ADMINISTRATIVE PROCEEDING
FILE NO. 3-3142

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

WHITE & COMPANY, INC. (8-565)
EDWARD A. WHITE
WHITE CAPITAL CORPORATION
IVAN A. EZRINE

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SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

September 21, 1971
Washington, D. C.

Ralph H. Tracy
Hearing Examiner

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INITIAL DECISION

APPEARANCES: John F. Kern and Larry W. Burks, of the St. Louis Branch Office and William M. Hegan of the Chicago Regional Office for the Division of Trading and Markets

Richard L. Ross of Slonim & Ross for White & Company, Inc., White Capital Corporation and Edward A. White

Ivan Ezrine, pro se

BEFORE: Ralph H. Tracy, Hearing Examiner

THE PROCEEDINGS

These are public proceedings instituted by Commission order ("Order") entered on July 20, 1971 pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether White & Company, Inc. ("Registrant"), White Capital Corporation ("White Capital"), Edward A. White ("White") and Ivan A. Ezrine ("Ezrine"), as alleged by the Division of Trading and Markets ("Division"), singly and in concert, willfully violated and willfully aided and abetted violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b), 15(c)(3) and 17(a) of the Exchange Act and the rules thereunder, and whether registrant and White failed reasonably to supervise persons under their supervision with a view to preventing such violations, and to determine what, if any, remedial action is appropriate in the public interest.

The Commission's order provided there be determined first the question whether suspension of the registration of the registrant on an interim basis, pending final determination of the issues presented by the order, is necessary or appropriate in the public interest or for the protection of investors.

The evidentiary hearing on the question of an interim suspension of registrant's registration was held at St. Louis, Missouri, on August 16 through August 19, 1971. Respondent Ivan A. Ezrine, Esq., appeared pro se. All other respondents appeared and were represented by counsel. Proposed findings of fact and conclusions of law and briefs were filed by the parties.*

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*Ezrine filed a brief on behalf of registrant.

The findings and conclusions herein are based upon the record and upon observation of the witnesses.

FINDINGS OF FACT AND LAW

The Respondents

Respondent White & Company, Inc. ("registrant"), was organized in 1936 and has been registered with this Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act since March 5, 1947. Registrant, which is a member of the National Association of Securities Dealers ("NASD"), has its principal place of business at 1733 Forsyth Boulevard, St. Louis, Missouri.

Respondent Edward A. White is president, a director and a beneficial owner of more than 10% of registrant's stock. He has been employed by registrant since 1949 and has been president since 1963.

Respondent White Capital Corporation was incorporated in the State of Delaware on or about August 10, 1970. White is president and sole shareholder of White Capital.

Respondent Ivan A. Ezrine is an attorney at law with offices at 37 East 68th Street, New York, New York. He has been counsel for registrant since early in 1970.

Injunctions Chargeable to Respondents

Section 15(b)(5)(C) of the Exchange Act provides that one of the bases for revocation of a broker-dealer's registration or the imposition of lesser sanctions is the existence of a described

permanent injunction issued by a court of competent jurisdiction. 1/

The order for proceeding alleges, and the record establishes, that on November 9, 1970, the U. S. District Court for the District of Columbia entered a consent judgment permanently enjoining registrant from further violations of Sections 5(a) and (c) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. On the same date the Court entered a consent judgment permanently enjoining Edward A. White from further violations of Sections 5(a) and (c) of the Securities Act and Sections 10(b), 13(a) and 14(a) of the Exchange Act and Rules 10b-5, 10b-6, 13a-1 and 14a-9 thereunder.

1/ Section 15(b)(5)(C) provides as follows:

> "(5) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, suspend for a period not exceeding twelve months, or revoke the registration of, any broker or dealer if it finds that such censure, denial, suspension or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated --
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> (C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."

Net Capital Violations

From at least July, 1969 to April 28, 1971, registrant was a member of at least one national securities exchange and, as such, was not subject[2/] to the Commission's net capital rule.[3/] On or about April 28, 1971 registrant became subject to the Commission's net capital rule and, accordingly, on August 8, 1971 a Commission staff accountant, using a trial balance and supporting schedules prepared by registrant as of July 31, 1971, computed registrant's net capital as of that date and concluded that registrant had a net capital deficit of $378,915.11.

Registrant disputed eight items deducted from capital in arriving at this deficit, three of which totalled $976,440.40. While the Division contends that these are proper deductions it points out that, if the deductions were reduced in accordance with registrant's contentions, the revised net capital computation still indicates a possible net capital deficiency of approximately $102,000. Registrant claims, further, that its own computation of net capital, as of August 13, 1971, prepared by updating the

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2/ Rule 15c3-1(b)(2) exempts members while in good standing on a national securities exchange from the Commission's net capital rule.

3/ Section 15(c)(3) of the Exchange Act, insofar as here pertinent, prohibits securities transactions by a broker-dealer in contravention of the Commission's rules prescribed thereunder providing safeguards with respect to the financial responsibility of brokers and dealers. Rule 15c3-1 provides, subject to certain exemptions not applicable here, that no broker or dealer shall permit his aggregate indebtedness to all persons to exceed 2,000% of his net capital computed as specified in the rule or have a net capital of less than $5,000.

Division's July 31, 1971 computation, showed it to be in compliance with Rule 15c3-1 with net capital of $379,001.00. The Commission's staff refutes this contention by asserting that an unsecured receivable in the amount of $381,421.30 which registrant was carrying as an asset should have been deducted from such net capital figure with the result that registrant would have a net capital deficit as of August 13, 1971, of at least $2,420.30 without any additional downward deductions which the staff urges should have been taken into account.

Registrant was a member of the New York Stock Exchange ("NYSE") from March 9, 1961 to February 5, 1971, of the American Stock Exchange ("ASE") from April 1952 to April 1, 1971, and of the Midwest Stock Exchange ("MSE") from December 1, 1949 to April 28, 1971.

During the period from on or about July 29, 1969 to February 5, 1971, the NYSE declared, on various occasions, that registrant was not in compliance with its net capital requirements. During this period White Capital was formed to assume certain of registrant's obligations and registrant's customers' accounts were transferred to another broker on a disclosed basis. Thereafter, on February 5, 1971, registrant was allowed to sell its seat and resign from the NYSE. Although registrant avers that it was in capital compliance at the time it admits that it resigned after the NYSE threatened to impose sanctions relating to alleged previous capital violations.

The ASE, which then became primarily responsible for registrant, took the position that its examination showed registrant not to be in

capital compliance as of February 26, 1971, as required by its rules, and thereupon forced registrant to resign on or about April 1, 1971.

The MSE then assumed jurisdiction of registrant and immediately conducted an audit which it concluded showed registrant to be in capital violation, according to its rules, as of March 26, 1971, and suspended registrant on or about April 28, 1971.

Registrant argues that it does not agree with the findings made by the various exchanges and that, in any event, it was in compliance with the capital requirements of each exchange during most of the time. Under the circumstances it is not appropriate for the present forum to retry the issues on which the exchanges have taken action. However, the explanations offered by registrant in mitigation of the exchanges' disciplinary actions have been considered, as noted below.

Failure to File Financial Reports

Rule 17a-5 Reports

Under the provisions of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder, registrant was required to annually file with the Commission a report of its financial condition on Form X-17A-5 within 45 days of the "as of" date of the report. The record reveals that for the calendar years 1968, 1969 and 1970, registrant filed its report of financial condition late by 62 days, 16 days and 175 days, respectively.

Rule 17a-5(j) Reports

Rule 17a-5(j) promulgated under Section 17(a) of the Exchange Act became effective on December 1, 1970 and provides generally that

a registered broker-dealer holding any membership interest in or subject to the capital rules of a national securities exchange whose members are exempt from Rule 15c3-1 shall file with the Commission a financial report within two business days after said broker or dealer ceases to be a member in good standing of such exchange. The Rule further provides that the report be as of the date the broker or dealer ceases to be a member in good standing of the exchange.

Registrant ceased to be a member of the NYSE on February 5, 1971, but did not file the report required by Rule 17a-5(j). The Division notified registrant of its failure to file by letter dated April 2, 1971. On April 1, 1971 registrant resigned from the ASE and by letter dated April 6, 1971, registrant replied to the Division's letter of April 2 and enclosed a report pursuant to Rule 17a-5(j). However, this report contained financial information as of February 26, 1971 and not as of April 1, 1971, the date registrant ceased to be a member of the ASE. Following notification by the Division, registrant filed another report on April 15, 1971. On April 28, 1971 registrant was suspended by the MSE and filed its report by letter dated April 30, 1971 but not received until May 3, 1971.

The Division contends that in addition to failing to file, or filing late, the reports are inaccurate in that they overstate registrant's assets by approximately $751,000 and understate its liabilities by $364,463.65. The asset of $751,000 is a receivable from another brokerage firm while the liability is a judgment in favor of the same brokerage firm. The dispute between registrant and the brokerage

firm was the subject of an arbitration hearing before the NYSE. Registrant originally claimed that it was owed $751,000 by the brokerage firm but an arbitration award of $364,463.65 was made in favor of the other firm. This was later reduced to judgment. Registrant contends that it was proper to carry the receivable until the matter was determined and a judgment returned against it. Registrant argues further that, in any event, it had set up reserves of $1,000,000 on the capital computation portion of each report which was sufficient to cover the liability.

Registrant states it did not file a Rule 17a-5(j) report when it left the NYSE as it was still a member of the ASE and MSE and interpreted the Rule to require such filing only when it was no longer a member of any national exchange.

Registrant's understanding of the Rule would appear to be incorrect in view of the Commission's statement at the time of its adoption:

> The basic purpose of the rule is to enable the Commission to obtain current financial information on the financial status of a broker or dealer as of the time it ceases to be a member in good standing of a national securities exchange specified in subparagraph (b)(2) of the Commission's net capital rule. SEC Securities Exchange Act Release No. 9033, December 1, 1970, page 1.

Bookkeeping Requirements

The order for proceedings charges that during the period from on or about January 1, 1970 to July 20, 1971 registrant and White, willfully violated and willfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, in

that registrant failed to accurately record certain transactions and liabilities on its books and records.

The alleged violations are that registrant's general ledger overstated its assets in the form of receivables by approximately $751,000 and understated its liabilities by failing to reflect a judgment of $364,463.45. These are the same items previously discussed under Rule 17a-5(j) Reports, supra.

Anti-Fraud Provisions

The order for proceedings alleges that registrant, White and Ezrine 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 by offering, selling and effecting transactions in securities, namely promissory notes issued by registrant and White, common stock of Daytona Beach General Hospital ("Hospital") and debentures purportedly issued by Hospital.

On July 1, 1970 White induced The Pipefitter's Educational Welfare Fund ("Fund") to purchase 100,000 shares of Hospital common stock. Registrant claims the sale was made by White Capital but the record indicates that White Capital was not incorporated until August 10, 1970. It is not disputed that these 100,000 shares of Hospital were not registered with this Commission. Ezrine had obtained them from the founders of Hospital in a transaction involving the purchase of 400,000 shares of Hospital by Manor Nursing Centers, Inc. ("Manor") for which Ezrine was attorney. The 100,000 shares were sold to Fund at 3-1/4 with a put from registrant to repurchase at 3-3/4.

The contract between Manor and the founders of Hospital could not be performed and following prolonged negotiations it was eventually terminated in November 1970 with the Hospital shares being returned to the founders and the Fund recovering its purchase price plus $25,000 in settlement of the put agreement.

On August 10, 1970 White obtained a loan from Tower Grove Bank ("Tower") for registrant in the amoung of $100,000, using as collateral $200,000 face amount of Hospital 8% subordinated convertible debentures. The Division alleges that registrant and White fraudulently sold registrant's note to Tower, inducing the purchase on the basis of the $200,000 of Hospital debentures as collateral. There is considerable dispute as to whether or not any debentures were validly authorized and issued by Hospital. However, when the transaction between Manor and Hospital's founders was rescinded all of the debentures were recalled and destroyed. White obtained the debentures from Tower and repaid the loan.

While many facets of the Hospital common stock and debenture transactions remain to be explored, the evidence indicates that the investors or lenders have been restored to their former positions without suffering loss.

Public Interest

Section 15(b)(6) of the Exchange Act obliges the Commission, pending final determination whether a broker-dealer's registration should be revoked, to suspend the registration if such suspension shall appear to be necessary or appropriate in the public interest or

for the protection of investors. The Comission has provided standards to be followed in determining the necessity or appropriateness of such suspension.[4] In enumerating such standards the Commission has emphasized, as an important factor to be considered in ordering an interim suspension, the likelihood that final determination of all issues will require revocation of registrant's registration.

Registrant argues that even an interim suspension would effectively put it out of business and submits, in mitigation of the findings, that the net capital violations found by the exchanges were not correct, that it is now in compliance with the Commission's net capital rule, that all of its customers' accounts have been assumed by another firm, that no investors have suffered loss and, that it has been engaged in the securities business for 35 years without previous sanction by the Commission.

The application of the aforementioned standards to the present situation indicates, in all likelihood, that in the final determination of the issues herein considered the revocation of registrant's registration will not be required. However, the serious nature of the possible misconduct on the part of registrant and the other respondents cannot be ignored. Therefore, upon consideration of all the circumstances it is concluded that certain conditions should be imposed on

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4/ A. G. Bellin Securities Corp., 39 SEC 178, 185 (1959); Peerless-New York Incorporated, 39 SEC 712, 715-16 (1960).

registrant and that continued operation should be in strict compliance with such conditions.[5/]

Accordingly, IT IS ORDERED that, pending a final determination of this proceeding, White & Company, Inc. conduct its securities operations subject to the following conditions:

(a) that registrant be suspended from engaging in any securities transactions on behalf of retail customers;

(b) that it supply the local office of the Commission with a daily summary of all securities transactions;

(c) that it provide the local office of the Commission within 5 business days of the last Friday of each month with a trial balance, capital computation and such other supporting documents as would be necessary for the staff to independently determine registrant's net capital;

(d) that it refrain from dealing in any securities which are subject to any SEC restrictions; and,

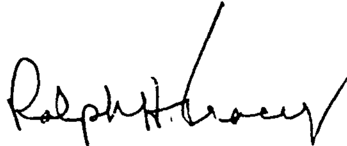
(e) that it immediately notify the Commission anytime registrant finds itself to be in violation of the Commission's net capital rule.

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice as modified by Rule 19.

This initial decision shall become the final decision of the

5/ See Paul C. Kimball, Sec. Ex. Act Rel. No. 9307 (August 26, 1971); J.E. Hinton & Co., Inc., Sec. Ex. Act Rel. No. 9320 (September 1, 1971); L. D. Sherman & Co., Inc., Sec. Ex. Act Rel. No. 8354.

Commission as to each party who has not, within three (3) days after receipt of the initial decision, filed a petition for review of this initial decision pursuant to Rule 17(b) as modified by Rule 19(c). If a party timely files a petition for review the initial decision shall not become final with respect to that party.[6/]



Ralph H. Tracy
Hearing Examiner

Washington, D. C.
September 21, 1971

6/ All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.