a profitable basis. It was pointed out that of the total 200,000 shares authorized, 175,000 shares were outstanding and 25,000 shares unissued. It was resolved that the Board of Directors have discretion to issue the remaining unissued shares at not less than $1.00 a share.

On June 3, 1967, the Board of Directors held a regularly scheduled meeting at which Heglund, as chairman of the board, stated that the primary business at the meeting was the implementing of the stock options as authorized at the annual stockholders meeting on May 19, 1967. Heglund was granted 8,800 shares, Clapp 5,000 and Buck 4,000, to be purchased on one-year promissory notes at $1.00 per share. The minutes state: "in the event that the company is sold, all stock offered under this plan will be considered vested with the employee and the time factor previously stated will be considered filled and the stock title will immediately pass prior to the actual sale to that designated employee." The minutes state, further:

> "It was pointed out that Jim Buck, Matthew Clapp and Albert Heglund, Jr. had made a trip to the Orient during the last part of January and early February, 1967 and had laid the groundwork for significantly improved relationship with our supplier. In the latter part of February, Heglund returned to Japan and obtained a new working agreement with the Japanese on a direct basis, with the end result that the product was acquired at a landed price of one-third that paid previously. This coupled with the additional cash that had been obtained through a re-evaluation of the overall working capital needed by Jim L. Buck, Matthew N. Clapp and Albert Heglund, and coupled with the merchandising program that was implemented and the discipline of expenses and related concerted sales effort, has placed the company in a profit-making position. The intent of the board is now that this opportunity be maximized to the fullest and with the incentives that the stock options offer the profit strides of the company should be significant."

On or about May 29, 1967, Heglund and Stabler visited Wright at West Warren, Mass. to discuss further the possibilities of merger. During this visit Heglund indicated to Wright that he felt Unique was worth about $8,000,000. In a letter written on June 12, 1967, Heglund reviewed the trip and detailed the changes and prospects at Unique at some length, saying:

> "Unique's acceptance in the field has generated a growth curve more significant than that which we had dared or hoped to predict.
>
> * * * *
>
> We can project between $1,600,000 to $2,000,000 in sales for fiscal 1967 which ends January 31, 1968, and for fiscal 1968 $4,000,000 in gross sales. With the loss of $14,000 February of 1967, we can still project gross profits, or better, net profits, of $525,000 before taxes for fiscal 1967."

In the latter part of August, 1967, Heglund and Stabler had a meeting in New York with Wright representatives to discuss the sale of Unique. Wright wanted an exchange of stock but Heglund objected on the ground that there was no more market for Wright stock than there was for Unique stock. Heglund testified that he told Wright "'Well, we might be willing to entertain some information or exchange from you. But it would not be on the basis of trading for your stock unless we had an absolute assurance that the stock was going to be taken public <u>so we could then free our stockholders who had been in there</u>.' <u>Some had been locked in there for, at least, seven years</u>." (Underscoring supplied)

Unique's board of directors at a meeting on October 5, 1967, stated that they might accept an offer of $30 per share, but were hopeful of receiving $40 to $50 per share. In November or December 1967, Wright offered to purchase Unique for between $3,000,000 and

$3,500,000 which was rejected by the board as not high enough. The $3,500,000 figure would have been a per share price of $17.50 for the 200,000 shares of Unique stock outstanding.

Violations of Rule 10b-5

From June 4, 1967 to October 4, 1967, Paulsell purchased a total of 8,567 shares of Unique stock from eleven Unique shareholders at prices ranging from $1.00 to $3.50 per share. All but one were made pursuant to a telephone campaign conducted by Paulsell whereby he would call Unique shareholders from the Smith-Barney office in San Francisco, tell them he was Mr. Paulsell of Smith-Barney, that he had a client who wished to purchase Unique stock, that he knew they were Unique stockholders, and then attempt the purchase at the best price he could negotiate. On at least two occasions he even told the stockholders how many shares they owned. In no instance did he disclose any of the information previously discussed herein concerning the improved profit position of Unique, the new supplier contract obtained by Heglund, the merger discussions with Wright, the prices he was paying other stockholders, or that the President of Unique had acquired 8,800 shares of its stock at $1.00 per share in June 1967. Most important, he did not disclose that he had no client but was actually sharing his purchases of Unique stock with Heglund on practically a 50-50 basis. Paulsell's purchases of Unique stock, Heglund's payments for the shares acquired by him, and the apportionment of the respective shares on the Unique stock register are shown in the following schedules:

PAULSELL'S PURCHASE OF UNIQUE STOCK IN 1967

Seller	Payment Date	Payment Amount	Shares	Price/Sh.
LaBour	6-5-67	$ 18	18	$ 1.00
Heath	8-9-67	600	545	1.10
Lamb	8-11-67	400	236	1.69
Ginsberg & Berman	8-14-67	1,400	691	2.03
Hone	Aug. '67	1,000	727	1.38
Leonard	9-8-67	4,500	1,700	2.65
Ogden & Van Arnam	Prior to 9-28-67	Unknown	364	
Lange	9-14-67	2,000	727	
Martens	9-14-67	500	181	2.76
Adams	9-15-67	575	166	
Adams	9-27-67	350	100	3.48
McKenzie	10-4-67	10,040	3,112	3.23
	Total	$ 21,383.00	8,567	
			- 364 Unknown price	
			8.203	2.61 (Average)

HEGLUND'S PAYMENTS TO PAULSELL

Payments Date	Payments Amount	Stock Transfers to Heglund Date	Shares	Source
Early June '67	$ 10.00	6-5-67	9	LaBour
9-7-67	1,750.00	8-31-67	618	Heath, Ginsberg & Berman
9-14-67	1,250.00	9-8-67	381	Lamb, Hone
10-3-67	3,508.33	9-27-67	850	Leonard
		9-28-67	769	Ogden & Van Arnam, Lange, Martens, Adams
		10-27-67	1,033	McKenzie
Total	6,518.33		3,660	

---Average cost per share, $1.73 (Computation includes 100 shares Heglund resold to O'Brien, which were never transferred to Heglund on Unique's books).

Unique registered the transfers as follows:

No. of Shares	From	To: Paulsell	Heglund	Others
18	LaBour	9	9	--
545	Heath)			
691--	(Ginsberg-)	618	618	--
	(Berman)			
727	Hone)	482	381	100 - O'Brien*
236	Lamb)			
1700	Leonard	850	850	
266	Adams)			
727	Lange)	769	769	
364	Ogden, Etc.)			
181	Martens)			
3112	McKenzie	1045	1033	1034 - Buck
8567	Total	3773	3660	1134
	*Sold/Heglund to O'Brien at cost		100	
			3760	

During the period in which these purchases from shareholders were taking place the monthly profits of Unique were as follows:

1967	Earnings
May	$30,854
June	32,216
July	19,398
August	44,330
September	31,745
October	22,621

For the fiscal year ended January 31, 1968, Unique reported a profit of $228,754.59.

Six of the eleven shareholders listed in the foregoing charts testified at the hearing and their testimony was substantially the same: they received a telephone call from Mr. Paulsell who told them that he was a representative with the brokerage firm of Smith Barney & Co.; that he was calling from San Francisco; that he had a client who was interested in purchasing Unique stock; that he could not divulge the client's name; that he knew they were Unique shareholders; and that he was offering a fair price.

On no occasion, according to the testimony, did Paulsell tell any of the sellers that Unique had shown a profit for each month from March to October, 1957; that these were the first profit months that Unique had experienced since its inception; that Unique had received a reduction in the price of materials imported from Japan which would substantially reduce its costs; that Unique's president and its board of directors were attempting to negotiate a merger, the terms of which contemplated Unique's stock being valued as high as $30 to $40 a share; that the president and other officers of Unique had been granted stock options at the May annual meeting; that he, Paulsell, was purchasing shares from other shareholders and that these purchases were being shared with Heglund, the president of Unique.

While the testimony of all of the investor witnesses agreed on the basic disclosures, or non-disclosures, as described above, there were some individual differences. James Adams testified that he was surprised when he received Paulsell's call and said, "I don't even know how many shares I have. He (Paulsell) said 'well, you have 366 shares'."

Adams, who had purchased his stock in the early 1960s and who attended most of the annual meetings since that time, called Heglund, whom he knew, to inquire as to what was going on with Unique and whether anything unusual or different was happening with Unique stock. Heglund inquired "why do you ask?" and Adams said he had received a call from a gentleman in San Francisco who was interested in buying it and "If anything unusual is happening I want to know it because what I do with it will result, in part, from knowing what is occuring with the stock." According to Adams,Heglund "responded that there was nothing unusual that he was aware of."

Donald Ginsberg testified that he and Manny Berman had bought 1,000 shares together in the early 1960s. Berman, who also testified, received the call from Paulsell and informed Ginsberg. After conferring and checking around Ginsberg called Heglund on the telephone. "I talked to Mr. Heglund in his office. I had talked with him before. I asked what was going on with the company, were there any new developments. I told him there was a possibility to sell the stock. He said there were no new developments and that there wasn't any actual market for the stock, it was 'whatever a man could get for it.'"

Monte McKenzie testified that he bought Unique stock in 1960 or 1961; that he had an unlisted telephone at the time Paulsell called and he asked Paulsell how he got his name and number but Paulsell passed over it. Paulsell said, "Are you the McKenzie who holds 3,000 shares of Unique Zipper?"

Howard Lange testified that he was living in Bloomfield Hills, Michigan at the time he received the call from Paulsell in San Francisco; that Paulsell said the company had not made any money and there was no prospect of it ever doing better; that he refused to sell at 50 and 75 cents a share and insisted on $1.00 a share, the price he paid for his original 2,000 shares.

J.D. Hone testified that Paulsell "indicated that the price he was offering was reasonable under the circumstances." Paulsell offered him a $1,000 and he accepted. Hone did not make any investigation because he had known Paulsell's father at the Seattle First National Bank and had no occasion to challenge or doubt anything that Paulsell told him.

In addition to the witnesses who testified concerning the 1967 transactions, Clyde Currie, from whom Paulsell bought 2,000 shares of Unique for $1,500 in 1966 at Heglund's suggestion, testified that Paulsell called him several times about selling his stock, saying that he had a client who was interested. Currie testified ". . . so I called Mr. Heglund and this went on several times over a month or so, and I'd call Mr. Heglund and, in all cases, he couldn't tell me anything about the company nor could he tell me what the stock was worth, so he said, 'It's up to you.'"

Currie, who had been a director of Unique but went off the board of directors at the time Clapp came in and it was reduced to five members, testified that he attended the annual meeting on May 19, 1967, that the officers discussed what had happened during 1966 and gave field reports. The company was still losing money and nothing was said about the 1967 financial condition or prospects. Currie testified that Paulsell made a motion to grant stock options to the officers and directors, "it was a very long or typed motion, it just wasn't a dry cut motion, he just went on to point out how the companies, how the little companies will give stock in lieu of payment not being made for services actually performed."

Mrs. Helvie O'Brien, was employed by Albert Heglund & Associates as Heglund's secretary and was, also, general secretary and bookkeeper for Unique, keeping stock records, making transfers, issuing certificates. Mrs. O'Brien testified that sometime in 1967 she was instructed by Heglund to make Unique's stock register available to Paulsell, but to no one else. She gave the register to Paulsell on one occasion and at other times took it into Heglund's office at his request when only he and Paulsell were present. She testified that she had been instructed by Heglund that when Paulsell brought in or mailed in stock of Unique the shares were to be equally divided between Heglund and Paulsell when transferred on the stock register. There were exceptions to this as when she was allowed to purchase 100 shares from Heglund's share of the Hone-Lamb block and when the 3,112 share purchase from McKenzie was split three ways between Paulsell, Heglund and Buck. O'Brien testified that Heglund signed all stock certificates and that she would check any questionable transaction with him.

Walter Stabler, vice-president and general manager of Unique, testified that he and other officers met with Heglund just prior to the annual meeting and were told by Heglund that at the meeting they were to discuss what had happened in the preceding fiscal year and nothing about what had happened from the end of that year until the time of the meeting. Unique had lost money for fiscal 1966 but had started to make a good profit between the end of that fiscal year and the May 19, 1967 stockholders meeting. Stabler accompanied Heglund on the visits to Wright in June and August to discuss merger. Heglund stated he wanted $8,000,000 for Unique, but Wright offered $3,500,000 which was rejected by the Unique board of directors. Stabler testified that the board thought better conditions could be obtained from somebody else. "Paulsell was looking and had a finder's fee if he found something." Stabler and all other employees were under instructions from Heglund to direct all inquiries from shareholders regarding the condition of the company or the value of their stock to Heglund.

Paulsell testified that he was in Seattle from late 1965 until the first of July, 1967, but only had an office in Heglund's suite for about the first three months. In July, 1967, he moved to San Francisco and it was from there that he made all of the calls to Unique investors. The first purchase in 1967 of Unique stock was made through the mail. Paulsell went to Heglund's office shortly after the annual meeting in May and Heglund gave him a letter from a Mrs. LaBour in Michigan who wanted to sell her 18 shares of Unique. Paulsell wrote to her offering $1 a share and she accepted. When he received the shares he was in Heglund's office and offered him half for $10 and Heglund accepted. This was the first purchase which was divided between them.

Paulsell testified as a Division witness but had considerable difficulty recalling anything about his Unique stock purchases. He testified that he got the names of stockholders "from a lot of sources". However, he could not remember where he got the names of Heath, Hone, Lamb, Leonard, Adams, Lange or Martens. He testified that there was no market for the stock and that he had "no recollection of why I would have bought that much stock and then sold some. I don't know." Heglund never told him to keep the stock himself and not sell it to Heglund. The shares were not transferred to Paulsell's name before going to Heglund, they went from the seller to Paulsell and Heglund. Paulsell had no recollection of O'Brien having made any of the stockholder records available to him and could not recall that she ever brought the Unique stock transfer records into Heglund's office while he was present. He testified that he paid for all of the purchases except one, before selling shares to Heglund. That one was the purchase of 3,112 shares from McKenzie and he called Heglund before making the purchase. At first Heglund was not going in on it but it was finally split three ways with Buck buying a 1,000 shares. Paulsell could not remember why he sold shares for less than he paid for them. His average cost was approximately $2.61 a share while Heglund paid an average of $1.73. In the McKenzie transaction he sold 1,000 shares to Buck, a director, for less than he paid. In the Leonard transaction he paid $2.65 a share and sold half to Heglund for $1.47 a share. During his testimony Paulsell had no recollection in response to questions on approximately 45 occasions.

Heglund testified that he bought the 8,800 shares of Unique on options granted him in return for a reduction of the company's debt to him. LaBour was responding to the fiscal 1967 financial statement in wanting to get rid of her shares. On September 7, 1967, Heglund purchased $1,750 worth of Unique stock from Paulsell. Heglund testified that he had no discussion with Paulsell about this purchase which was for 618 shares in August and 381 in September. Paulsell just called him out of the blue and "I never questioned Fred [Paulsell] as to [source]." Heglund testified that he did not know until 1969 that the stock he purchased in August, September and October, 1967 was half of Paulsell's purchases; that Paulsell was not buying stock for Heglund and he never made any inquiries as to where he (Paulsell) was getting it; and that he never gave Paulsell any information about the company.

Heglund testified that he knew Adams very well; that Adams had purchased 300 shares of Unique stock in 1961 while a member of the Boeing Investment Club; that Adams attended 8 or 9 annual meetings and "Invariably he was asking where are we going now and when are we going to pay dividends." Heglund testified that Adams did not contact him in August or September, 1967. "Never talked to Adams about the purchase of his stock or solicitation of purchase of his stock by Mr. Paulsell."

Adams' testimony had been strongly disputed by Heglund. He not only denies ever having had any telephone conversation with Adams concerning the stock purchase but has also introduced testimony by

Adams from another trial in which, he claims, Adams contradicted himself Following the close of this hearing Adams testified at the trial in Tacoma, Washington on October 23, 1973, in the case of <u>Monte G. McKenzie</u> v. <u>Albert Heglund, Jr.</u>, et al. Counsel for Heglund moved that this testimony be admitted in this hearing, along with a supplemental brief, and this motion was granted. The testimony Adams gave at the McKenzie trial, in pertinent part, is as follows:

> "Q. What was Mr. Heglund's response, if any?
> A. . . . (question repeated):
> Well, the substance of his words was that there was nothing unusual happening, <u>but I don't know what the words were</u>. <u>I simply concluded that I had no reason not to sell</u>.
> THE COURT: The substance of his words was that there was nothing unusual happening, whatever the precise words, that is the meaning of what you understood him to say; is that right?
> THE WITNESS; Yes, Yes."
>
> <u>CROSS EXAMINATION</u>
>
> " . . .
> Q. (By Mr. Cameron) Well, in respect to the Court's remarks, Mr. Adams, it is just your impression, is it not, that after you terminated the conversation that nothing unusual had happened, but Mr. Heglund didn't tell you that, did he? He didn't use those words?
> A. <u>He didn't tell me that anything had happened</u>.
> Q. <u>Oh, all right, and from that you inferred that nothing had happened</u>?
> A. I would say that was true."
> (emphasis supplied by respondent's counsel).

The principal argument advanced on behalf of Heglund is that he and Paulsell were acting independently of each other and that Heglund had no idea of what Paulsell was doing to obtain the Unique stock which he was offering to Heglund as a "friendly gesture." Heglund strongly claims that he did not employ Paulsell to purchase Unique stock; that he did not have any direct or indirect control over Paulsell; that he did not direct or encourage Paulsell to purchase Unique stock; that he did not tip any non-public corporate information to Paulsell until Paulsell attended a directors' meeting on November 30, 1967, as one of several guests, after which Paulsell did not acquire any Unique stock; that he never loaned any money to Paulsell; that he never caused Paulsell to make any misrepresentations; and that Paulsell's sales of Unique stock were not pursuant to any collusion whatsoever, nor was there any prior arrangement between them to split Paulsell's purchases.

In support of his position Heglund cites Paulsell's testimony that the reason he sold portions of his Unique stock acquisitions to Heglund was that he wanted to have a continuing "close relationship" with Heglund because Heglund was a successful businessman, and Paulsell's job was "to work with successful businessmen." Paulsell, who opened an office in Seattle for Smith-Barney & Co., Inc., temporarily from 1965 to July 1967 and permanently in April, 1968, felt Heglund was important to his career.

In summarizing his argument Heglund points out that both he and Paulsell denied any tipping of non-public corporate information to Paulsell and that there is no evidence that Paulsell knew of it; and there is no relevancy to what Paulsell did or did not do unless he is, by the evidence, linked to Heglund as his agent or Heglund is linked to Paulsell as an aider and abetter of a known independent wrong by Paulsell.

The evidence supports an inference that Paulsell was at all times acting as Heglund's agent and it, also, conclusively establishes that Heglund violated Rule 10b-5. From the time he made the first purchase of 9 shares from LaBour he knew where the shares were coming from and was under a fiduciary duty to make full and complete disclosure to each and every seller of the facts concerning Unique peculiarly within his knowledge. There were less than 175 stockholders and there was no other source for Unique shares. Heglund cannot evade responsibility by not asking the source of the shares tendered to him. Heglund knew, as he so aptly put it, that Unique's shareholders were "locked in" with no market for shares which some of them had held for 7 years. Despite that he engaged in a concerted effort with Paulsell to encourage these locked in shareholders to sell their shares while he failed to disclose the very information concerning the improving condition of the company that he was being rewarded with stock options to develop.

It is found that Paulsell and Heglund wilfully violated and wilfully aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In so finding respondent's arguments to the contrary are rejected. Paulsell in his testimony was obviously "covering" for Heglund and, for the most part, is not worthy of belief. Heglund's testimony that he did not talk to either Adams or Ginsberg following Paulsell's offer to buy their stock is not credible.

Rule 10b-5 was adopted by the Commission on May 21, 1942, and in the first published case 2/ under that rule the facts were remarkably

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2/ In the Matter of Ward LaFrance Truck Corporation, 13 SEC 373 (1943).

similar to the instant case. The Commission, in finding that the purchase of securities by officers and insiders unaccompanied by appropriate disclosure of material facts constituted a violation of Rule 10b-5, said:

> In order to conceal the facts previously discussed, it was also essential that the identity of the purchaser should not be disclosed, as such disclosure might well have led to inquiries or surmises concerning the better condition of the company,
>
> * * *
>
> The last hope shareholders had of learning anything that might have given them a lead as to what was taking place in their corporation was to have learned the true identity of the purchasers of their shares.

If the sellers herein had known that Heglund was purchasing their shares it would undoubtedly have led to inquiries or surmises concerning the better condition of Unique.

More recently the court said in Ross v. Licht, 263 F. Supp. 395 at 408 (1967):

> Rule 10b-5 requires that a corporate insider purchasing stock from an outsider must disclose any material fact known to him by reason of his inside position but not known to the outsider. If there is a failure to make such a disclosure, and if the insider would have been influenced not to make the sale had there been disclosure, then the insider is liable to his seller. A material fact is one to which a reasonable man would attach importance in determining his choice whether to make the sale or not. List v. Fashion Park, Inc., 340 F2d. 457, 463 (2d Cir. 1965) cert. denied, 382 U.S. 811.

This comment by the court is appropriate here in light of Adams testimony (p. 12, supra) that what he would do in regard to Paulsell's offer to buy his stock would depend on his knowing what was going on in the company.

The Court in Ross v. Licht went on to say, at 409:

> In determining whether a person, not a director or officer, is a corporate insider it seems to me that the test is whether he had such a relationship to the corporation that he had access to information which should be used "only for corporate purpose and not for the personal benefit of anyone." In re Cady Roberts & Co., 40 SEC 907 at 912 (1961) (See, also 3 Loss 1450-51).

Under the foregoing definition Paulsell, as well as Heglund, certainly should be deemed to have been an insider in the present situation.

Each of the respondents, Paulsell and Heglund, failed to make the required disclosure to Unique stockholders and each participated in the scheme to purchase Unique shares by the method followed. If either one of them, regardless of the number of shares purchased, had made disclosure of the material facts in their possession, the scheme would have collapsed. Therefore, the participation of each was essential to the success of the scheme.

In Securities and Exchange Commission v. Shapiro 3/ where the defendant insiders were charged with violating Section 10(b) of the Exchange Act and Rule 10b-5, thereunder, by failing to disclose to those from whom they purchased stock, material non-public information relating to the existence and progress of merger negotiations, the court said:

> Section 10(b) of the Act and Rule 10b-5 are aimed at achieving a fair and honest securities market by preventing those in possession of material inside information from using that information to their own advantage when dealing with others not possesing the same information. Thus, the statute requires that one in possession of material inside information about a company must either disclose it to the investing public before trading in the securities of that company, or, if he cannot or chooses not to disclose the

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3/ Securities and Exchange Commission v. Shapiro, 349 F. Supp. 46, 53 (1972); See, also, SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 848 (2d Cir. 1968), cert. denied, 394 U.S. 976 (1969).

information, he must abstain from trading in the securities concerned while such inside information remains undisclosed.

PUBLIC INTEREST

The Division has recommended that, although Heglund is not presently engaged in the securities business, he be barred from association with any broker or dealer. This recommendation is based, partly, on the fact that he was listed as an officer and director of a firm which filed a Form BD application for registration as a broker-dealer with the Commission on June 2, 1972. Also, the Division urges, as a principal violator and as an aider and abettor of the violation of Rule 10b-5, Heglund should be barred.

The serious nature of the violation of the securities law by Heglund requires that a sanction be imposed in the public interest. Upon consideration of all of the circumstances, including mitigating factors urged by counsel as to his standing in the community and his previous inexperience in the securities business, it is concluded that while he should be barred from being associated with any broker-dealer that after a period of time he should be permitted to apply to the Commission for permission to be associated with a broker-dealer.

ORDER

Accordingly, IT IS ORDERED that the respondent, Albert Heglund, Jr., is barred from association with any broker-dealer, provided that after six months he may apply to the Commission for permission to be associated with a broker-dealer.

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

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not within fifteen days after seriice of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(f), 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.[4/]

Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.
March 11, 1974

4/ To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the views herein they are rejected, and to the extent they are inconsistent therewith they are rejected.