ADMINISTRATIVE PROCEEDING
FILE NO. 3-1793

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
VOLANTE, BEHAR AND SPERLING GUIDO VOLANTE JACQUES BEHAR HERMAN SPERLING	INITIAL DECISION (On Question of Suspension of Registration)
(8-14167)	

FILED
JAN 22 1969
SECURITIES & EXCHANGE COMMISSION

Sidney L. Feiler
Hearing Examiner

Washington, D. C.
January 22, 1969

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APPEARANCES: Messrs. John J. Phelan III and Michael L. Blaine,
for the Division of Trading and Markets

Feiner and Klaris, by Ira N. Smith, Esq.
150 Broadway, New York, New York 10038
for Volante, Behar and Sperling, a partnership;
and Guido Volante, Jacques Behar, and
Herman Sperling, individually.

BEFORE: Sidney L. Feiler, Hearing Examiner

I. THE PROCEEDINGS

These are proceedings instituted by order of the Commission pursuant to Section 15(b) 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 pursuant to Section 15(b) of the Exchange Act and, whether, pending final determination of the ultimate issues, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of Volante, Behar and Sperling ("VB&S"), the registrant.

The order for the proceedings alleges that, during the period from on or about June 20, 1967 to on or about July 20, 1967, Guido Volante (a partner in VB&S), and other persons acting in concert with him willfully aided and abetted violations of Sections 5(a) and (c) of the Securities Act of 1933, as amended ("Securities Act") in connection with the offer and sale of the common stock of North American Research and Development Corporation [1/]; that Volante and other persons acting in concert with him willfully violated anti-fraud provisions of

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1/ Section 5 of the Securities Act provides, in pertinent part, that it shall be unlawful to make use of the instruments of transportation or communication in interstate commerce or of the mails to offer to sell or to sell a security unless a registration statement is in effect as to it.

the Securities Acts in the sale of North American common stock [2]; that Volante while associated with another broker-dealer firm willfully aided and abetted violations of record-keeping requirements applicable to broker-dealers (Section 17(a) of the Exchange Act and Rule 17a-3 thereunder) and net capital requirements (Section 15(c)(3) of the Exchange Act and Rule 15c3-1). It is also alleged that VB&S, a partnership, willfully violated registration requirements applicable to broker-dealers and that its individual partners, Guido Volante, Jacques Behar, and Herman Sperling, willfully aided and abetted such violation. Additional allegations are that Volante has been enjoined in two proceedings from further violations of the Securities Acts and that prior to becoming associated with VB&S, Volante failed reasonably to supervise to prevent violations of the Securities Acts.

The Commission ordered that at the hearing there should be first considered the necessity for suspension of the registration of the registrant with other issues left for determination after a reconvened hearing. Pursuant to notice, a hearing was held at New York,

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2/ 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.

New York with the parties being represented by counsel. Evidence was presented on the allegations that VB&S has willfully violated Section 15(a) of the Exchange Act and that the individual members of this partnership willfully aided and abetted such violation by conducting a securities business at a time when VB&S failed to be registered as a broker-dealer pursuant to 15(b) of the Exchange Act 3/ and that Volante, prior to becoming associated with VB&S, had been preliminarily enjoined by orders of a court of competent jurisdiction from continuing a course of conduct in connection with the purchase and sale of securities and has violated various provisions of the Securities Act and the Exchange Act and various rules thereunder. At the conclusion of the presentation of evidence, opportunity was afforded the parties to file proposed findings of fact and conclusions of law, together with briefs in support thereof as specified in Rule 19 of the Commission's Rules of Practice. Proposed findings, together with supporting briefs, were submitted on behalf of all the parties.

3/ Section 15(a) provides that no broker or dealer (other than one whose business is exclusively intra-state) shall make use of the mails or any means or instrumentalities of interstate commerce to effect any transaction in, or to induce the purchase or sale of any security otherwise than on a national securities exchange, unless such broker or dealer is registered in accordance with subsection (b) of Section 15.

II. FINDINGS OF FACT AND LAW

A. Registration of the Registrant

Herman Sperling, d/b/a Financial Services Co., was a sole proprietorship registered with the Commission pursuant to Section 15(b) of the Exchange Act from January 31, 1961 (File No. 8-9121-1). On or about July 24, 1968, Messrs. Guido Volante, Jacques Behar and Sperling orally agreed to form a partnership to succeed to the business of Financial Services Co. On July 29, 1968 there was filed with the Commission as an amendment to the registration of Financial Services Co. a document executed on July 24, 1968 noting the names of the partners and certain biographical data on Volante and Behar, and noting that the business would be continued under the name of Financial Services Co. (Div. Ex. 10). On August 30, 1968 a further amendment, dated August 29, 1968, was filed noting a change of name under which the business would be conducted from Financial Services Co. to VB&S. (Div. Ex. 11). (The partnership and its individual partners are sometimes collectively referred to herein as the respondents.)

By letter dated September 9, 1968 addressed to Herman Sperling, d/b/a Financial Services Co., the Section of Broker-Dealer and Investment Advisor Registration of the Commission returned the first amendment previously referred to stating, "If, as it appears, Financial Services Co. has been changed from a sole proprietorship to a partnership, it will be necessary to file Form BD as an application for registration of the partnership." (Div. Ex. 1). Enclosed with the letter were copies of applicable rules and regulations of the Commission

dealing with registration and rules relating to registration of successors to registered broker-dealers (Rules 15b1-2, 15b1-3, Revised Form BD).

By letter dated September 16, 1968, also addressed to Sperling, the Section returned the second amendment stating, "Since the partnership is not a registered entity, the enclosed amendment cannot be accepted." (Div. Ex. 1).

By letter dated September 26, 1968 counsel for registrant forwarded an application for registration of VB&S as successor partnership to the sole proprietorship of Financial Services Co. (Div. Ex. 2, File No. 8-14167-1, Non-Current). Acceleration of the effectiveness of the application to the earliest practical date was requested. The application was found defective and incomplete in certain respects by the Section, and additional material was filed by registrant by way of amendment. (Div. Exs. 4, 5 and 6, Affidavit of Ira N. Smith, Esq., dated Nov. 20, 1968, in Administrative Proceeding File No. 3-1773-1).

The amendment was received and filed on October 29, 1968.

By order dated November 12, 1968 the Commission instituted proceedings to determine whether, pursuant to Section 15(b) of the Exchange Act the application of VB&S for registration as a broker and dealer should be denied. The effective date of the registration was postponed until November 27, 1968 and a hearing was directed on the question of whether it was necessary in the public interest or for the protection of investors to postpone the effective date of such

registration until final determination of the question of denial. A hearing by affidavits followed by the presentation of oral argument on November 22, 1968 was held. By prior stipulation the effective date of the registration of VB&S was postponed until December 2, 1968. However, no order accepting this stipulation and so postponing the effective date was issued. No decision on the question argued before the Commission was made. Later, an order was issued noting that the denial proceedings had become moot because the issues raised were not determined prior to the effective date of registration and the registration had become effective by the lapse of time. As previously noted, on November 29, 1968 the Commission issued an order for the instant proceeding noting that the registration of VB&S as a broker-dealer had become effective on November 27, 1968.

Volante, who owns a 75% interest in the partnership (the other two partners dividing the remaining 25%), testified that the basis for the determination to attempt to have the partners succeed to the business of Financial Services Co. was to avoid a time lapse that would ensue in securing approval of a new application (Tr. pp. 355-357). He sought to take advantage of the financial situation available to him through underwritings and participation in underwritings. The partnership commenced operations as a broker-dealer on or about August 1, 1968 and continued to do business using the mails until the institution of the denial proceedings on November 12. Operations were resumed at the beginning of December 1968 and continue so until the present time.

Contentions of the Parties; Conclusions

The Division contends that the evidence establishes that VB&S has been engaged in a general broker-dealer business during the period from approximately August 1, 1968, with the exception of the period between approximately November 12, 1968 and December 2, 1968 and that it had not complied with the registration provisions of the Exchange Act until November 27, 1968. It is urged in opposition to this contention that VB&S made a good faith effort to comply with applicable requirements by the amendments which were filed, that according to Volante he did not have notice of the letters of comment of September 9 and 16 from the Section of Broker-Dealer and Investment Advisor Registration previously referred to, and that the material furnished fully supplied all the information required in an application for registration with the exception of financial statements.

The statutory provisions for the registration of broker-dealers as set forth in Section 15(a) of the Exchange Act and as supplemented by rules promulgated by the Commission under that Act (Rule 15b1-1 et seq.) are designed to protect the public interest by assuring that those who engage in the securities business meet applicable requirements and have the requisite integrity. Compliance with these rules by those seeking to become registered broker-dealers is essential if the Commission is to carry out its responsibilities. Two methods are set forth in the rules for the registration of brokers and dealers, in general. One is by filing an application for registration (Rule 15b1-1). The other, by way of exception to the general rule, is

by taking advantage of and complying with the following provisions dealing with registration of a successor to a registered broker or dealer:

> In the event that a broker or dealer succeeds to and continues the business of another registered broker or dealer, the registration of the predecessor shall be deemed to remain effective as the registration of the successor for a period of 60 days after such succession: Provided, That an application for registration on Form BD is filed by such successor within 30 days after such succession. (Rule 15b1-3(a))

VB&S did not file a full application for registration until September 30, 1968. The filing of such a statement does not empower an applicant to immediately engage in the securities business. He can do so when his registration becomes effective. In the instant case that date was November 27, 1968. The evidence establishes that prior to that date the registrant was doing business as a broker-dealer.

Basically, the registrant relies on Rule 15b1-3(a) as a successor to Sperling who was doing business as an individual. It maintains that the two amendments it filed giving notice that the partnership was conducting the business of Financial Services Co. and, later, that the name of registrant had been changed to VB&S was substantial compliance with applicable provisions. However, the Rule clearly provides that the registration of the predecessor shall be deemed to remain effective as the registration of the successor for a period of 60 days after such succession: "Provided, that an application for registration on Form BD was filed by such successor within 30 days after such succession." There was not full compliance with this requirement by the registrant. A statement of financial condition

required by Rule 15b1-2 to be filed with each application for registration as a broker-dealer was not included in either of the amendments filed by the registrant. Such a statement is an integral part of an application and even if the amendments were to be considered as attempts to comply with the full registration requirements, the amendments were defective.[4/]

The respondents urge that the Division is estopped from alleging that the respondents violated Section 15(a) of the Exchange Act because the first letter of comment raising a question about the first amendment filed on behalf of the partners was made 42 days after the initial filing. The defense of estoppel is not available against an administrative agency.[5/] Furthermore, the registrant and its partners, having sought to take advantage of an exception to the general rule for registration, incurred the obligation of strict compliance with its provisions. This they did not do. The undersigned, therefore, concludes that the evidence tends to show that the registrant violated the registration provisions of Section 15 of the Exchange Act and applicable rules thereunder and that its individual partners aided

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4/ Rule 15b1-3(b) provides in substance that Form BD filed by an unregistered partnership which succeeds to and continues the business of a registered predecessor partnership shall be deemed to be an application for registration, even though designated as an amendment if it is filed to reflect the changes in the partnership and to furnish required information concerning any new partners. No other exceptions are contained in the Rules.

5/ H. C. Keister & Company, Sec. Exch. Act Rel. No. 7988, p.7 (Nov. 1, 1966).

and abetted such violations.[6/]

B. Injunctions Issued Against Volante

Prior to his association with VB&S, Volante was an officer and stockholder in the registered broker-dealer firm of Dunhill Securities Corporation (File No. 8-11616-1). During this association, Dunhill and Volante became subject to orders of preliminary injunction prohibiting them from further violations of the Securities Acts.

On February 20, 1968 an order of preliminary injunction was issued in the United States District Court for the Southern District of New York against Volante, Dunhill and a number of others prohibiting them from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 (Div. Ex. 8-B).

In an extensive opinion handed down on February 8, 1968 the Court found that there had been a scheme to acquire control of the issued stock of an inactive publicly-held corporation, North American Research and Development Corp. and, with the participation of certain defendants, to promote distribution of the balance of the issued stock with a view to introducing it on the over-the-counter market in the United States, creating a demand for it, instigating trading in it and running up its market price, all for the benefit of the chief defendant

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6/ Evidence was presented that the partnership did some business in the corporate form. In the opinion of the undersigned it is not necessary to consider this evidence at this stage of the proceeding.

and a group of friends engaged in its distribution.[7/]

The action was brought against North American and 42 other defendants. In his opinion Judge Mansfield described in detail how Edward White, the principal originator of the scheme, acquired a publicly-held inactive corporation to use as a shell for a stock manipulation, and how shares acquired by an insider group were distributed from Canada into United States.

Some of the findings of the Court dealing specifically with the activities of Dunhill and Volante are as follows:

> The opening of the market in the United States signalled the purchase of North American shares by most of the broker-dealers to whom the group had talked, including Dunhill, which commenced trading on June 27, 1967, by purchasing shares from one of the Toronto group's Canadian accounts (Dombrofsky, Morris Cooper's sister) and later from another (Frances Oventhal, Cooper's mother-in-law). As a result of an earlier visit by Blumberg in June to Toronto, during which White and Cooper furnished him with promotional information with respect to North American, Blumberg told various investors in and about New York that the stock was a good buy and would increase in value, and furnished copies of the 'Progress Report' to some. Thereafter some of these investors bought shares through Dunhill, which distributed 47,700 shares acquired from Canada to about 35 customers in the United States. (pp. 118-119)

> With respect to Dunhill Securities Corp., and its president, Guido Volante, 10,000 of the shares that came through its hands have been traced directly to the tainted shares that emanated from Utah prior to April 27. Between June 27 and July 20, 1967, 47,700 shares that it had acquired in Canada were sold to various brokers and to the firm's customers. On July 13, 1967, Mickey Osias, one of Dunhill's registered representatives,

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7/ North American Research and Development Corp., et al., 280 Fed. Supp. 106 (USDCSDNY, Feb. 8, 1968), Division Exhibit 8-A.

informed a number of the firm's customers about North American. Thereafter, upon the customers' inquiries into whether it was a good company, Osias stated that it had an "anti-pollution device" and that some of the companies were interested in looking into it. Thereupon the customers told Osias to purchase North American. Among the solicited transactions that appear to have involved tainted shares was the sale by Osias to Abe Gutman and Louis Wachs of shares previously in the account of Dombrofsky (Cooper's sister) with certificates registered in the name of Frances Oventhal (Cooper's mother-in-law). Having in mind that the burden of proving an exemption falls upon Dunhill, Securities & Exchange Commission v. Ralston Purina Co., 346 U. S. 119, 73 S.Ct. 981, 97 L.Ed. 1494 (1953); SEC v. Culpepper, 270 F.2d 241 (2d Cir. 1959); Gilligan Will & Co. v. SEC, 267 F.2d 461 (2d Cir.), cert. denied 361 U.S. 896, 80 S.Ct. 200, 4 L.Ed.2d 152 (1959) there is sufficient evidence to support the inference that Osias sold tainted shares to Gutman and Wachs.

Dunhill contends that its inquiries to Morris Cooper (Frances Oventhal's son-in-law), who also sold North American to Dunhill, and to Johnson (North American's transfer agent), inquiring as to North American's officers and directors and whether restricted stock bore legends, fulfilled its duty to make reasonable inquiry to ascertain whether the stock emanated from a control group. SEC v. Franklin Atlas Corp., 154 F.Supp 395 (S.D.N.Y.1957); SEC v. Mono-Kearsarge Consolidated Mining Co., 167 F.Supp. 248 (D. Utah 1958). The "reasonable inquiry" defense is not the result of statutory exemption. The denial of injunctive relief in Franklin Atlas, the only case wherein the argument proved successful, was based largely on the theory that resumption of the illegal activities was unlikely. Reliance upon a seller's self-serving statements, SEC v. Culpepper, supra, or upon statements of corporate officials, Barnett v. United States, 319 F.2d 340 (8th Cir. 1963), is insufficient. An inquiry is deemed reasonable only where it rests upon a reliable investigation based upon documentary facts or upon an SEC opinion, as was the case in Franklin Atlas. Therefore, assuming that an inquiry into whether shares emanated from an issuer or an underwriter would discharge a broker-dealer's statutory obligation, this obligation was not discharged by Volante's efforts in this case. Osias' attempts to induce customers to buy constituted solications destroying the § 4(4) exemption to which Volante would otherwise be entitled, since Osias' conduct, on the principle of respondeat superior, is attributable to Dunhill and Volante. Wonneman v. Stratford

Sec. Co., 57-61 CCH ¶ 90,923 (S.D.N.Y. 1959). The recent case of Kamen & Co. v. Paul H. Aschkar & Co., 382 F.2d 689 (9th Cir. 1967), does not indicate a different result, since the plaintiff there, unlike Osias' customers, could not have reasonably believed that the agents possessed the authority to engage in the improper transactions involved. (pp. 126-127)

Dunhill and its principal stockholder, Guido Volante, made use of the "Progress Report" to stimulate the interest of customers and other broker-dealers in North American. Volante, who did not testify, submitted his affidavit denying that he ever sent any report to Bryan Greenman, a broker-dealer. However, Greenman, whom the Court finds credible, testified that during the June 27-July 19, 1967 period, when North American was actively trading, Volante sent him a copy of the "Progress Report." Many of Volante's other statements were refuted. For instance, despite his denial that reports were sent out to customers Abe Gutman's affidavit asserts that Osias, a registered representative with Dunhill (Volante's firm), showed him a copy of the report and informed him that the security had promises of making him a dollar. Gutman thereupon purchased one hundred shares for himself and one hundred shares for his partner. Steven Bierer testified that he was told by Osias that North American had an air pollution device that other firms were interested in, and that the stock would go up, whereupon Bierer purchased one hundred shares. Vincent Martinelli, a broker, testified that he was asked by Volante to put North American stock in the Pink Sheets, Volante informing him that Dunhill was more interested in selling than buying the stock. (p.131).

* * * * *

As the active head of Dunhill, who manages its operations and supervises its salesmen, Volante was openly endeavoring to interest other brokers in the stock, doing so at a party sponsored by Dunhill. Since he knew and desired his salesmen to solicit and push the North American stock to its customers, he is responsible for their statements, and his conduct violated § 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934. SEC v. Rapp, 304 F.2d 786, 790-791 (2d Cir. 1962); SEC v. Broadwall Sec., Inc., supra. (p.131).

The Court concluded that violations of the registration provisions of the Securities Act (Section 5) had been committed by various defendants including Dunhill Securities and Volante and that violations

of the anti-fraud provisions of the Securities Acts (Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rules and Regulations thereunder had been committed by certain defendants including Dunhill and Volante. An appeal by some of the defendants from the injunction is now pending, but no appeal was taken by either Dunhill Securities or Volante.

On June 19, 1968 a judgment of preliminary injunction was issued in the United States District Court for the Southern District of New York against Dunhill Securities and its officers Patrick R. Reynaud and Volante in a proceeding instituted by the Commission on May 24, 1968. (Div. Ex. 7-B).

In a memorandum opinion (Div. Ex. 7-A) the Court found that at the time of the institution of the action, Dunhill was not in compliance with either the net capital rule (Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder) and the maintenance of record rule (Section 17(a) of the Exchange Act and Rule 17a-3 thereunder). It was further found that at the time of the hearing held on June 3, 1968 this condition continued, although Dunhill had made efforts to bring its records up to date and had come close to achieving that objective. It was further found that as of May 31, 1968 Dunhill had a net capital deficiency of $22,000. Many records, including blotters and general ledger were found not to be up to date as of May 24, 1968 and while certain records had been subsequently brought up to date, it was further found that certain postings were not completed and that clerical errors appeared in the records.

The injunctions issued in the above proceedings and the findings in the opinions in each of those cases summarized above, indicate that Volante participated in the violations against which the injunctions were issued.

III. CONCLUDING FINDINGS: PUBLIC INTEREST

The Commission, pursuant to the provisions of Section 15(b)(6) of the Exchange Act, pending final determination whether the registration of a broker-dealer shall be revoked is directed to suspend such registration if, after appropriate notice and opportunity for hearing, such suspension shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors. In Peerless-New York Incorporated, 39 S.E.C. 712 (1960), the Commission set forth the following standard to be applied in determining the issue of suspension:

> . . .The Exchange Act clearly contemplates that a suspension order is properly issued where a preliminary showing is made that a registered broker or dealer has engaged in such misconduct, of a nature that would warrant revocation, that public investors would be jeopardized by registrant's continuing dealings with them during the more extended interval which development and determination of the issues relating to revocation would entail. (pp.715-716).

In A. G. Bellin Securities Corp., 39 S.E.C. 178 (1959), the Commission stated:

> The suspension provision in Section 15(b) of the Exchange Act indicates recognition by the Congress that where it is preliminarily shown that a registered broker-dealer has engaged in serious misconduct, proper protection of investors and the securities markets requires that the statutory permission to

> engage in interstate securities transactions with others which is conferred by his registration be withdrawn pending further hearings on the revocation issue. Under that provision, we are only directed to inquire into the question of whether the public interest or the protection of investors warrants suspension, and there is no requirement that suspension be based upon findings of willful violations or the other grounds specified with respect to revocation. The pattern of Section 15(b) thus shows that in balancing the interests of the registrant on the one hand and of investors on the other, Congress viewed the interest of investors in being protected from such a broker or dealer as outweighing his interest in continuing to have full access to investors. Nor is it necessary, as urged by registrant, that the record show imminent danger to the public interest in connection with the particular securities involved. In our opinion we are required in the public interest or for the protection of investors to suspend registration where the record before us on the suspension issue contains a sufficient showing of misconduct to indicate the likelihood that after hearings on the revocation issue registrant will be found to have committed willful violations or any of the other grounds prescribed with respect to revocation in Section 15(b) will be established, and that revocation will be required in the public interest. (p.185).

The above standard has been applied in a long line of other cases.[8/]

The evidence adduced at the hearing indicates that the registrant violated the registration provisions of Section 15(a) of the Exchange Act by engaging in business as a broker-dealer without being registered. Guido Volante, a 75% owner of the registrant, has been enjoined in two cases from further violations of the Securities Acts. The opinion in the North American Research and Development Corp. case, supra, indicates that Volante participated in violations of the anti-

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8/ Barnett & Co., Inc., 40 S.E.C. 1,5 (1960); Biltmore Securities Corp., 40 S.E.C. 273, 277 (1960); Allstate Securities, Inc., 40 S.E.C. 567, 571 (1961); Brown, Barton & Engel, 41 S.E.C. 59, 64 (1962); and Lloyd, Miller and Company, 41 S.E.C. 200, 205 (1962).

fraud sections of the Securities Act, and sections dealing with the registration of securities. The violations found in that case were serious and extensive and dealt with key provisions designed for the protection of investors and the public interest. The Commission, pursuant to the provisions of Section 15(b) of the Exchange Act may revoke the registration of any broker-dealer if it finds that such revocation is in the public interest and that any person associated with such broker-dealer prior to becoming so associated is enjoined from engaging in or continuing in any conduct or practice in connection with any activity as a broker or dealer or in connection with the purchase or sale of any security or has willfully aided or abetted in violations or has himself violated any provision of the Securities Acts.

It is contended on behalf of the respondents that it is not in the public interest or necessary for the protection of investors to suspend the registration of VB&S pending determination of the question of revocation. Among the contentions made are that Behar and Sperling have been engaged in the securities business for 12 and 16 years, respectively, and have an unblemished record, and that Volante has been engaged in the securities business since 1956 and had an unblemished record until 1968. As to the alleged violation of the broker-dealer registration provisions of the Exchange Act it is urged that VB&S relied on advice from counsel. Finally, it is also argued that the actual business operations of VB&S have been in compliance

with applicable rules and regulations and that no member of the public has had any cause for complaint against the firm.

With respect to the two injunctions that were issued against Volante, it is urged that they were not final and that their mere existence does not establish that it is in the public interest to suspend the registration of VB&S. However, each of the injunctions were accompanied by opinions containing detailed findings of serious violations of provisions of the Securities Acts designed to protect investors and the public interest. In particular, the opinion in the North American Research and Development Corp. case, supra, contains very serious findings of violations of the anti-fraud provisions of the Securities Acts. The Commission in the line of suspension cases previously cited in footnote 8 has consistently held that evidence of violation of these provisions formed a basis for the issuance of a suspension order.

Respondents rely on Balbrook Securities Corporation (Securities Exch. Act Rel. No. 7522, Jan. 28, 1965). In that case the issue before the Commission was whether an application for registration should be denied because of an injunction issued against its president. The officer of the applicant had consented to the entry of an injunction against him without admitting allegations in the complaint charging him and others with violations of various provisions of the Investment Company Act. The Commission after stating that a consent injunction furnished the basis for denial of registration if such action was in the public interest found certain extenuating circumstances including

the prior unblemished record of the officer-respondent since 1931, his inability to engage in a securities business since the issuance of the injunction and the proposal of the registrant that if its registration were permitted to become effective, it would not maintain custody or possession of, or exercise discretionary authority over, customers' funds or securities. The Commission concluded that while the case was a close one that under all the circumstances, including the proposed limitations on the applicant's activities which would be incorporated as a condition in its order, the mere existence of the injunction was not a sufficient indication that denial of registration would be in the public interest in the instant case. One commissioner dissented from the holding of the majority.

There are clear distinctions between the Balbrook case and the suspension cases cited above. Balbrook involved the determination of an ultimate issue; denial of registration. The instant proceeding involves a question of suspension in which a different standard of evidentiary proof applies. Ultimately in each case presented to it the Commission must determine what is appropriate and hard and fast rules cannot be strictly applied. The Commission in Balbrook recognized that the case was a close one and concluded that denial was not necessary, but only after imposing a strict limitation on the type of activity the registrant could perform.

It is argued that since there was a suspension hearing as part of the prior denial proceedings brought against this registrant

and the Commission did not issue an order of suspension after argument, it must be concluded that the Commission had decided that an order of suspension was not necessary. There is no warrant for such an assumption. The only order of record states that the proceeding had been dismissed because it had become moot by virtue of a lapse of time. The Commission made no determination on the merits of the issue argued before it.

It is also argued that some of the defendants in the North American Research and Development Corp. injunctive proceedings summarized above are registered broker-dealers or principals thereof and that not one has had revocation proceedings instituted against him. (Respondent's Brief, p.8). Revocation proceedings have recently been instituted against some of those defendants. (Sec. Exch. Act Rel. No. 8461, Dec. 2, 1968). In any event, the central issue here is what action is appropriate in the instant case. The evidence does indicate that the registrant has violated the registration provisions of the Exchange Act and that serious violations of the Securities Acts have been committed by Volante who is a dominant member of the registrant. The nature of these alleged violations are so serious that the undersigned concludes that suspension of the registration of the registrant is appropriate in the public interest and the protection of investors pending determination of the issue of revocation.

Accordingly, IT IS ORDERED that pending final determination of the allegations set forth in the order for these proceedings and what, if any, remedial action is appropriate in the public interest

pursuant to Section 15(b) of the Exchange Act, the registration of Volante, Behar and Sperling as a broker-dealer shall be suspended.

Pursuant to Rule 19 of the Commission's Rules of Practice, a party may file a petition for Commission review of this initial decision within three days after receipt of the initial decision. If a party timely files a petition for review, this initial decision shall not become final as to that party. 9/

Sidney L. Feiler
Hearing Examiner

Washington, D. C.
January 22, 1969

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