ADMINISTRATIVE PROCEEDING
FILE NO. 3-4330

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

COHEN GOREN EQUITIES, INC.
L. M. ROSENTHAL & CO., INC.
IRVING ATHERTON
STEPHEN IRWIN FISCHGRUND
DANIEL S. BRIER & CO., INC.
DANIEL S. BRIER
ROBERT W. STEVEN CORP.
ROBERT ISAAC KONIGSBERG
SCHWEICKART & CO.
JOHN RADIN
SINGER & MACKIE, INC.
NATHAN SHAPIRO
BARID PATRICK & CO.
DANIEL LANKTREE

INITIAL DECISION

February 28, 1975
Washington, D.C.

Ralph Hunter Tracy
Administrative Law Judge

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INITIAL DECISION

APPEARANCES: William Nortman, Franklin Ormsten, Jeffrey Tucker, John J. O'Connor and Stuart Perlmutter of the New York Regional Office for the Division of Enforcement

Charles D. Edelman of Simpson, Thacher & Bartlett for L. M. Rosenthal & Co., Inc.

Laurence Shiff for Nathan Shapiro

Eugene R. Anderson and Robert M. Morgenthau for Stephen I. Fischgrund

Joel S. Hanover of Borden & Ball for Singer & Mackie, Inc.

Henry F. Minnerop of Brown, Wood, Fuller, Caldwell & Ivey for Schweickart & Co. and John Radin

APPEARANCES: (Continued)

Philip J. O'Reilly of Delaney & O'Reilly, for Daniel Lanktree

Joseph B. Corpina of Baratta and Corpina for Irving Atherton

Leo C. Fennelly of Fennelly, Douglas & Nager for Baird Patrick & Co.

Charles Snow of Wofsey, Certilman, Haft, Snow & Becker for Robert Stevens Corp. and Robert Konigsberg

Daniel S. Brier& Co., Inc. by Daniel S. Brier, *pro se*

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

These are public proceedings instituted by an order of the Commission (Order) dated June 28, 1973, pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 (Exchange Act) to determine whether the above-named respondents, among others, committed various 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 8 respondents[1/] and offers of settlement are presently pending before the Commission with respect to 5 others.[2/] Therefore, this initial decision is applicable only to the remaining respondents although, in view of the nature of the charges and the factual circumstances, it will also, necessarily involve findings with respect to some or all of the respondents.

Section II K of the Order alleges, in substance, that during the period from on or about May 24, 1972 to February 14, 1973, Cohen Goren Equities, Inc. (CGE), Stanley Cohen (Cohen), Stephen Goren (Goren),

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1/ The Order also sets forth charges against the following persons or firms whose cases have been determined by the Commission as reflected in respective Securities Exchange Act Releases, as follows: Cohen Goren Equities, Inc., Stanley Cohen and Stephen Goren, 10252, June 28, 1973; Donald Reisfeld and Jerome Schwartz, 10359, August 23, 1973; Geraldine Chevalier, 10450, October 25, 1973; Gary Levenberg, 10544, December 11, 1973; Donald Greenbaum, 11043, October 8, 1974.

2/ The Division has withheld proposed findings without prejudice to file later and has requested that post-hearing procedures be held in abeyance pending consideration by the Commission of offers of settlement submitted by L.M. Rosenthal & Co., Inc., Stephen Fischgrund, Shaskan & Co., Inc., Sidney R. Buchman and Sanford Trontz. As regards the three latter respondents the Order was amended during the course of the hearing with their consent for purposes of their settlement offers.

L.M. Rosenthal & Co., Inc., (Rosenthal); Stephen Irwin Fischgrund (Fischgrund); Daniel S. Brier & Co., Inc. (Brier & Co.); Daniel S. Brier (Brier); Robert W. Steven Corp., (Steven); Robert Isaac Konigsberg (Konigsberg); Irving Atherton (Atherton); Nathan Shapiro (Shapiro); John Radin (Radin); and Daniel Lanktree (Lanktree), singly and in concert, directly and indirectly, willfully violated and willfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with effecting transactions in the common stock of Logos Development Corp. (Logos) by employing devices, schemes and artifices to defraud and by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

Section II P of the Order alleges that during the same period, CGE, Rosenthal, Brier & Co.; Steven Corp.; Baird Patrick & Co., (Baird); Singer & Mackie, Inc., (Singer); and Schweikart & Co., (Schweikart) willfully violated and Cohen, Goren, Fischgrund, Brier, Konigsberg, Atherton, Shapiro, Lanktree and Radin willfully aided and abetted violations of Section 15(c)(2) of the Exchange Act and Rule 15c2-7 thereunder in connection with the insertion of quotations in inter-dealer quotation media with respect to Logos stock without disclosing the existence of guarantees against loss, guarantees of profit and other similar arrangements.

The Order alleges, further, that during the relevant periods indicated above Rosenthal, Atherton, Fischgrund, Brier & Co., Steven Corp., Baird, Singer and Schweikart failed reasonably to supervise persons subject to their supervision with a view to preventing the violations alleged in the Order.

Prehearing conferences were held on September 25 and December 3, 1973, and the evidentiary hearing was held at New York, New York, from February 4 to February 15, 1974, and from March 18 to March 21, 1974, all respondents except Brier & Co. and Brier being represented by counsel. Proposed findings of fact and conclusions of law and supporting briefs were filed by the remaining parties to the proceedings except Brier & Co. and Brier. The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

Cohen Goren Equities (CGE) was organized by Stanley Cohen (Cohen) and Stephen Goren (Goren), who contributed equally to its capitalization, and was incorporated in the State of New York on November 10, 1971. CGE became registered with the Commission on December 19, 1971. In January 1972, CGE, through Cohen, began negotiations to underwrite a public offering of Logos Development Corporation (Logos) stock. On May 24, 1972 Logos' registration statement became effective for an offering of 125,000 shares of Logos $.01 par value common stock at $10.00 per share on a "best efforts, all or none basis", with CGE as the sole underwriter.

FINDINGS OF FACT AND LAW

Respondents

Rosenthal has been registered, pursuant to Section 15(b) of the Exchange Act, as a broker-dealer with the Commission since October 25, 1961. The firm's principal place of business is located at 5 Hanover Square, New York, New York. Rosenthal is a member of various national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD").

Fischgrund, during the relevant periods of time referred to herein was a vice president and stockholder of Rosenthal. During the past 13 years he has been employed in the securities industry as a trader.

Atherton, during the relevant periods of time referred to herein, was employed as a trader at Rosenthal. He has been employed in the securities business for the past 15 years, including six years as a trader.

Singer has been registered with the Commission as a broker-dealer since May 19, 1950. During the pertinent period its principal place of business was located in New York City but is now in Jersey City, N.J. Singer is a member of the NASD.

Shapiro, during the relevant periods of time referred to herein, was employed as a trader at Singer.

Brier & Co. has been registered as a broker-dealer with the Commission since June 26, 1968. The firm was a member of the NASD and maintained offices at 80 Broad Street, New York, New York.

Brier, during the relevant periods referred to herein, was the president of Brier & Co. and the owner of between 25% - 50% of the firm's common stock.

Steven has been registered with the Commission as a broker-dealer since February 19, 1972. The firm, during the relevant periods of time referred to herein, was a member of the NASD and maintained offices at 26 Broadway, New York, New York.

Konigsberg, during the relevant periods of time referred to herein, was a vice-president, director, and the owner of between 25% - 50% of Steven's common stock.

Schweickart has been registered as a broker-dealer with the Commission since May 24, 1946. It is a member of various national securities exchanges and the NASD. The firm's principal place of business is located at 2 Broadway, New York, New York.

Radin was employed by Schweickart as a trader from July 24, 1972 through August of 1973. He has been a trader for approximately 10 years. From February 1970 to March 1972 Radin was a principal in his own firm, J.R. Radin & Co.

Baird has been registered as a broker-dealer with the Commission since September 16, 1950. The firm, a member of various national securities exchanges and the NASD, maintains its principal place of business at 67 Broad Street, New York, New York.

Lanktree, during the relevant periods of time referred to herein, was employed as a trader by Baird.

All of the violations charged herein against the remaining respondents arose out of the activities of Cohen and Goren on behalf of CGE to establish and maintain a market in the stock of Logos after the offering had become effective. With respect to Cohen and Goren the Order charges, and Goren admitted during his testimony, that much of the Logos stock had been withheld from the market by being placed in nominee accounts so that when the offering became effective the stock was in short supply with the result that it opened at a premium as a "hot issue".

Accordingly, Cohen and Goren were seeking market makers to create the impression of a free and independent market while in reality keeping the price up during the period stock in nominee accounts was being sold at inflated prices. Goren testified that his nominees were to receive a percentage of the profits thus realized and he would retain the balance.

Each of the respondents was approached either directly or indirectly by Cohen or Goren, or both, to insert bid and offer quotations in inter-dealer quotation media[3/] and make a market in Logos, allegedly with an agreement or understanding that they would be "protected" by CGE. The nature of this protection took the form of a guarantee of a quarter point profit on any transaction in Logos stock. If a broker received an offer of Logos stock and purchased it he could simply reflect[4/] it to CGE and CGE would buy it at the broker's price plus a quarter of a point. If the broker

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3/ The media were the "pink sheets" published by the National Quotation Bureau, and NASDAQ the National Association of Securities Dealers Automated Quotation Service which is referred to as the "machine" and which commenced operation on February 8, 1971.

4/ Goren testified that "reflect" meant that the broker would show CGE any order the broker had, whether it was a buy or sell order, and tell CGE who the buyer or seller was. CGE could then accept it or not.

received a bid on Logos he could sell and then be supplied the stock by CGE less a quarter of a point. Although CGE agreed to guarantee only the first 100 shares in any transaction the record shows that, as a matter of fact, it accepted all transactions reflected or tendered, to it regardless of size.

During the period here pertinent Article III, Section 6, of the NASD Rules of Fair Practice, required that when a broker-dealer placed a firm quotation (bid or offer) in the pink sheets or on the machine he was obligated to honor that quotation on the first 100 share transaction tendered to him after that quotation appeared. This obligation did not apply to every subsequent transaction tendered by the same or other broker-dealers. Here CGE was obligating itself on the first 100 shares in each transaction tendered to it during the day by every broker-dealer. This offer, in itself, would appear to bring broker-dealers who accepted it within the prohibition of Rule 15c2-7 as an "accommodation arrangement".

Violations

Section II K of the Order alleges that the respondents named therein (page 1, supra,) singly and in concert, directly and indirectly, willfully violated and willfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange

Act[5] and Rule 10b-5 thereunder in connection with the offer and sale of Logos stock. As pertinent part of the aforesaid conduct, it is alleged among other things that respondents: (1) initiated, maintained, dominated, controlled and manipulated a market for Logos stock at artificially inflated price levels; (2) inserted quotations for Logos stock in the "pink sheets" and on the NASDAQ machine (hereinafter referred to as "machine") and purchased and sold Logos stock pursuant to guarantees against loss, guarantees of profit and other similar arrangements thereby lending the name and prestige of said broker-dealer respondents to the market in Logos stock and creating the false and misleading illusion of a widespread, free and independent market for such securities; (3) quoted and purchased Logos stock at artificially inflated prices without regard to the investment merit and the legitimate supply and demand for it.

Section II P of the Order alleges that the respondents named therein (page 2, supra) failed to advise the publisher of the pink sheets, NASDAQ, or the other broker-dealers quoting Logos of the existence or nature of the arrangements that existed between these respondents while they were inserting quotations on Logos in the pink

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5/ Section 10(b), as here pertinent, makes it unlawful for any person to use or employ in connection with the purchase or sale of a security any manipulative device or contrivance in contravention of rules and regulations of the Commission prescribed thereunder. Rule 10b-5 defines manipulative or deceptive devices by making it unlawful for any person in such connection: "(1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person ..." Section 17(a) contains analogous antifraud provisions.

sheets or on the machine during the relevant period, and charges that they thereby willfully violated and/or willfully aided and abetted violations of Section 15(c)(2) of the Exchange Act and Rule 15c2-7 thereunder.[6/]

6/ Section 15(c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2), proscribes the making of any "fictitious quotation". Rule 15c2-7, adopted on October 1, 1964, provides in pertinent part as follows:

> Rule 15c2-7. Identification of Quotations.
> (a) It shall constitute an attempt to induce the purchase or sale of a security by making a "fictitious quotation" within the meaning of Section 15(c)(2) of the Act, for any broker or dealer to furnish or submit, directly or indirectly, any quotation for a security to an inter-dealer-quotation-system unless:
> (1) The inter-dealer-quotation-system is informed, if such is the case, that the quotation is furnished or submitted
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> * * *
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> (B) in furtherance of one or more other arrangements (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangements) between or among broker or dealers, and if so, the identity of each broker or dealer participating in any such arrangement or arrangements; provided, however, that the provisions of this subparagraph shall not apply if only one of the brokers or dealers participating in any such arrangement or arrangements furnishes or submits a quotation with respect to the security to an inter-dealer-quotation-system.
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> * * *
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> (b) It shall constitute an attempt to induce the purchase or sale of a security by making a "fictitious quotation," within the meaning of Section 15(c)(2) of the Act, for a broker or dealer to enter into any correspondent or other arrangement (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangement) in furtherance of which two or more brokers or dealers furnish or submit quotations with respect to a particular security unless such broker or dealer informs all brokers or dealers furnishing or submitting such quotations of the existence of such correspondent and other arrangements, and the identity of the parties thereto.

L. M. Rosenthal & Co., Inc.

Rosenthal was the first brokerage firm approached by CGE to go on the machine. Cohen and Goren first talked about making a market in Logos with Atherton sometime in December 1971 or January 1972. He was told that Logos was a fine company with a revolutionary new idea and would do well. Cohen told Atherton that Logos stock was oversubscribed and "put away tight" which Atherton understood to mean that all shares had been allocated to CGE's customers and would be held after purchase and not immediately resold into the market. Atherton was advised by both Cohen and Goren that if Rosenthal, as market maker, would buy or sell 100 shares of Logos, CGE would flatten its position at a price which would yield a 1/4 point profit to Rosenthal. If Rosenthal received bids or offers in excess of 100 shares then Rosenthal could reflect such bids or offers to CGE within a reasonable time and if CGE had an interest they would buy or sell at a 1/4 point profit to Rosenthal. Regardless of the size of any transaction CGE was obligated to protect Rosenthal on the first 100 shares of each transaction reflected.

Atherton informed CGE that in order to trade Logos he would need the approval of his superior and in this connection he obtained a "red herring" which he gave to Fischgrund who was vice-president in charge of trading at Rosenthal. Although Fischgrund and Atherton had some discussions concerning Logos prior to May 24, 1972, Fischgrund could not recall what was discussed. He did not recall discussing the

business, profit picture or management of Logos with Atherton prior to May 24, 1972. Fischgrund gave Atherton permission to trade Logos. After receiving Fischgrund's approval Atherton advised Goren that Rosenthal would be a market maker in Logos and that if the offering became effective while he, Atherton, was on vacation, then Fischgrund would trade the stock for Rosenthal. Atherton went on vacation on May 19, 1972 anddid not return until May 30, 1972. Fischgrund testified that he traded Logos on May 24, 25 and 26 without any specific knowledge of the company and could not remember the basis for such trades.

On the morning of May 24, 1972, the date upon which the Logos public offering was declared effective, Goren, who was the principal trader at CGE, called Fischgrund and asked if he could visit the offices of Rosenthal to observe the trading activity in Logos. Fischgrund at first refused but then granted the request and Goren was present in Rosenthal's trading room during the first day of trading. Fischgrund and Atherton both testified that it was not customary practice to allow the underwriter of a new issue in the trading room when they were making the market in that issue and neither could recall any other occasion when an underwriter had been in the trading room during the time Rosenthal was making a market in a security.

Fischgrund testified that Rosenthal was a major market maker on OTC stocks, mainly new issues, that it made a market in 80 to 90 percent of the new issues that came out and that over the last ten years had traded 500 to a 1,000 new issues. Rosenthal's trading room was a show place

in the street with 150 to 175 direct wires to other brokers, 5 NASDAQ machines and 10 or 11 people in its trading department, 4 or 5 of whom were traders. When Goren told Fischgrund that Logos was free for trading Rosenthal flashed the news that the stock was breaking over its direct wires together with the statement that it was a market maker in Logos. Fischgrund decided what the opening bid and ask prices would be and opened the market at 18-22 to test the market. The first bid was from Smith, Jackson for 10,000 shares at 20. Fischgrund turned to Goren and said that he could get 20 for 10,000 and Goren said "you can sell it; I can offer you 10,000 at 19 3/4". For the rest of the first day when a trade came in Fischgrund first consulted Goren before accepting it. In each instance Goren accepted on the spot by saying "you can fill it. I can offer you such and such".

The offering price of Logos was 10 but the opening transaction described above was 20. According to Rosenthal's records this first transaction occurred at 1:33 P.M. Between that time and shortly after 2:20 P.M. it engaged in 26 transactions in Logos involving 13 sales to various customers totaling 22,200 shares, at prices ranging from 20 to 23, and 13 purchases of 22,200 shares from CGE to cover these sales at precisely a 1/4 point profit. At the end of the first day of trading Rosenthal's position in Logos was even, or flat. The longest time lapse between the sale of shares by Rosenthal and a corresponding purchase from CGE was 7 minutes. Fischgrund continued trading Logos on May 25 and 26 but interest had slackened and there was no more trading in Logos until May 30 when Atherton, who returned from

vacation on the 29th, took over. Between May 25 and June 14, 1972, when it ceased trading, Rosenthal engaged in 22 transactions in Logos involving 12, 175 shares at prices ranging from 19 3/4 to 23, resulting in profits of 1/8 to 1/2 and averaging about 1/4 point.

In summary, Rosenthal traded Logos stock from May 24, 1972 until June 14, 1972, during which time it engaged in approximately 48 complete transactions totaling 34,375 shares at prices ranging from 19 3/4 to 23. Of the 24 sales Rosenthal made a profit of 1/4 point on 19 and a profit of 1/8 to 1 point on 5, or an overall average of approximately 1/4 point.

The participation of Rosenthal, Fischgrund and Atherton in the market manipulation engineered by Cohen and Goren as set forth above in detail is fully supported by the record. 7/

Atherton testified he was never offered any guarantee of profit, guarantee against loss or other arrangement by Cohen or Goren for trading Logos. Fischgrund testified to the same effect.

Atherton's contentions that he was not offered protection by Cohen or Goren and that he never discussed any arrangement with Fischgrund when discussing the trading of Logos are rejected in view of the evidence to the contrary. Accordingly, it is found that Atherton willfully 8/ violated and/or willfully aided and abetted violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(2) of the Exchange Act and Rules 10b-5 and 15c2-7 thereunder. 9/

7/ Due to pending offers of settlement no findings are made concerning Rosenthal and Fischgrund.

8/ It is well established that a finding of willfullness does not require an intent to violate the law; it is sufficient that the person charged with the duty knows what he is doing. Billings Associates, Inc., 43 S.E.C. 641, 649 (1967); Biesel, Way & Company, 40 S.E.C. 532 (1961); Hughes v. S.E.C., 174 F. 2d 969, 977 (CA DC 1949).

9/ A charge of failure to supervise against Atherton was dismissed upon motion of the Division during the course of the hearing.

Singer & Mackie, Inc.

Goren testified that prior to May 24, 1972, he had discussions with Fischgrund to the effect that he would like additional market makers in Logos and that on May 24, 1972, at the Rosenthal offices, Fischgrund told him that the trader at Singer was Shapiro and that Singer would go in the sheets but Shapiro wanted to be flat at the end of each day as he did not want to have any position, long or short, in the stock overnight. Goren agreed to this condition as he felt that Singer was a good name to have in the sheets.

Singer's activity in making a market in Logos coincided with that of Rosenthal from May 24, 1972 until June 14, 1972. During this period Singer engaged in 11 complete transactions involving the sale of 2425 shares and the purchase of 2425 shares of Logos. In completing these 11 transactions Singer dealt with CGE on 8 occasions involving 2100 shares. On 7 occasions Singer sold Logos and made the covering purchase from CGE on on 1 occasion Singer purchased Logos and sold it to CGE. Singer's profit on these transactions with CGE ranged from 1/4 to 3/4 of a point.

Goren testified that Atherton called him on May 31 and again on June 1, and said that Singer was either long or short Logos and would he flatten them out. Goren asked the price and then said "fine, I will either buy or sell, you know at a quarter of a point". The record shows that Singer was short 200 shares on May 31 and long 100 shares on June 1

and that CGE flattened both positions with a 1/2 point profit to Singer. Goren did not talk to anyone at Singer on either occasion but asked Atherton to convey CGE's action as Rosenthal had a direct line to Singer.

Shapiro urges that Goren himself never directly offered an arrangement to him, that Goren never received an acceptance of such offer from Shapiro and in fact never in any way shape or form discussed any arrangement with Shapiro. Respondent points out that Fischgrund denied ever telling Goren that he had discussed any arrangement with Shapiro or that Shapiro would make a market in Logos only on the condition that he be flattened out at the close of business every day. In this connection Goren himself never testified that Fischgrund ever told him that he offered Shapiro an arrangement or that Shapiro accepted an arrangement or that Shapiro traded Logos only on the condition that he be protected. Both Fischgrund and Atherton testified that they did not tell Shapiro that CGE had promised him any protection for making a market in Logos stock.

Goren testified that all of the conversations to the effect that Singer would trade the stock but wanted to be flat every night were held with either Fischgrund or Atherton. Goren's testimony does not indicate that he ever was told by Fischgrund or Atherton that they had informed Shapiro that CGE would guarantee him a 1/4 point profit on all transactions in Logos stock.

Shapiro's argument overlooks the fact that the approach to Shapiro was through Fischgrund at Rosenthal and the reciprocal demand by Shapiro was transmitted back through Fischgrund. This demand was that Shapiro would make a market in Logos upon the condition that he be flattened every night. Once this condition was accepted by CGE, as Goren's testimony and the corroborating trading schedule show it was, then Shapiro and Singer had entered into an "other arrangement" as proscribed by Rule 15c2-7(b).

It would be naive to believe that Singer's demand to be flattened every night as a condition to its appearance in the sheets as a market maker was on a basis other than an assurance of a profit for its activities. Indeed, the record supports the finding that Shapiro, Fischgrund and CGE fully understood that the flattening of Shapiro's position each night would be at a profit to Singer. As noted earlier, all of Singer's transactions with CGE were at a profit ranging from 1/4 to 3/4 of a point. It is thus evident that Shapiro received assurances from CGE through Fischgrund that Singer's transactions in Logos would be riskless.

Robert Mackie, Jr., (Mackie) Executive Vice President of Singer, testified that before a trader traded a new issue he filled out an information card concerning that security. In addition, Singer had 4 criteria to be met before a new issue could be traded. These were: (1) Security underwritten by a member of the NYSE (this not absolutely necessary); (2) Statistically able to stand on own- worth the offering

price; (3) Singer not be the best name in the sheets; (4) Proper financial information available.

In the present case Shapiro began trading in Logos before the information card was completed. Mackie testified that this was not unusual as the trader, Shapiro, would know if Singer's criteria were being met. Mackie said that trading was often approved informally before the more formal method had been completed. Mackie testified that he approved the trading in Logos "probably with the proviso that L.M. Rosenthal at least traded, we'd trade, because he'd be a better name than us, and we couldn't be deemed the sponsors of the stock in any way." Shapiro began trading Logos on behalf of Singer and with the approval of Mackie simultaneously with Rosenthal.

This trading of Logos in conjunction with Rosenthal is further indication of the close association[10/] and understanding implicit between Fischgrund at Rosenthal and Shapiro at Singer in regard to the making of a market in Logos.

Accordingly, it is found that Singer willfully violated and Shapiro willfully aided and abetted violations of Section 15(c)(2) of the Exchange Act and Rule 15c2-7 thereunder.

Wholly apart from any agreement the record clearly shows that Shapiro, with the approval of Singer, took advantage of the opportunity created by CGE in Logos stock when the totality of the circumstances should have placed them on notice that diligent inquiry was called for.

10/ Cf. D. H. Blair & Co., Securities Exchange Act Release No. 8888, May 21, 1970 at page 9.

The importance of a broker-dealer's responsibility to use diligence where there are unusual factors is high-lighted by the fact that violations of the antifraud provisions of the securities laws frequently depend for their consummation, as here, on the activities of broker-dealers who fail to make diligent inquiry to obtain sufficient information to justify their activity in the security. 11/

This activity contributed to creating a false and misleading impression of a genuinely free market when, in reality, it was not. As a result of Shapiro's activity Singer, rather than being a free market maker, was acting as little more than a conduit between CGE and the investing public. The reflection of almost all of its bids and offers to CGE resulted in a situation wherein CGE was, in effect, the undisclosed market maker in Logos stock rather than Singer. The essence of the offense is that it constitutes an unlawful interference with the factors upon which the market value, as distinct from any other value depends. 12/

As the Commission has said:

> The anti-manipulative provisions of the Securities Exchange Act are directed not only against the defrauding of unwary investors but with equal force against the impediments to a free and open market created by artificial stimulants or restraints. Where the purpose is to induce the purchase or sale of securities by others, the Act denounces manipulations whether designed to raise or lower the market price of a security or only to create a false appearance of activity or inactivity in the market for the security. Masland, Fernon & Anderson, 9 S.E.C. 338, 344 (1941).

11/ Alessandrini & Co., Inc., Securities Exchange Act Release No. 10466 October 31, 1973.

12/ See Securities & Exchange Commission v. Torr, et al., 27 F. Supp. 602, 607 (S.D.N.Y. 1936); Otis & Co., v. Securities and Exchange Commission, 106 F. 2d 579 (CA 6 1939).

A sophisticated trader or broker-dealer should have recognized that the instant situation required, at least, reasonable inquiry so as to assure that the activity in which he participated would not violate federal securities laws.[13/]

Accordingly, it is found that Shapiro willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Singer is not charged thereunder.

The Order, also, charged that Singer failed reasonably to supervise persons subject to its supervision with a view to preventing violations alleged in Section II, paragraph P of the Order. However, such a finding would be inconsistent with the active role Singer played in this situation. Failure of supervision -- which may result in derivative responsibility for the misconduct of others-- connotes an inattention to supervisory responsibilities, a failure to learn of improprieties when diligent application of supervisory procedures would have uncovered them. Here, having found that Singer willfully violated Section 15(c)(2) of the Exchange Act and Rule 15c2-7, it is inappropriate and inconsistent to find it responsible for a failure of supervision with respect to the same misconduct.[14/]

13/ Hanley v. SEC, 589 F. 2d 1969 (CA 2 1969).

14/ In the Matter of Anthony J. Amato, Securities Exchange Act Release No. 10265 (June 29, 1973. See, also, Securities Exchange Act Releases, as follows: Adolph D. Silverman, 10237 (August 6, 1973); Fox Securities Company, Inc., 10475 (November 1, 1973); Charles E. Marland & Co., Inc., 11065 (October 21, 1974).

Baird Patrick & Co.

Lanktree, the sole trader at Baird, met Goren for the first time, by accident, at a hockey game at Madison Square Garden sometime in April or May 1972. Goren testified that when he learned that Lanktree was a trader he told him that CGE had done an underwriting in Logos, that they were looking for market-makers and that if he would trade the stock he would protect him. Lanktree told Goren that he didn't need his protection but that if he would send over a final prospectus on Logos he would discuss it with his superiors whose approval was necessary before trading it. Goren sent Lanktree a prospectus and subsequently Lanktree called him and said that he would be able to trade Logos.

Baird made 9 trades in Logos totaling 2900 shares between June 12, 1972 and July 14, 1972. These were on June 12, 15, 22, 29, 30, July 3, 10 and 14. The first two trades were short sales to other brokers with covering purchases from CGE of 900 shares at a 3/8 point profit to Baird. The remaining seven trades were purchases from other brokers of 2000 shares and sales thereof to CGE at a 1/4 point profit on each trade. Most of the trades were simultaneous buy and sell and Baird maintained no position overnight.

It should be noted that the Division has not briefed this violation in regard to either Baird or Lanktree for the reason that there was disclosure during the hearing that in fact, no agreement existed between Lanktree and Goren. A review of the record supports the conclusion that a violation of Section 15(c)(2) of the Exchange Act and Rule 15c2-7 thereunder has not been proven by a preponderance of the evidence. Accordingly, this allegation is dismissed as to Lanktree and Baird Patrick.

The involvement of Lanktree in helping to create the illusion of a free and open market by his trading in Logos, secure in the knowledge that he would be relieved of any position by CGE, without, risk, is almost identical to that of Shapiro and Singer. The principal difference is that Lanktree had been informed by Goren of CGE's intent and that he dealt directly with CGE on every transaction in Logos. Therefore, the discussion concerning antifraud violations of the securities laws and the views of the Commission and the courts thereon, pages 17, 18 and 19, supra, are equally applicable to Lanktree and need not be repeated here.

Although Lanktree testified that Goren never offered him protection and that he traded Logos of his own free will without knowledge of any guarantees, his trading record belies his testimony. It shows that he dealt directly with CGE on every transaction which is indicative of the fact that he was secure in the knowledge that CGE would cover his transactions and that he had no intention of trading in a free and open market.[15/]

It is found that Lanktree willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[16/]

Section II, paragraph R of the Order charges that Baird failed reasonably to supervise, with a view to preventing the violations alleged in paragraph P of Section II, persons who were subject to its supervision

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15/ Masland, Fernon & Anderson, 9 SEC 338, 344 (1941).

16/ Baird is not charged in Section II, paragraph K of the Order. See page 1, supra.

and who committed such violations. Inasmuch as those charges have been dismissed as to Lanktree and Baird no finding is made concerning failure to supervise on the part of Baird.

The Division conceded in its brief filed on April 30, 1974, that the charges of violations of Section 15(c)(2) of the Exchange Act and Rule 15c2-7 as to Baird had not been proven. Therefore, Baird in its brief filed on May 29, 1974, advanced no argument as to that charge. Subsequently, in its reply brief, filed on July 10, 1974, the Division moved to amend the Order to conform to the proof in the record and to include Baird in Section II paragraph K, charging violations of the antifraud provisions of the federal securities laws. Baird filed a memorandum in opposition to Division's motion on July 22, 1974.

In its memorandum Baird characterizes the Division's motion as a "proposed scatter-shot" amendment without any specificity as to what proof it wishes to conform the Order to or specific fraud violation it now seeks to charge. Baird points out that it prepared its defense to meet the charges in the Order and now that the evidentiary hearing is over it has no opportunity to present a defense to charges which were not alleged in the Order and of which it was not apprised at the time of the hearing.

Baird states that when it filed its answer to the charges in the Order on July 11, 1973, it moved for a more definite statement which was granted by the undersigned. Also, two prehearing conferences were held at which the undersigned directed the Division to inform respondents as

to its theory of the case and to turn over certain material. As Baird points out these orders were never fully complied with by the Division so that Baird and other respondents moved to dismiss on grounds of failure to be properly informed as to the nature of the charges against them. This motion was denied and the Division ordered to put on its case.

Section 15(b)(5) of the Exchange Act provides that the Commission may impose certain sanctions against a broker or dealer if it finds willful violations and determines that it is in the public interest to do so. However, any such sanction may be invoked only "after appropriate notice and opportunity for hearing." It is concluded that this precondition has not been met.[17/] Accordingly, the Division's motion to amend the Order is denied.

17/ Jaffee & Company v. Securities and Exchange Commission, 446 F. 2d 387, 393 (CA 2 1971).

Daniel S. Brier & Co., Inc.

Cohen testified that on the night of October 12, 1972, he was informed by a customer that there would be an excessive amount of selling, i.e., a "bear raid" in Logos on the following day. Cohen alerted the market makers and most of them withdrew from the media. The raid occurred on October 13 at 12:00 noon. Sometime during that day Brier telephoned Cohen and Cohen returned the call that night. Brier had recognized the bear raid and asked Cohen what he could do to help. Cohen said that there was need for additional market makers and that if Brier traded Logos he would cover him on a 100 shares at a quarter of a point profit. Brier agreed to go on the machine and the record shows that from October 23, 1972 until January 15, 1973 he engaged in 12 completed transactions involving 12 purchases and 12 sales of Logos stock totaling 1,850 shares at prices ranging from 18 on October 23 to 21 on October 27 and then down to 15 3/4 on January 4, 1973. Eleven transactions were with CGE and 9 of those were flattened at precisely 1/4 point profit.

Cohen testified that the trades which CGE had with Brier were pursuant to Brier's calling CGE and stating the price at which he had bought or sold Logos and they would then take it from him plus the quarter. In certain instances CGE would ask Brier to hold the stock and if he lost it in the street then they would be happy for him to make the additional profit as long as he reported to CGE that he had sold the stock. If Brier was unable to dispose of it then CGE would take it from him at a later date.

Brier testified that he never had any agreement, or arrangement, with CGE where he was guaranteed profits or protected against losses. He said he traded Logos because he thought it was a good trading stock and he could make a profit.

Brier's testimony is not credible in view of the fact that, because of the bear raid, trading in Logos had been discontinued by most of the market makers at the time he went into the sheets or on the machine. In fact Brier testified that it was his understanding that two market makers have to be on the NASDAQ machine so that if he did not go on then CGE would have to go off and that was why Cohen wanted him to participate in making a market.

The record supports a conclusion that Brier & Co. willfully violated and that Brier willfully aided and abetted the violation of Section 15(c)(2) of the Exchange Act and Rule 15c2-7 thereunder. Also, it is found that Brier & Co., and Brier willfully violated and/or willfully aided and abetted violations of Sections 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

The Order, also, charges that Brier & Co. failed reasonably to supervise persons subject to its supervision with a view to preventing the violations alleged therein. However, having made the foregoing findings as to Brier & Co., it is inconsistent and inappropriate to find it responsible for a failure of supervision with respect to the same misconduct. See page 19 and footnote 14 *supra*.

Schweikart & Co.

Schweikart & Co., (Schweikart) has been registered with the Commission as a broker-dealer since May 24, 1946, and is a member of the New York Stock Exchange, the American Stock Exchange, various other securities exchanges and the National Association of Securities Dealers (NASD). It is a limited partnership under New York law and has its principal place of business at 2 Broadway, New York, New York. Eugene M. Cohen (E. Cohen) has been a general partner for over 15 years and among his responsibilities, at all times relevant herein, was the supervision of Radin.

John R. Radin (Radin) has been connected with the securities business since August 1961, when he was employed as a staff investigator by the NASD, continuing in that position until January 1964. He was with Archer Securities Corp. from January 1964 to September 1965; with L. Flomenhoff & Co., from September 1965 to June 1969; and with Baerwald & DeBoer from June 1969 to January 1970. On February 11, 1970, he incorporated J.R. Radin & Co. (Radin & Co.) under New York law and it became registered with the Commission on March 30, 1970. Subsequently, Radin & Co., became a member of the NASD. On March 9, 1972, Radin & Co. consented to an injunction by the United States District Court for the Southern District of New York permanently enjoining Radin & Co. from violating the net capital provisions under the Exchange Act.[18/] Radin & Co.

18/ S.E.C. v. J.R. Radin & Co., Inc., et al., 72 Civil Action File No. 987. Also, in Securities Exchange Act Release No. 10963, August 14, 1974, J.R. Radin & Co., Inc. had its registration as a broker-dealer revoked and was expelled from membership in the NASD. This action was by default on the part of J.R. Radin & Co., Inc.

went into receivership and was liquidated under the Securities Investor Protection Act.

Radin was employed as Schweikart's trader from July 24, 1972, to June 29, 1973. Prior to employing Radin, Schweikart had not been active in trading OTC stocks for its own account. Desiring to establish a trading department, Schweikart looked for and finally hired a trader, Radin, with substantial experience. Schweikart's application to employ Radin, which disclosed the injunction to which Radin was subject, was approved by the NASD. Schweikart drew up an agreement, which was signed by Radin, setting forth the terms and conditions applicable to the trading department which Radin was to set up. The agreement provided that Radin could employ one or two associates, subject to Schweikart's approval, that Radin was limited to a maximum position of $200,000, and that in the event there were any questions of "security concentration or doubt as to the advisability of trading in any security" Radin was to abide by Schweikart's decision.

Radin testified that, as a trader, he had become acquainted with Cohen and Goren on the wire (over the telephone) and that at some time it was suggested that CGE would like to have a direct line with Schweikart. Before putting in a direct line with anyone it was Radin's policy to meet and have a discussion. Radin testified that, also, he had another reason to meet with CGE people as Schweikart had gone short in Applied Digital Data (ADD) and he had learned that CGE was making a market in it so he thought perhaps CGE would be able to cover Schweikart's position. A meeting was set for CGE's office but when Radin arrived early one morning

no one was there. Subsequently, Cohen and Radin had a breakfast meeting early in November 1972 at Schraffts. At this meeting Logos was discussed and Radin agreed to trade it although he denies that any offer of protection was made. Cohen testified that he offered Radin a 1/4 point on the first 100 shares of each transaction but he did not say anything about Radin accepting such an offer. Shortly after the breakfast meeting a direct line was installed between CGE and Schweikart.

The Division's trading schedule (Exhibit 1) shows that Schweikart traded Logos as a market maker from December 14, 1972 to February 9, 1973 during which time it engaged in 7 transactions totaling 1100 shares of Logos at prices ranging from 16 to 19 with a profit of from 1/4 to 1 1/4 points. Most transactions were simultaneous purchase and sale.

The Division's schedule contains only principal transactions. A Securities Transaction Questionnaire, commonly known as a "blue sheet", submitted by Schweikart shows that Schweikart purchased 1,500 shares of Logos in 4 transactions on June 19 and 22, 1972 on an agency basis and that these purchases were made from Kohlmeyer & Co. and L. M. Rosenthal.

An analysis of the transactions by Schweikart after it began trading Logos shows that the first sale was for 100 shares on December 14, 1972, covered by a like purchase on December 18, 1972, and neither the sale nor the purchase was with CGE. On January 10, 1973 Schweikart sold 100 shares to Herzfeld and Stern and on January 11 purchased 100 shares from CGE. On January 15 Schweikart bought 200 shares from Weiss, Voisin & Connor and sold 200 shares to CGE. On

January 22 and 23 Schweikart sold 100 and 200 shares, respectively, to CGE and on February 9, 1973, it purchased 200 shares from CGE. The Division's schedule shows 200 shares sold to C. J. Hodgson on February 13, 1973, but no corresponding purchase is shown thus leaving Schweikart short 200 shares. However, this appears to be incorrect as Radin testified that this last short sale was actually for only 20 shares. The record is not clear whether this short position was ever covered.

A review of the transactions shows that Schweikart only had trades involving CGE from January 10, 1973, to February 9, 1973, or approximately one month. During this time it made 6 purchases of Logos totaling 1,000 shares and 6 sales of Logos totaling 1,020 shares. Of these only 3 purchases and 3 sales totaling 500 shares were with CGE.

Radin maintained due diligence files on all companies in whose stock he was making a market. The due diligence file on Logos was put in evidence by Radin and the Division raised no objection as to its adequacy. E. Cohen reviewed all due diligence files periodically and, also, reviewed all order tickets at the end of the day or the next day. In addition, Radin provided E. Cohen with a daily (and monthly) computer run on all trades. These runs listed, in alphabetical order, all securities, including Logos, traded by Radin. These were reviewed by E. Cohen at least twice a week so that he had an additional opportunity to keep apprised of the activities of the trading department.

Respondents Radin and Schweikart argue, in summary, that, even if an arrangement ever existed (between CGE and Schweikart), it was honored mostly in the breach in that only one of the six Schweikart—CGE trades involved 100 shares (the guaranteed number) and resulted in a 1/4 point profit (the guaranteed profit). Also, it is contended, Radin denied entering into any arrangement with CGE and gave an adequate explanation for trading Logos.

Upon careful consideration it is concluded that the testimony of Radin and E. Cohen is credible and that the evidence in the record fails to establish a pattern from which to infer that the arrangement which Cohen claims to have offered Radin was ever accepted, or acted upon without acceptance as found in regard to Lanktree, *supra*. Accordingly, the charge in Section II, paragraph K that Radin violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder is dismissed.[19/] The charge in Section II, paragraph P, that Radin and Schweikart violated Section 15(c)(2) of the Exchange Act and Rule 15c2-7 thereunder is, also, dismissed. In view of these findings the charge of failure to supervise against Schweikart is likewise, dismissed.

19/ Schweikart was not charged with this violation.

Robert W. Steven Corp.

Robert W. Steven Corp. ("Steven Corp.") became registered as a broker-dealer with the Securities and Exchange Commission on February 19, 1972. It commenced business shortly thereafter and was a member of the National Association of Securities Dealers, Inc. with offices at 26 Broadway, New York, New York. It officers included Robert Konigsberg ("Konigsberg"), who was a vice-president and Steven Yavers ("Yavers"), also a vice-president.

Konigsberg is a certified public accountant and is presently a partner in the firm of Konigsberg, Wolf & Co., certified public accountants in New York City. He was graduated from New York University in 1961 with a Bachelor of Science degree. From June 1961 to June 1962 he was a member of a small over-the-counter brokerage firm. From June 1962 to June 1964, he was employed as a junior accountant by the firm of Haskins & Sells, certified public accountants.

In January 1970, Konigsberg joined Smith, Jackson & Co., Inc., a broker-dealer, as a vice president. His principal duties entailed corporate finance aspects of the business. He had nothing to do with the trading of securities.

Yavers is in the real estate business presently engaged in a construction project in Pomona, Florida. His father was engaged in the real estate business for many years. Yavers was graduated from Columbia College, New York City, in 1964 with a Bachelor of Arts in Economics. He attended Brooklyn Law School completing his work there in 1968.

Shortly thereafter, he was admitted to the Bar of the State of New York. After law school, Yavers was employed by Merrill Lynch, Pierce, Fenner & Smith, Inc. in the firm's training program and became a customers' broker in one of their New York City offices. Thereafter, he became employed by the New York Stock Exchange member firm of Philips, Appel & Walden, 111 Broadway, New York, New York in the firm's corporate finance department. In the beginning of 1971 he became employed in the corporate finance department at Smith, Jackson & Co., Inc. and left that firm to organize Steven Corp. in March 1972.

Steven Corp. did not professionally trade securities. It rented or leased a NASDAQ machine permitting it to quote securities traded thereon, but only for the purposes of customer business. In general the business of Steven Corp. was in the corporate finance aspect of the securities industry.

In March 1972, a customer of Konigsberg, Paul Abrahamson ("Abrahamson"), mentioned that he was also a customer of CGE and suggested that Konigsberg and Yavers might wish to meet Cohen who, also, had just formed a brokerage firm. Accordingly, they all visited Cohen's office in the latter part of March 1972, but Cohen was not there.

Konigsberg first heard of Logos stock through Abrahamson who had bought Logos stock through CGE. In October 1972, Abrahamson placed an order with Steven Corp. which executed the transaction, selling the shares as agent to the firm that had the highest bid which was CGE.

Abrahamson asked Steven Corp. to sell another 100 shares of Logos on November 2, 1972. These shares were also sold to CGE with

Steven Corp. acting as agent for Abrahamson. Approximately five or ten minutes after this sale Cohen called Konigsberg and said "I see you are selling Logos, what is your interest in the stock." Konigsberg replied that he had no interest except in executing an order for a customer. Cohen continued the conversation mentioning friends in common. Cohen asked whether he could meet with Konigsberg to discuss common interests.

Cohen visited the offices of Steven Corp. on November 2 or 3, 1972. Present were Cohen, Konigsberg and Yavers. The meeting started at 5:00 P.M. and lasted approximately 45 minutes. They introduced one another and talked about their respective backgrounds.

Cohen and Yavers knew some people at Loeb Rhodes & Co. and they talked about such common interests for ten or fifteen minutes. Yavers told Cohen that he was an attorney and Konigsberg told him he was a certified public accountant and involved in finance.

Cohen raised the subject of Logos. He said the company had been underwritten by CGE, that it was in a field of high technology, that it had excellent management, that it had a good future and that the potential for success was there. He provided Konigsberg and Yavers with a prospectus and another brochure concerning Logos. Cohen thought that Logos at its then price levels had excellent investment merit, and he suggested that Steven Corp. sell Logos stock to its customers on a retail basis. He said that CGE and its customers had large positions and the stock traded in more than 100 share lots.

Specifically, Cohen also suggested that Steven Corp. trade the stock of Logos. Cohen indicated that recently there had been a bear raid in Logos and that many of the traders who had previously traded the stock were no longer trading it and that he believed that Logos deserved more credibility and that he was desirous of having a greater number of traders quote the stock on the NASDAQ medium. He indicated it was a two sided market and traded both on the buy and the sell side and by reason thereof Steven Corp. could make trading profits.

Konigsberg and Yavers testified that at no time during the meeting did Cohen guarantee Steven Corp. profits in the stock of Logos or agree to protect it against losses in trades of Logos stock. The meeting ended without any decision as to any of the matters discussed. The following day, after having read the material concerning Logos provided to them by Cohen, Konigsberg and Yavers decided that they would neither solicit the interest of their customers in the stock of Logos nor trade the stock for the firm's account.

As a consequence, Konigsberg spoke to Abrahamson and recommended that he sell his remaining shares. Abrahamson said that he had gotten his investment out of the stock on the first two sales (mid October and November 2, 1972). As a result, he preferred not to sell his remaining shares of Logos stock. Thereafter, in early December, Konigsberg again recommended that Abrahamson sell his remaining shares of Logos stock. He pointed out that Steven Corp. could quote Logos

stock on NASDAQ with the low offer. In that way Steven Corp. could be expected to receive offers by other brokers to buy such securities at the quoted offer thereby obtaining a better price for Abrahamson. The difference would be that if Steven Corp. were able to attract any broker to its offer to sell securities, that broker would pay the quotation Steven Corp. offered to sell Logos shares at, whereas in contrast, if Steven Corp. offered to sell the same shares to a broker who was then bidding for stock it would have to accept the bid price which is uniformly lower than the offered price. Abrahamson agreed to permit Steven Corp. to sell his remaining 150 shares of Logos stock.

Steven Corp. entered quotations for Logos on approximately December 5, 1972 in NASDAQ and in the pink sheets. It continued to quote Logos stock as low bid-low offer through and including January 4, 1973. During the period through January 2, 1973, Steven Corp. did not receive a call from anyone soliciting the purchase from it of shares of Logos stock. In fact, there were few, if any, calls received by Steven Corp. with respect to Logos stock.

On January 2, 1973, Konigsberg spoke to Abrahamson indicating that Steven Corp. had been quoting the stock for about three or four weeks and had elicited no interest from other brokers. Konigsberg suggested

that Abrahamson not wait for someone to pick up the stock but sell it on an agency basis into the market. Konigsberg's recommendation was due in part to apparent lack of interest in Logos stock. Abrahamson agreed and the 150 shares of Logos stock owned by Abrahamson were sold, by Steven Corp. as agent, to Bishop, Rosen & Co. on January 4, 1973.

No longer having customer interest in the sale of Logos stock, Konigsberg and Yavers decided, in view of their adverse reaction to Logos and its relative inactivity, that if they were able to sell the shares short, the firm would probably be able to realize a profit on such transaction. Accordingly, Steven Corp. continued to quote Logos stock low bid-low offer. Again, such manner of quotation was calculated solely to achieve a sale of stock and would not be expected to result in any purchase of Logos stock.

Yavers and Konigsberg testified that Steven Corp. did not pay attention to its quotations on NASDAQ during the morning of January 4, 1973. As a result and without Steven Corp. changing its quotations, its bid at $16 3/4, which had been the low bid, became equal to the high bid by reason of the fact that other brokers reduced their bids. As a result Steven Corp. received a call from W.E. Burnet & Co. accepting Steven Corp.'s bid which was then published on the NASDAQ machine at $16 3/4. W. E. Burnet & Co. sold 100 shares of Logos stock to Steven Corp. and thereafter Steven Corp. first lowered its bid and then ceased quoting Logos stock. The timing of the transaction with W.E. Burnet & Co. was approximately 12:10 or 12:12 p.m. At approximately

the same time that Steven Corp. bought 100 shares of Logos stock from W. E. Burnet & Co. at $16 3/4, W. E. Burnet sold 100 shares of Logos stock to CGE at $17.

When Konigsberg and Yavers realized that they had not been attentive to the NASDAQ machine, that Steven Corp.'s bid had become equal to the high bid and that by reason thereof had been compelled under NASD rules to buy 100 shares of Logos stock, they were disturbed. They decided that because they could not be attentive to the NASDAQ machine and were not professional traders, the risk of having to buy shares when they desired to sell shares was not worth the trouble and they decided to cease quotations of Logos on behalf of Steven Corp. and to sell the Logos quotations they had bought from W. E. Burnet & Co. Having in mind that CGE had consistently been the high bid for Logos stock, Yavers called CGE, asked for their bid, was advised it was $17 and accepted such bid for a sale of the 100 shares to Cohen Goren at its bid price of $17. As Cohen testified, referring to Yavers, "He offered me 100 shares at 17, or the price I was bidding. I took it." Other than this one transaction on January 4, 1973 Steven Corp. had no other transactions in Logos stock. It never "traded" the stock and it did not retail Logos stock to customers.

On the basis of the foregoing review and analysis of the record it is concluded that Konigsberg and Stevens did not submit quotations to NASDAQ or the pink sheets with respect to Logos stock pursuant to a guarantee against loss, guarantee of profit or other similar arrangement. In addition, the record supports a finding that they did not participate

in any activity which violated the anti-fraud provisions of the securities laws. Accordingly, it is found that the violations alleged in the order that Stevens Corp. and Konigsberg willfully violated, and/or willfully aided and abetted violations of Section 17(a) of the Securities Act and Sections 15(c)(2) and 10(b) of the Exchange Act and Rules 15c2-7 and 10b-5 thereunder have not been proven by a preponderance of the evidence and they, therefore, are dismissed. The allegation of failure to supervise against Steven Corp. is likewise dismissed.

OTHER MATTERS

During the presentation of its evidence the Division subpoenaed Shapiro as a witness. However, he declined to answer the questions put to him on the grounds of Fifth Amendment privilege against self-incrimination. In its brief the Division has asked that an adverse inference be drawn from Shapiro's silence.

The Division cites several SEC cases in support of its position.[20/] However, while the Commission states that such an inference may be drawn in an appropriate case no such inference was in fact drawn by the Commission in the cited SEC cases. Nor is the instant case one in which such inference appears appropriate.

However, although no adverse inference has been drawn the inescapable fact remains that the evidence presented by the Division as regards Shapiro's involvement stands unrebutted.

20/ Securities and Exchange Commission v. Kelly Andrews & Bradley, Inc., et al., 341 F. Supp. 1201 (S.D.N.Y. 1972); James De Mammos, et al. 43 SEC 333 (1967); Century Securities Company, et al., 43 SEC 371 (1967); Strathmore Securities et al., 43 SEC 575 (1967); Melvyn Hiller, et al., 43 SEC 969 (1968).

Public Interest

The remaining issue concerns the remedial action which is appropriate in the public interest with respect to the respondents who have been found to have committed certain violations as alleged in the Order. The Division urges that severe sanctions be imposed on all of the respondents in view of the serious nature of the violations and the need, in the public interest, to impress them with the enforcement capabilities of the federal securities laws. Beyond that the Division does not offer any specific recommendation or indication as to the sanction deemed appropriate for each respondent.

The appropriate remedial action as to a particular respondent depends on the facts and circumstances applicable to him and cannot be measured precisely on the basis of action taken against other respondents,[21/] particularly where, as here, the action respecting others is based on offers of settlement which the Commission deemed appropriate to accept.[22/]

Review of the record in this matter discloses that the basic activity charged by the Division was the arrangement or understanding which originated with Cohen and Goren and was then offered to the other respondents for the sole purpose of furthering the interests of Cohen and Goren. The precise nature of the arrangement, and the resulting culpability, as pertains to each respondent is, accordingly, different. There was no overall conspiracy in which all respondents participated equally.

21/ See Dlugash v. SEC, 37 F. 2d 107, 110 (CA 2 1967).

22/ See Benjamin Werner, Securities Exchange Act Release No. 9422, pp. 3-4 (December 17, 1971); Cortlandt Investing Corporation, Securities Exchange Act Release No. 8678, pp. 8-9 (August 29, 1969).

Beginning with the original arrangement which, it has been found, was entered into between CGE, Rosenthal, Fischgrund, Atherton, Shapiro and Singer, the other arrangements were more or less sporadic. There was no continuing overall manipulation as the result of the attempt by Cohen and Goren to control the market in Logos. Accordingly, the appropriate remedial action in the public interest as to each respondent must be viewed in the light of his individual participation and the mitigating factors, if any, which should be considered.

All of the respondents have denied the existence of "arrangements" which would bring them within the reach of Rule 15c2-7. In this connection it should be noted that they have not disputed the fact that they did not give any notice of such "arrangement" to the pink sheet publisher, the NASDAQ machine or to other broker-dealers who were appearing in the media.

Atherton was the first trader offered the arrangement and was instrumental in having Rosenthal and Fischgrund participate in the most serious manipulation of Logos stock which began on the opening day, May 24, 1972, and continued until June 14, 1972.

Shapiro and Singer entered into the arrangement through Fischgrund and Rosenthal and they too participated in and contributed to the manipulation in Logos from May 24, 1972 until June 14, 1972.

While the Division conceded its inability to prove the participation of Lanktree and Baird in any "arrangement" it did prove that Lanktree was not merely an innocent and fortuitous bystander but a willing participant

in a riskless situation. However, Lanktree testified that when he was asked by Goren to put through a sale in excess of 1,000 shares of Logos below the market he reacted with a gut feeling that something was wrong and refused to execute the transaction and immediately thereafter discontinued all activity in Logos stock. He further testified that when he ran into Goren at another hockey game after he had been called to the SEC office he confronted Goren with the statement that Goren had told the SEC that he had protected Lanktree when Goren knew that was not true. Lanktree testified that Goren shrugged and said he had told the SEC that everybody was being protected.

Daniel S. Brier & Co., Inc. is no longer doing business and Brier is out of the securities business. However, both have previously been the subject of disciplinary action by the Commission, the State of New Jersey and the NASD.[23]

Taking into account the gravity of the violations found herein; the length of time respondents have been in the securities business and the existence or absence of prior disciplinary sanctions against them; the mitigating factors applicable; the respective degrees of knowledge that the several respondents had of the manipulative scheme or of the circumstances that imposed on them a duty to inquire; and the entire record, it is concluded that the sanctions ordered below are necessary and appropriate in the public interest.

23/ Securities Exchange Act Releases 9178, May 24, 1971 and 10627, February 4, 1974.

ORDER

Accordingly, IT IS ORDERED:

(1) Respondents Irving Atherton and Nathan Shapiro are each suspended from association with any broker or dealer for three months.

(2) Respondent Daniel Lanktree is suspended from association with any broker or dealer for one month.

(3) The registration of Singer & Mackie, Inc. is suspended to the extent that it may not for ten business days submit quotations to any inter-dealer-quotation system.

(4) The registration as a broker-dealer of Daniel S. Brier & Co., Inc. is revoked and the firm is expelled from membership in the NASD.

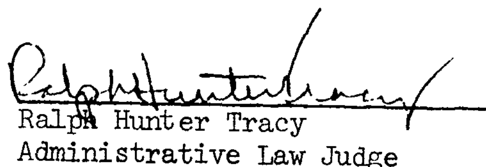
(5) Daniel S. Brier is barred from association with any broker or dealer, except that after a period of one year from the effective date of this order he may become associated with a registered broker-dealer in a non-supervisory capacity upon an appropriate showing to the staff of the Commission that he will be adequately supervised.

(6) These proceedings are hereby dismissed as to Robert W. Steven Corp., Robert Isaac Konigsberg, Schweikart & Co., John Radin and Baird Patrick & Co.

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 service of this initial decison 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.24/



Ralph Hunter Tracy
Administrative Law Judge

February 28, 1975
Washington, D.C.

24/ 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 accepted, and to the extent they are inconsistent therewith they are rejected.