ADMINISTRATIVE PROCEEDING
FILE NO. 3-3643

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

FIRST FIDELITY, INC. 8-15684
DAVID R. NEMELKA
JERRY R. ZABRISKIE
WILLIAM B. HESTERMAN, JR.
PARKER-MAWOD & CO. 8-14068
TRENT J. PARKER
EDWARD J. MAWOD
TRANSAMERICAN SECURITIES, INC. 8-14736)
DUANE SMITH JENSON
MELVIN H. MILLER
DONALD D. GLENN

INITIAL DECISION

June 28, 1974
Washington, D.C.

Sidney L. Feiler
Administrative Law Judge

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APPEARANCES: Messrs. Joseph H. Bottum, III and Richard J. Leedy of Bottum & Leedy, 10 Exchange Place, Suite 820, Salt Lake City, Utah 84111, for Edward J. Mawod and Co., formerly known as Parker-Mawod & Co., and Edward J. Mawod individually.

Ralph J. Hafen Esq., 625 Kearns Bldg., Salt Lake City, Utah 84101,for Trent J. Parker

Jerry R. Zabriskie, 594 Wilford Avenue, Murray, Utah 84107, *pro se*.

Messrs. John E. Jones and Matthew J. Zale, for the Division of Enforcement.

BEFORE: Sidney L. Feiler, Administrative Law Judge

I. THE PROCEEDINGS

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

At the commencement of the hearing, counsel for the Division stated that offers of settlement had been filed with the Commission by a number of the respondents and that others were in the process of negotiation. He then presented evidence relating to the respondents Parker-Mawod & Co., Trent J. Parker and Edward J. Mawod. The hearing at that stage was concluded as to these respondents and proposed findings and briefs were subsequently filed. The Commission, pursuant to offers of settlement, issued its Findings and Orders Imposing Remedial Sanctions upon respondents First Fidelity Inc., and David R. Nemelka (Sec. Exch. Act Release No. 9942, January 16, 1973); upon respondent Donald D. Glenn (Sec. Exch. Act Release No. 10009, February 15, 1973); upon respondents William B. Hesterman, Jr. and Melvin H. Miller (Sec. Exch. Act Release No. 10222, June 15, 1973); and the respondents Transamerican Securities, Inc. and Duane Smith Jenson (Sec. Exch. Act Release No. 10497, November 14, 1973).

The Division subsequently moved to reopen the hearing as to the respondent, Zabriskie, noting that an offer of settlement by him had not been accepted by the Commission. The motion was granted and evidence was received with respect to this respondent after which the hearing was closed. The respondent parties, therefore, remaining in this proceeding are Parker-Mawod & Co., now known as Edward J. Mawod & Co., Edward J. Mawod

and Jerry R. Zabriskie. Because of the nature of the allegations this initial decision will include discussion of the acitivities of some of the respondents named in the order who are no longer parties herein. Such references are only for the purpose of resolving the issues remaining in this proceeding.

The hearing herein was held in Salt Lake City, Utah. The Mawod respondents and the Division were represented by counsel. Zabriskie was represented by counsel in the initial stages of the proceeding, but appeared in his own behalf at the evidentiary hearing. Full opportunity was afforded all parties to present evidence and to examine and cross-examine witnesses. Proposed Findings of Fact, Conclusions of Law, and supporting briefs were filed on behalf of the Mawod respondents and the Division. No filings were made on behalf of Zabriskie.

On the basis of the entire record, including his evaluation of the testimony of the witnesses, the undersigned makes the following:

II. FINDINGS OF FACT AND LAW

A. The Mawod Respondents

1. The Mawod Respondents; Allegations in the Order.

At all times here relevant Parker-Mawod and Co. ("Registrant"), a co-partnership with principal offices in Salt Lake City, Utah, was a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act. Edward J. Mawod and Trent J. Parker were general partners of the Registrant during the relevant period. On or about May 11, 1972 Parker resigned from the Registrant and the Registrant changed its name to Edward J. Mawod & Company. Edward J. Mawod continued as general partner of the Registrant.

During the relevant period, the Registrant was a member of the National Association of Securities Dealers, Inc., a national securities association registered pursuant to Section 15A of the Exchange Act. It resigned its membership on January 31, 1974. On November 28, 1973 the Registrant filed a Notice of Withdrawal from Registration as Broker-Dealer (File No. 8-14068). This notice has not become effective pursuant to the provisions of Rule 15b6-1 of the Rules and Regulations promulgated by the Commission pursuant to the Exchange Act.[1]

It is alleged in the order for these proceedings, as amended, that during the period from about July, 1969 to the date of the order, the Mawod respondents willfully violated and willfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act of 1933, as amended, ("Securities Act") in that said persons directly and indirectly made use of the means and instrumentalities of transportation and communication in interstate commerce and of the mails to offer to sell, sell and deliver after sale shares of the common stock of Com Tel, Inc. when no registration statement was in effect as to said securities pursuant to the Securities Act.

It is also alleged in the order that during the period from about December 16, 1969 to the date of the order, Parker-Mawod willfully violated and Parker and Mawod willfully aided and abetted violations of Section 7(c) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System in that said

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1/ If a Notice to Withdraw from Registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to Section 15(b) of the Exchange Act, it is provided in this rule that a Notice of Withdrawal shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

respondents directly and indirectly extended and maintained credit and arranged for the extension and maintenance of credit to and for customers, Don Glenn and Clipper Craft, on securities (other than exempted securities) namely, Com Tel Inc., and on collateral in contravention of Sections 3 and 4 of Regulation T adopted by the Board of Governors of the Federal Reserve System pursuant to Sections 7(a) and 7(b) of the Exchange Act.

It is further alleged that during the relevant period Parker-Mawod willfully violated and Parker and Mawod willfully aided and abetted violations of Section 7(c) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System in that they established special accounts for customers without recording each such special account separately, without confining each such special account to the transactions and relations specifically authorized for such account by Section 4 of Regulation T and to transactions and relations incidental to those specifically authorized, and without maintaining adequate records showing for each such account the full details of all transactions in the account; such conduct failing to comply with Section 4(a) of Regulation T.

2. The Offer, Sale and Delivery of Unregistered Com Tel Stock.

It is conceded that no registration statement has ever been filed or was ever in effect under the Securities Act covering the stock or any other securities of Com Tel Inc. ("Com Tel"), a Utah corporation. Arrangements for the public sale of Com Tel stock were made between officials of First Fidelity Underwriters, acting as the underwriter and officers of Com Tel. The parties agreed that the offering would be made as an intra-state offering with a claimed exemption

from registration under the Securities Act. The offering was made by the use of an offering circular which stated on its face that the offering covered 5,000,000 shares at a price of 10¢ per share. It was further noted

> THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION BECAUSE THEY ARE BELIEVED TO BE EXEMPT FROM REGISTRATION UNDER SECTION 3(a) (11) OF THE SECURITIES ACT OF 1933, AS PART OF AN ISSUE OFFERED AND SOLD ONLY TO PERSONS RESIDENT WITHIN A SINGLE STATE. AS SUCH THESE SECURITIES ARE TO BE OFFERED AND SOLD ONLY TO BONA FIDE RESIDENTS OF THE STATE OF UTAH, AND ANY SALE TO ANY OTHER PERSON WILL VOID THE EXEMPTION. (Division Ex. 3)

It was also noted in the offering circular that checks in payment for stock, less commission, would be delivered by the underwriter to the company. After checks given for stock had cleared the bank, stockholders would receive credit upon the books of the company for the amount paid and stock certificates would then be issued and delivered to the purchasers. According to the testimony of Gerald A. van Mondfrans, secretary-treasurer and dirctor of the company, whose testimony is credited, this procedure was followed in the issuance of stock certificates. The practice followed in the sale of Com Tel stock was for subscribers to file a subscription agreement (Div. Ex. 5). In addition to providing for the name and address of the subscriber and the amount of stock subscribed for, the agreement contained a warranty that the subscriber was a bona fide resident of the State of Utah and that his stock was subscribed for and purchased for investment purposes and not with present intention of further distribution. The agreement also contained space for the provision of monthly payments for stock subscribed for. The offering was authorized for public sale in August,

1969 and the entire offering was asserted to have been sold.

A report purporting to show completion of the Com Tel underwriting was filed with the Utah Securities Commission on October 15, 1969 (Mawod Ex. 11). However, according to van Mondfrans, who was in charge of the receipt of subscriptions and proceeds for the company and who authorized the issuance of its stock, a substantial number of the 5,000,000 share offering remained unpaid for in January, 1970. These included three subscriptions for 650,000 shares. These were made by Clipper Craft, Inc., Horizon Associates and Penny Decorator, Inc. entities controlled by a Donald D. Glenn.[2/] Clipper Craft subscribed for 450,000 shares, Horizon Associates for 100,000 shares and Penny Decorator for 100,000 shares. The Com Tel stock subscribed for by the above three entitites was kept by Com Tel officials and not released until the stock had been fully paid for (Tr. 120). Certificates were eventually released on January 16, 1970 for stock paid for (Tr. 113). Com Tel on January 12, 1970 received a Parker-Mawod & Co. check used to cover in part the sale of stock to Clipper Craft by subscription (Tr. 114-118, Div. Ex. 4). Eventually some of the subscribed stock from the three entities named above was never paid for and had to be sold to others (Tr. 171).

As previously noted, a report had been filed with the Utah Securities Commission on October 15, 1969 indicating that the entire issue of 5,000,000 shares had been sold out. A statement to this effect was also contained to a letter to stockholders sent by the company on October 16, 1969 (Mawod Ex. 6).

2/ Glenn, as previously noted, had been a party respondent in this proceeding.

On January 14, 1970 the underwriters for the aforementioned issue, First Fidelity Underwriters, issued a letter addressed to "Dear Brokers" in which it stated that it had notified the State Securities Commission and filed the proper papers on October 15, 1969 stating that the Com Tel issue had been completely sold out and closed. It was further stated "We have experienced that there is much discussion and difference of opinion as to when the agreed upon 90 day waiting period has been reached so that an intra-state stock may be traded out of State. We felt a letter from us might be appropriate" (Mawod Ex. 7). However, on January 21, 1970 a letter was sent by the president of Com Tel to the underwriters stating, in part, that circulating written information implying that Com Tel stock "had come to rest" in Utah without a competent legal opinion to support this position was foolhardy. He directed that no further information on Com Tel be circulated without approval of Com Tel and that efforts to promote out-of-state sales of Com Tel stock be discontinued "until competent legal opinion states that such sales are legally permissible and until suitable guide lines are available . . ." (Mawod Ex. 8).

It is undisputed that the Com Tel shares, which were the subject of these proceedings were never registered with the Commission but were offered under a claimed exemption from Registrant pursuant to Section 3(a)(11) of the Securities Act which provides in pertinent part:

> Sec. 3(a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:
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> (11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is . . . if a corporation, incorporated by and doing business within such State or Territory.

The Division contends that the claimed exemption was lost because sales of Com Tel were made from the original issue to non-residents of Utah. It presented evidence of three transactions where Utah residents purchased Com Tel stock for non-residents of Utah. One transaction involved a John B. Ellis of Phoenix, Arizona. Ellis is a brother-in-law of Hugh Jones Hintze, a director of Com Tel in 1969. In conversations between Hintze and Ellis it was agreed that Hintze would arrange for a nominee purchase in the name of a Salt Lake City friend, W.J. Patterson. Ellis sent a check to Hintze for $6500 for the purpose of buying Com Tel stock.[3] Hintze made arrangements for the purchase with Patterson and Patterson bought 65,000 Com Tel shares on September 8, 1969. He later received stock certificates which he delivered to Ellis.

Hintze made arrangements for a Dr. A.E. Siddell of Scottsdale, Arizona to purchase 10,000 shares of Com Tel. Again Hintze made use of Patterson in this transaction. Patterson received from Hintze Dr. Siddell's check for $1,000 and made the requested purchase at about the same time as the Ellis purchase. He forwarded the stock certificates he received in February, 1970 to those for whom he had acted.

John Howard Jackson, a Salt Lake City resident, acted as a nominee for Wayne Garrett, Pocatello, Idaho, in the purchase of 10,000 shares of Com Tel on the trade date of November 5, 1969.

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3 / The Division has reoffered Division Exhibit 6, a check signed by Ellis payable to Hintze, dated September 5, 1969 in the sum of $6500.00. Hintze testified that he received this check for the purpose of buying Com Tel stock, but was not sure whether he turned that check over to Patterson or issued his own check to him. It is received for the limited purpose of showing that Hintze did receive a check from Ellis to be used in the aforementioned Com Tel transaction.

The undersigned concludes that the above transactions were interstate transactions. The burden of establishing an exemption from the registration provisions of the Securities Act is upon the person advancing the claim and is strictly construed against the claimant.[4/] The Commission has held that a single sale to a non-resident destroys the exemption for the entire issue.[5/] These sales, therefore, destroyed the claimed intra-state exemption.

It is contended on behalf of the Mawod respondents that they had nothing to do with the aforementioned transactions and that it would be unfair to charge them in any way with the consequences of these transactions. They further point out that the nominee transactions of Jackson took place in November after a statement had been filed the month previous indicating that the issue of Com Tel stock had been completely sold (Div. Ex. 26).

However, the Registrant itself effected transactions in Com Tel stock.[6/] Registrant purchased 25,000 shares of Com Tel stock in the original distribution in the name of a nominee account and thus was chargeable with the terms and conditions in the subscription agreement, including the clause specifying that stock was being taken for investment purposes and was only to be sold to Utah residents.

Glenn had a general trading account at Parker-Mawod in the name of Clipper Craft in which he traded in a number of securities, including Com Tel (Div. Ex. 10). He began trading Com Tel on October 30, 1969

4/ S.E.C. v. Ralston Purina Co., 346 U.S. 119, 126 (1954).

5/ Petersen Engine Co. Inc., 2 SEC 893, 903 (1937); Professional Investors, Inc., 37 SEC 173, 175 (1956); Universal Service Corp., Inc., 37 SEC 559, 563-64 (1957). See also, Edsco Manufacturing Co. Inc., 40 SEC 865, 869 (1961); Armstrong, Jones & Company 43 SEC 888, 894 (1968).

6/ It was stipulated that the Registrant used the facilities of interstate commerce in these transactions.

and between that date and December 2, 1969 he bought and sold 50,000 Com Tel shares (Div. Ex. 30). Between December 24, 1969 and January 5, 1970 he sold an additional 78,000 shares of Com Tel through that account. He continued further sales of that stock until February 9, 1970.

Glenn had subscribed for 650,000 Com Tel shares of the 5,000,000 shares in the original offering in the names of Clipper Craft (450,000 shares), Horizon Associates (100,000 shares), and Penny Decorator (100,000 shares). These shares had not been paid for by January 1970. The Horizon Associates subscribed shares were released by the issuer on January 2, 1970 and were received by Parker-Mawod,which issued transfer instructions to re-issue those shares in certificates in the name of its nominee (Div. Exs. 12, 28). Parker-Mawod issued a check to Clipper Craft which was used in part payment to obtain the 450,000 shares subscribed for by Clipper Craft (Div. Ex. 4, 11). Two of the certificates for 75,000 shares each were received by Parker-Mawod (Div. Exs. 13, 14), which issued transfer instructions to reissue the certificates in the name of its nominee (Div. Exs. 28, 29). The shares were then sold to customers.

Glenn had subscribed to more than ten percent of the original issue of Com Tel stock. He paid for and received a substantial number of those shares in January, 1970. He had made a series of sales in the Clipper Craft account at Parker-Mawod and blocks of the shares he received from the issuer were used to meet those commitments. Thus, Glenn was a statutory underwriter as defined in the Securities Act as a person who has purchased a security from an issuer with a view to its distribution. (Sec. 2(11)). Parker-Mawod aided and abetted Glenn by permitting him to make substantial sales from the Clipper

Craft account and by acting for him in the distribution of his shares to the public. At the very least, Parker-Mawod is chargeable with knowledge that in January 1970 the Com Tel offering had not been completed.[7]

At about the time Parker-Mawod was assisting Glenn in his acquisition of Com Tel subscription shares, it also sold Com Tel shares to a retail customer Madelain Farah Habib. Her account was opened on January 12, 1970 and on that date Parker-Mawod sold her 3,000 shares of Com Tel. The Division contends that this was an interstate sale because Mrs. Habib was domiciled in Portland, Oregon and was in Salt Lake City temporarily for the purpose of attending school.

Mrs. Habib's "Client Application Form," which she completed herself, shows the printed line headed, "Business Address", crossed out and "Permanent Address" written above it, followed by a Portland, Oregon address. A Salt Lake City address is listed at another place on the form. (Div. Ex. 24). Mrs. Habib's ledger account sheet shows a Salt Lake City address crossed out and a Portland, Oregon address substituted (Div. Ex. 23).

The account executive with whom Mrs. Habib dealt testified that Mrs. Habib told him she had been living in Salt Lake City for approximately two years while completing work for an advanced degree at the University of Utah, that she retained ownership of a homein Portland, and that she wished to use a Portland address to avoid losing mail in case she moved in Salt Lake City.

7/ The Mawod respondents contend that there is no proof that any of the sales from the Clipper Craft account were to out-of-state customers. However, the intra-state exemption had been lost by other transactions. (See, Op. Gen. Counsel, Sec. Act Rel. 1459 (1937)). It is conceded that Parker-Mawod used the mails in its transactions.

It is evident that at the time of the Com Tel transaction Mrs. Habib was a temporary resident of Utah and her domicile was in Oregon. The Commission has interpreted the residence requirement in the statute to mean domicile in the conflict-of-laws sense.[8] The sale to Mrs. Habib, therefore, was an interstate sale.

Parker-Mawod also made two sales of Com Tel stock in March, 1970 to customers in Cincinnati, Ohio, each for 5,000 shares. In these cases, as well as in other Parker-Mawod transactions, it is contended that the original Com Tel distribution had been completed and the shares subject to the distribution had "come to rest" prior to any transactions by Parker-Mawod, so that interstate sales could thereafter take place without loss of the original intra-state exemption.[9] Reliance is placed on the certificate of the completion of the distribution filed by the Com Tel underwriters on October 15, 1969 and, especially, on a letter from an attorney, Edwin J. Pond, dated February 27th, 1970, addressed to "Over the Counter Brokers Association", Salt Lake City, rendering an opinion as to the secondary sales or resales of Com Tel, Inc.[10]

In his letter Edwin Pond reviewed the history of the Com Tel offering and steps taken to insure that the offering would be exempt as an intra-state offering. He reviewed applicable law and noted that for the intra-state exemption to apply securities must ultimately come

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8 / Loss, "Securities Regulation", VoI., p. 598, Vol. IV, p. 2603.

9 / Op. Gen. Counsel, Sec. Act Rel. 1459 (1937), Brooklyn Manhattan Transit Corp., 1 SEC 147, 162-63 (1935).

10/ Mawod Ex. 9. The respondents contend that a copy of this letter was in their Com Tel "Due Diligence" file, although it was not stamped as such.

to rest in the hands of residents within the state. He pointed to the secondary market which had developed in Com Tel after the offering was formally closed and stated that the question could be raised as to whether or not the stock ultimately had come to rest in the hands of Utah investors. He then dealt with the question when the original distribution had been concluded and gave his opinion that sales by a dealer after 40 or 90 days are not in the course of distribution and that broker-dealers could then commence to trade the securities of Com Tel to non-residents of Utah in a secondary distribution.

However, Pond concluded his letter with the following paragraph:

> "This letter is to and for the information of the Over-the-Counter Brokers Association of Salt Lake City, Utah, and is not intended separately to advise others respecting their individual or special cases. This opinion is based on a summary examination of facts involved in an intrastate offering of securities and my search of said factual matters was not exhaustive. Therefore, since this letter is written for brokers, I would at this time caution them as to further trades. It is clear that brokers are considered dealers under the Securities Act of 1933 and that sales executed by brokers may be deemed distributions. This may partiicularly be true if the principal for whom the sale is made is affecting [sic] a distribution. Thus I would caution brokers to know the customers they are acting for and take whatever steps are necessary to be informed as to any particular transaction."

This cautionary language applied with particular force to Parker-Mawod. It was aware, through the Clipper Craft account, that an unrestricted secondary market had developed in Com Tel in October 1969 immediately after the closing statement for Com Tel was filed. It had good reason to understand that the original distribution had not been completed when it furnished funds which were used to secure some of the original distribution of Com Tel stock for Glenn, received such certificates, and took the steps necessary to process those certificates for further

distribution. It had good reason to understand that Glenn was effecting a distribution of Com Tel stock, but the record is barren of any evidence that it took any of the protective steps mentioned in Pond's letter. It is concluded that the original distribution of Com Tel stock was continuing as late as January 1970 and that the intra-state exemption was not available for the sale of these securities not only by reason of interstate sales to non-Parker-Mawod customers, but also by reason of Parker-Mawod transactions in the Clipper Craft account, its sale to Mrs. Habib in January 1970, and its sales in March 1970 to two Cincinnati, Ohio investors just a few weeks after important distribution steps had occurred.

The Mawod respondents contend further that the Parker-Mawod transactions were exempt transactions under the terms of Section 4 of the Securities Act and that the provisions of Section 5 are not applicable to them. They rely on Section 4(1) and 4(4). Section 4(1) exempts transactions by any person other than an issuer, underwriter, or dealer. Parker-Mawod was a dealer as defined in the Securities Act (Section 2(12)) and cannot rely on that exemption clause.

Section 4(4) exempts "brokers transactions executed upon customers orders . . . . in the over-the-counter market but not the solicitation of such orders". However, the Commission has held that that exemption is limited to unsolicited transactions which are not part of a distribution by underwriters.[11/] It has been found that Glenn was an underwriter of Com Tel stock by virtue of his engaging in a distribution. The exemptive provision of Section 4(4), therefore, cannot be availed of here.

11/ Ira Haupt & Company, 23 S.E.C. 589, 600-606 (1946); Whitney & Company, 41 S.E.C. 699, 701 (1963).

Finally, it is urged that the violations, if any, were not willful because the respondents could not know that sales to non-residents were being made by brokers other than Parker-Mawod and they did not intend to commit violations. It is well established that a finding of willfulness under the Exchange Act does not require an intent to violate, but merely an intent to do the act which constitutes a violation.[12/] The Commission has also held that brokers have a responsibility to be aware of the requirements necessary to establish an exemption from the registration requirements of the Securities Act and be reasonably certain that such an exemption is available before engaging in transactions which raise a question of compliance with those requirements.[13/] The respondents in their own dealings with customers had plenty of warnings that further investigation by them was required, but did not exercise the care required of them.[14/] It is concluded that the Registrant, Parker-Mawod & Co., now known as Edward J. Mawod & Co., Edward J. Mawod and Trent J. Parker, general partners in the Registrant, willfully violated and willfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities

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

13/ See, e.g., Strathmore Securities, Inc., Securities Exchange Act Release No. 8207, p. 8 (December 13, 1967); Mark E. O'Leary, Securities Exchange Act Release No. 8361, p. 7, n. 13 (July 25, 1968). As two Courts have stated, "Brokers and salesmen are under a duty to investigate and their violation of that duty brings them within the term willful." Hanly v. S.E.C., 415 F. 2d 589, 595-6 (C.A. 2, 1969); Quinn and Company, Inc. v. S.E.C., 452 F. 2d 943, 947, (C.A. 10, 1971), cert den., 406 U.S. 957 (May 30, 1972).

14/ Respondents claim they relied on the Pond letter in February 1970, but they were aware of, among other things, the letters by First Fidelity Underwriters and the Com Tel management in January 1970 which should have concerned them.

Act in the offer to sell, sale, and delivery after sale of the common stock of Com Tel, Inc. when no registration statement was filed or in effect as to said securities prusuant to the Securities Act.

3. Violations of Regulation T and Section 7 of the Exchange Act.

It is alleged in the order that from on or about December 16, 1969 Parker-Mawod willfully violated and Parker and Mawod willfully aided and abetted violations of Section 7 of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System. The statutory and regulatory provisions deal with margin and credit requirements in securities transactions. In essence, the Division has charged that the Mawod respondents permitted prohibited short sales in a customer account and improperly extended credit.

These respondents, in addition to denying the commission of any violations, have also claimed that the Division waived any right to press a charge of improper extension of credit. They rely on a colloquy immediately before the Division rested its direct case, in which counsel for the Division was asked to further detail the basis for the claim of Regulation T violations (Tr. 280-284). Counsel indicated that he was relying on the allegations in the order set forth in paragraphs IID and E. He made no waiver, but did state that he was relying on transactions occurring in the Clipper Craft account in the securities of Com Tel between December 24, 1969 and January 21, 1970. Accordingly, the following findings will relate to those transactions, although there are some references in filed documents to other possible violations on other dates.

Section 7(c) of the Securities Exchange Act provides in relevant part:

> "(c) it shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer--
>
> "(1) on any security (other than an exempted security), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System shall prescribe under subsections (a) and (b) of this section . . . ."

Section 4(c) of Regulation T issued by the Board of Governors provides in relevant part:

> "(1) In a special cash account, a creditor [broker-dealer 15/] may effect for or with any customer bona fide cash transactions in securities in which the creditor [broker-dealer] may:
>
> " . . .
>
> "(ii) Sell any security for, or purchase any security from, any customer, provided the security is held in the account or the creditor [broker-dealer] is informed that the customer or his principal owns the security and the purchase or sale is in reliance upon an agreement accepted by the creditor [broker-dealer] in good faith that the security is to be promptly deposited in the account."

It was stipulated that the Clipper Craft account at Parker-Mawod was a "special cash account" (Tr. 283). In a "special cash account" a broker-dealer is permitted to effect only "bona fide cash transactions in securities." Section 4(c)(1). He may sell a security in a special cash account only if "the security is held in the account" of the customer or when the broker-dealer "is informed that the customer . . . . owns the security and the purchase or sale is in reliance upon an agreement accepted by the . . . [broker-dealer] in good faith

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15/ For purposes of Regulation T: "The term 'creditor' means any broker or dealer . . . ." Section 2(b) of Regulation T, 12 CFR 220.2(b).

that the security is to be promptly deposited in the account." Thus promptness is of the essence in a "bona fide cash transaction" in a special cash account. While there is no specific delivery-date requirement, this in no way suggests that unnecessary delay may be tolerated consistently with the requirements of Regulation T. (25 Fed. Res. Bull. 466 (1939); Naftalin & Co., Inc., 469 F. 2d 1166, 1176-78 (C.A. 8, 1972).

A customer using a special cash account represents that he owns the securities he directs a broker-dealer to sell. He cannot use that account for short sales.16/ Such sales are governed by special rules requiring appropriate collateral in margin accounts.17/

The Clipper Craft account at Parker-Mawod reflects transactions in a number of securities between October 3, 1969 and February 27, 1970 (Div. Ex. 10). The Com Tel activity in that account was abstracted and tabulated by a Commission investigator (Div. Ex. 30). There had been Com Tel transactions in the account between October 30 and December 8, 1969. At the latter date the account was in balance with reference to the receipt of securities sold.

On December 24, 1969, 7 sales totalling 36,000 shares of Com Tel were made from the Clipper Craft account. Additional sales were made on December 29 (one for 15,000 shares and one for 6,000 shares), and on December 30 for 3,000 shares; and 5,000 shares were sold on December 31, 1969.

In 1970, sales were made on January 2, (6,000 shares) and January 5, (7,000 shares). At that point 78,000 shares had been sold out of

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16/ A "short" sale is one effected at a time when the seller does not own the security. See Rule 3b-3 of the rules and regulations under the Exchange Act.

17/ Regulation T, Section 8(d).

the account. Each sale was credited to the account immediately so that total credits of $8,105.00 had been posted to the account. On January 5 additional events transpired. Checks were issued to Clipper Craft for $3,565.00 and 2,272.50 for a total of $5,837.50. Also 100,000 shares were received into the account. These were in the form of two certificates for 50,000 shares each made out to Horizon Associates and released by Com Tel on January 2, 1970 (Tr. 121). There is no definitive evidence whether the aforementioned checks were issued before the certificates were furnished. Respondents assert the checks would not have been issued unless this had been done.

Between January 6 and January 8, 1970, 16,000 shares of Com Tel were sold through the Clipper Craft account in five transactions. The account was still long on its position balance.

On January 8, an additional sale of 9,000 shares was made, leaving the account 3,000 shares short. Additional sales were made on January 13 of 24,500 shares in six transactions. At that point the account was short 27,500 shares. Deliveries were made into the account on January 19 (13,000 shares) and January 21, (45,000 shares). The account then remained in a long position on Com Tel until it became in balance on February 9.

The checks totalling $5,837.50 which Glenn had withdrawn from the Clipper Craft account on January 5 were endorsed by him, First Fidelity Underwriters, the underwriter for Com Tel, and Com Tel itself (Div. Ex. 11). Com Tel received the checks on January 12, (Div. Ex. 4) and accepted them as part payment on the Clipper Craft subscription (Tr. 124). Clipper Craft subscribed shares were released, in part, on January 16th. Glenn used part of the certificates thus obtained to place the Clipper Craft account in a long position.

The record establishes that commencing on December 24, 1969 Glenn made use of the Clipper Craft account to make extensive sales of Com Tel stock when the account was in a short position on that stock. This condition continued for a total of 12 days. The trader for Com Tel testified that he inquired of Glenn when each sale was made whether Glenn had the securities in his possession and Glenn assured him that he had Com Tel stock, having bought the shares in the underwriting (Tr. 328-330). However, if Glenn had the necessary shares no explanation has been given for the failure of Parker-Mawod to obtain the shares from Glenn for a long period other then the statement that this was a holiday period. The trader further testified that during that period it was a custom for local brokers to use a seven day delivery period (Tr. 331-32). Here a much longer period was allowed. It is concluded that Glenn was using the Clipper Craft account to effect short sales and that Parker-Mawod permitted him to do so. Had they pressed Glenn or made inquiries from the underwriters they would have found out that Glenn had defaulted in payment for his subscriptions and had been pressed unsuccessfully for months to make payment. He was manuevering to make payments for Com Tel stock and meet commitments as he could. The respondents aided him by their liberal treatment of him and failure to press him to avoid misuse of his Clipper Craft account.

In later sales, the Clipper Craft account was permitted to be 3,000 Com Tel shares short from January 8 and an additional 24,500 shares short from January 13. Deliveries were made into the account on January 13 and January 19 when the account position became long. Thus the account was 3,000 shares short for eleven days and 17,500 Com Tel shares short for eight days. With the prior experience respondents had had with

the Clipper Craft account from December 24 to January 5, the respondents were not fulfilling their responsibilities in permitting Glenn to again take his time in meeting his obligations under the Exchange Act. It is concluded that Parker-Mawod willfully violated and Parker and Mawod willfully aided and abetted violations of Section 7(c) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System by permitting the Clipper Craft special cash account at Parker-Mawod to be used to effect short sales without requiring prompt deposit in the account of the securities sold.

The Division contends that the Mawod respondents improperly extended credit to Glenn in the Clipper Craft account. The Mawod respondents contend that there was no improper extension of credit, maintaining that while Glenn was allowed to withdraw sums from the account he was only permitted to do so when his account of Com Tel shares was long. They also rely on testimony of the Commission investigator who analyzed the Clipper Craft account and who testified he could not find any extension of credit to Glenn in the Clipper Craft account (Tr. 265).

While there had been no extension of credit to Glenn in the sense that he had been allowed to withdraw funds from the Clipper Craft account before short positions had been covered, the very existence of short sales in special cash accounts constitutes improper extension of credit. When Glenn started to sell Com Tel on December 24, 1969, his balance in Clipper Craft account was $122.50 (Div. Ex. 10). He ran this balance up to $8,487.50 on January 5, 1970, all on sales of Com Tel for which he had not put up a penny. If these transactions had been entered in a special or margin account, Glenn would have been required to put up funds in accordance with applicable rules and regulations. This was another aspect of the

misuse of the Clipper Craft special cash account. The conduct of the Mawod respondents in permitting this situation was willfully violative of Section 7 and Regulation T.

B. Respondent Jerry R. Zabriskie

Among those named in the order are First Fidelity, Inc., a Utah corporation, which became registered as a broker-dealer on May 20, 1970 under the name of First Fidelity Underwriters and whose name was later changed to First Fidelity, Inc.; William B. Hesterman, its president, a director and beneficial owner of 33 1/3% of its equity securities; David R. Nemelka, from June 1969 to July 1970 a director, vice president and beneficial owner of 33 1/3% of First Fidelity's equity securities; and Jerry R. Zabriskie, from June 1969 to July 1970, a director, secretary-treasurer and beneficial owner of 33 1/3% of the equity securities of First Fidelity. Of this group, only Zabriskie remains as a party respondent.

First Fidelity Underwriters was organized in 1969 by Hesterman, Nemelka and Zabriskie and they engaged in business as broker-dealers under that firm name. Zabriskie had an ownership interest, and an officer position, and when he passed the NASD examination he also became a registered representative for the firm. He had a drawing account and was entitled to share in the profits. Zabriskie maintained that he resigned from First Fidleity in May or June 1970, but the Division contends that he maintained an association with the firm at least until the Fall of 1970. It also is undisputed that he held his ownership interest in First Fidleity until August 1970 and after that date the interest was held in his wife's name. He sold this interest

in late 1970 or in 1971. The broker-dealer files at the Commission reflect that Zabriskie was deleted as a principal in July 1970 from the registration of First Fidelity.

The order, as amended, alleges that during the period from about July 1969, First Fidelity and Zabriskie willfully violated and willfully aided and abetted violations of Section 5(a) and 5(c) of the Securities Act in the offer, sale, and delivery after sale of shares of the common stock of Com Tel Inc. Similar violations are charged to these parties in connection with the offer to sell, sale and delivery after sale of debt securities and shares of the common stock of Hydroponics, Inc. (formerly known as Royal Garden Farms, Inc.). It is further alleged that First Fidelity and Zabriskie violated the anti-fraud provisions of the Securities Acts in connection with the offer and sale of securities of Hydroponics, Inc.[18/] A final allegation relating to these parties is that First Fidelity willfully violated and Zabriskie willfully aided and abetted in violations of statutory rules and regulations relating to the financial responsibility of brokers and dealers.[19/]

18/ Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The composite effect of these provisions, as applicable here, is to make unlawful the use of the mails or interstate facilities in connection with the offer or sale of any security by means of a device or scheme to defraud or untrue or misleading statements of a material fact, or any act, practice, or course of conduct which operates or would operate as a fraud or deceit upon a customer or by means of any other manipulative or fraudulent device.

19/ Registered brokers and dealers pursuant to the provisions of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder, are prohibited for making use of the mails and facilities of interstate commerce to effect transactions in and to induce and attempt to induce the purchase and sale of securities when their agregate indebtedness to all other persons exceeds 2,000% of their net capital. A minimum net capital of $5,000 is also required.

Zabriskie did not challenge the alleged violations by First Fidelity. His defense, in general, was that he and his associates knew very little about the brokerage business when they commenced operations, but attempted to comply with legal requirements. He further maintained that his associates controlled the operations of First Fidelity, that he did not have a controlling voice and he resigned in 1970 because of disputes he had with his associates.

1. Violations of Section 5(a) and 5(c) of the Securities Exchange Act, in the Offer, Sale and Delivery of Securities of Com Tel Inc.

First Fidelity was the underwriter of the 5,000,000 share offering of Com Tel sold under a claimed exemption from registration under the Securities Act as involving intra-state sales only. The issues raised in connection with this offering have been dealt with in detail in a prior section of this initial decision where it was concluded that the intra-state exemption did not apply and that this issue was offered and sold in violation of Section 5 of the Securities Act.

Zabriskie participated in the offer and sale of the stock of Com Tel. As part of his duties as an officer of First Fidelity, he received cash payments from the sale of Com Tel stock, executed subscription agreements, notarized affidavits of investors in connection with the offering and had investors sign receipts.

Zabriskie admitted participation in the underwriting of Com Tel and in the sale of its securities (Div. Ex. 93, pp. 9). He knew that payment by Glenn on his subscription was delayed (Div. Ex. 93, pp. 19-20). He also knew that Com Tel withheld issuing stock certificates until the stock was paid for, that Glenn eventually never did make full payment

for his stock and that ultimately First Fidelity had to buy approximately $10,000 worth of the stock subscribed for by Glenn for which he did not make payment (Div. Ex. 93, pp. 25-26).

Despite his participation in the Com Tel offering and his knowlege of the difficulty of obtaining payment from Glenn, which problem continued until January 1970, Zabriskie did nothing when a statement was filed by First Fidelity on October 15 that the underwriting had been completed and when First Fidelity issued a letter in January 1970 to the local brokerage community encouraging interstate sales of Com Tel, and also when Com Tel rebuked First Fidelity for this activity. As a principal of First Fidelity and a participant in the distribution of the Com Tel offering, Zabriskie had an obligation to take action to avoid violations of the Securities Act by First Fidelity. His failure to do so plus his participation in the distribution with knowledge of violations taking place constituted willful violations of the registration provisions of the Securities Act, as alleged.

2. Violations of the Registration Provisions of the Securities Act and the Anti-Fraud Provisions of the Securities Acts in the Offer, Sale and Delivery of Securities of Royal Garden Farms.

According to Zabriskie, sometime in June 1970 Nemelka told him and Hesterman that First Fidelity had agreed to raise $20,000 for Royal Garden Farms, Inc., ("RGF"), later known as Hydroponics Inc., that this had to be raised in units of $5,000, and that he, Nemelka, had already raised $5,000. He told Zabriskie that he had the assignment to raise the remaining amount (Div. Ex. 87 pp. 15-17). Shortly after, Nemelka left for Europe.

RGF was a Utah corporation incorporated in 1969 for the purpose of contructing and operating commercial hydroponic greenhouses designed

to produce agricultural crops in quantity. During the relevant period it was engaged in growing tomato crops. On May 11, 1970 it filed a notification and offering circular, and subsequently filed amendments thereto, for the purpose of obtaining an exemption from the registration requirements of the Securities Act pursuant to Section 3(b) thereof and Regulation A thereunder, with respect to a public offering of 3,000,000 shares of its $.04 par value common stock at $.10 per share. First Fidelity was not the original underwriter for this issue, but it was named in an amendment filed on June 15, 1970 (File No. 24D-2975-1). The underwriting commitment of First Fidelity continued thereafter.

Nemelka gave Zabriskie two printed forms to use. One form stated that receipt was acknowledged of a loan to RGF, the consideration for the loan would be the issuance of shares of the Company's $.10 par value common stock. No interest would be payable and shares would be issued as soon as a recapitalization was completed. It was further stated that the shares would be taken for investment purposes only. The document was signed by the president of RGF and had a blank space for the other person to the loan agreement to sign his name (Div. Ex. 88). Another printed form which was supposed to be signed by an investor was a letter addressed to RGF stating that in connection with acquisition of shares of common stock of RGF it was represented that the shares were being acquired for investment and that restrictive legends could be imprinted on share certificates. (Div. Ex. 89).

Zabriskie proceeded to actively solicit "loans" under the arrangement described above in June, July and August 1970. He obtained $5,000 from a Howard Cahoon on June 17, 1970 and signed the form, noting that 25,000 shares of RGF stock was the consideration for the loan (Div. Ex. 44). Zabriskie had recommended the investment.

A Herbert Bolke invested in RGF through First Fidelity by giving his check for $1,000 payable to First Fidelity on June 25, 1970. He spoke with several persons at First Fidelity and Zabriskie helped put him into a group which collectively made up a $5,000 unit investment (Tr. 519).

Zabriskie dealt with a group which collectively was called the LOLNK group. Zabriskie worked out the arrangement for the LOLNK group to invest a total of $7,000.

Zabriskie also spoke with a personal friend, Vern Staker, and discussed RGF with him, after which Staker mailed his check dated July 6, 1970 for $5,000 payable to First Fidelity (Div. Ex. 71). Zabriskie signed a form receipt acknowledging a loan for $5,000 as consideration for 25,000 shares of RGF stock (Div. Ex. 72). Another investment in the sum of $1,000 was made by a Blair Malouf by check dated July 27, 1970 payable to First Fideltiy (Div. Ex. 76). Malouf made this investment after discussing it with Zabriskie. Ultimately $25,000 was raised by First Fidelity in the form of these loans. Some of the persons who had made these so called interest-free loans were mentioned in an amendment to the Regulation A filing made on September 8, 1970. A complete list was contained in an amendment filed on October 6, 1970. Zabriskie and First Fidelity used the mails in the loan and stock transactions described above.

The investors who advanced money to RGF through solicitation by First Fidelity and its principals were actually being sold unregistered stock as part of the so-called "loan" arrangement. They were unsophisticated investors who had little knowledge of RGF. Contrary to statements made in the amended notification, filed October 6, 1970, they were not officers, directors or key employees of the Company or close business associates of such persons who were fully informed concerning the affairs of the Company

and who had access as a matter of right to the information which registration would give. The investors did not have access to the books of RGF and only received sketchy information about its affairs. Under these circumstances it is concluded that the claimed private offering exemption under Section 4(2) of the Securities Act was inapplicable and these securities were being offered and sold in violation of Section 5(a) and (c) of the Securities Act.

Zabriskie made no investigation of the financing plans of RGF or any detailed examination of its financial situation or the legality of the loan transactions. On his own testimony, he proceeded to interest investors in the loan transactions using the forms given him by Nemelka. He was an active participant in these arrangements and raised a majority of the money accumulated by First Fidelity for RGF. Under these circumstances it is concluded that Zabriskie willfully violated Section 5 of the Securities Act in the offer and sale of the securities of RGF.

Zabriskie was uncertain as to the information he gave investors about RGF. He testified that he thought he told them that RGF was losing money (Div. Ex. 41) and gave them other adverse information on the prospects of RGF in order to make a balanced presentation. However, this testimony is contradicted by investors who dealt with Zabriskie and who testified that he not only did not tell them of RGF's adverse financial position, but told them that RGF was doing well in its business operations, the tomatoes RGF were raising were in demand, RGF was making money and operating at a profit and needed money from investors to expand its operations.

The undersigned found the testimony of the investor witnesses mutually corroborative, clear, and detailed, while Zabriskie was very

uncertain as to just what he told them. The undersigned credits the testimony of the investor witnesses and concludes that Zabriskie willfully violated the anti-fraud provisions of the Securities Acts by engaging in the public distribution, offer and sale of securities of Royal Garden Farms, Inc. (now known as Hydroponics, Inc.), and in connection therewith failed to make responsible and diligent inquiry as to the true nature and worth of such securities, which inquiry would have revealed adverse information as to its financial situation, earnings, and operations; and that he made untrue and incomplete statements about the business and prospects of Royal Garden Farms, its financial condition, the profitability of its operations and its securities.

On January 7, 1971 the Commission issued its Order Permanently Suspending the Exemption from Registration with respect to the proposed offering of securities by Hydroponics, Inc. pursuant to Regulation A (Sec. Act Rel. No. 5124). The Commission noted that on November 5, 1970 it had issued an Order Temporarily Suspending the Exemption on allegations that the notification and offering circular, as amended, contained untrue and misleading statements of material facts by, among other things, failing to disclose that certain persons to whom the issuer had issued stock as consideration for interest-free loans were incorrectly described with respect to their relationship to the issuer and the extent of their information concerning the issuer. It was further alleged that the issuer and underwriters, in the distribution of the issuer's securities, had violated the registration and anti-fraud provisions of the Securities Act. The order of permanent suspension was issued when the issuer stated that it was willing to permit the temporary order to become permanent and did not wish to request a hearing.

Zabriskie as a principal of the broker-dealer firm which acted as underwriter for the Royal Garden Farms securities had a duty to see to it that the notification and offering circular filed by Royal Garden Farms were true and correct. He not only failed to carry out that responsibility but directly participated in conduct that rendered the material filed incomplete and misleading. This conduct was willfully violative of the Securities Acts.

3. Violations of the Financial Responsibility Provisions of the Exchange Act.

It is alleged in the order that First Fidelity and Zabriskie willfully violated and willfully aided and abetted violations of the financial responsibility provisions contained in Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.

A Commission investigator testified that he examined the books and records of First Fidelity from the period March 31, 1970 to December 31, 1970 and found net capital deficiencies for all the months, except for the month ending April 30, 1970 which he did not examine, ranging from a low of $1,478.10 for the month of December 1970 to $29,225 for the month of May 1970. During this period First Fidelity was conducting securities transactions as a broker-dealer and Zabriskie had a 1/3 interest in the business. He also took an active part in the operations of First Fidelity at least until the Fall of 1970. Zabriskie did not challenge the evidence presented, and it is concluded that First Fidelity was in violation of the net capital provisions of the Exchange Act and rules thereunder between March and December 1970.

Here again, as in the case of other alleged violations contained in the order, Zabriskie maintained that he was not in control of the

operations of First Fidelity and knew little of any possible violations alleged here. However, the violations found were repeatedly brought to the attention of the principals of First Fidelity by the Commission investigator. Yet, Zabriskie, according to his own testimony, did not make any effort to see to it that First Fidelity was living up to its obligations under the Exchange Act. This disregard of his responsibilities constituted willful aiding and abetting of the violations committed by First Fidelity.[20/]

III. CONCLUDING FINDINGS, PUBLIC INTEREST

The Commission, pursuant to the provisions of Section 15(b)(5) of the Exchange Act, so far as it is material herein, is required to censure, suspend for a period not exceeding twelve months or to revoke the registration of any broker or dealer if it finds that such action is in the public interest and that such broker or dealer, subsequent to becoming such, has willfully violated any provision of the Exchange Act, the Securities Act, or any rule or regulation thereunder. It also may, pursuant to the provisions of Section 15(b)(7) of the Exchange Act, censure, bar, or suspend for a period not exceeding twelve months any person from being associated with a broker or dealer if it finds that such sanction is in the public interest and that such person has willfully violated any provisions of the Exchange Act, the Securities Act, or any rule or regulation thereunder.

It has been found that Parker-Mawod & Co., now known as Edward J. Mawod & Co., and Trent J. Parker and Edward J. Mawod, at all relevant times

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20/ Aldrich, Scott & Co., Inc., 40 S.E.C. 775, 778 (1961); Luckhurst & Company, Inc., 40 S.E.C. 539, 540 (1961).

herein, general partners of Parker-Mawod & Co., willfully violated and willfully aided and abetted violations of Sections 5(a) and (c) of the Securities Act in the offer, sale and delivery after sale of the common stock of Com Tel Inc. It has also been found that Parker-Mawod willfully violated and Parker and Mawod willfully aided and abetted violations of Section 7(c) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System in that said respondents directly and indirectly extended and maintained credit to and for customers in violation of applicable regulations and also established special accounts for customers without complying with regulatory safeguards.

In addition to arguments that no violations were committed by the Mawod respondents, which contentions have been disposed of by the findings herein, it is urged on their behalf that they have never been the subject of any S.E.C. proceeding, that they enjoy a fine reputation in their community, and that it would not be in the public interest to impose sanctions upon them.

The Mawod respondents played important parts in the interstate distribution of Com Tel stock. Sales were made directly by them. They assisted Glenn, who was a key figure in the distribution, to carry out his plans through his Clipper Craft account at Parker-Mawod in violation of Exchange Act and Regulation T requirements. Investors were deni. the protection of the registration provisions of the Securities Act by this conduct. It is concluded that it is appropriate in the public interest to impose a period of suspension upon these respondents and that it should be for a period of sixty days.

Jerry R. Zabriskie has been found to have willfully violated and willfully aided and abetted violations of Sections 5(a) and (c) of the Securities Act in the offer, sale and delivery after sale of the common stock of Com Tel Inc. and debt securities and shares of the common stock of Royal Garden Farms, Inc. (now known as Hydroponics, Inc.). He has also been found to have willfully violated and willfully aided and abetted violations of the anti-fraud provisions of the Securities Acts in the offer and sale of those securities. In addition, it has been found that Zabriskie willfully aided and abetted violations of the financial responsibility requirements set forth in the Exchange Act and applicable rules.

While Zabriskie maintained that he played a subordinate role in the control and operation of First Fidelity, he had an equal ownership interest in it with his two associates and thus had an equal voice and equal responsibility in the management and operation of First Fidelity. He failed to live up to those responsibilities. In fact, he directly participated in the violations and played an important role in the Royal Garden Farms violations.

The violations by Zabriskie were serious and the undersigned concludes that it is in the public interest to issue an order barring him from association with any broker or dealer. A remaining question is whether he should conditionally be afforded an opportunity to return the securities field at a future date. During the hearing, it became very apparent that Zabriskie had little knowledge of the duties and

responsibilities of a principal in a broker-dealer firm. There is some doubt of his understanding of the obligations of a securities salesman also. However the undersigned has concluded that he should be given a further opportunity to reenter the securities field in a non-supervisory capacity if he can persuade the Commission that it is in the public interest for him to be given this further opportunity. Accordingly,

IT IS ORDERED that the registration as a broker-dealer of Edward J. Mawod & Co., is hereby suspended for sixty (60) days.

FURTHER ORDERED that Edward J. Mawod and Trent J. Parker each hereby are suspended from association with any broker or dealer for sixty (60) days.

ALSO ORDERED that Jerry R. Zabriskie is barred from being associated with any broker or dealer, provided, however, that after one year he may apply to the Commission for permission to become so associated other than in a principal or supervisory capacity upon an adequate showing that he will be properly supervised. 21/

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within fifteen days after service thereof on him. This initial decision

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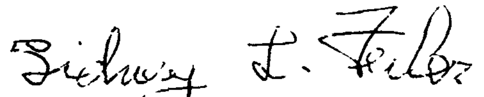
21/ All contentions and proposed findings and conclusions have been carefully considered. This initial decision incorporates those which have been accepted and found necessary for incorporation therein.

pursuant to Rule 17(f) shall become the final decision of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or the Commission, pursuant to Rule 17(c), determines on its initiative to review this initial decision as to him. If a party timely files a petition to review or the Commission takes action to review as to a party, this initial decision shall not become final as to that party.



Sidney L. Feiler
Administrative Law Judge

June 28, 1974
Washington, D.C.