



UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :  
LESTER KUZNETZ : INITIAL DECISION  
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APPEARANCES: Sandra L. Dolan, Joseph G. Mari and John B. Myers, of the New York Regional Office, for the Division of Enforcement.

Edward J. Boyle, for Respondent.

BEFORE: Jerome K. Soffer, Administrative Law Judge.

On April 30, 1984, the Commission issued an order for public proceedings (Order) pursuant to Section 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) naming Lester Kuznetz as respondent. The order is based upon allegations of the Division of Enforcement (Division) that the respondent willfully violated the antifraud provisions of the securities laws, specifically, the first three numbered paragraphs under Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in connection with the purchase and sale of shares of common stock of Reserve Oil & Minerals Corporation (ROIL).

The order directed that a public hearing be held before an administrative law judge to determine the truth of the allegations set forth and, what, if any, remedial action is appropriate in the public interest for the protection of investors. Five days of hearing were held during the week of April 23, 1984 in New York City. Respondent was represented by counsel.

Following the close of the hearing, successive proposed findings of fact, conclusions of law and supporting briefs were filed by the Division and by the respondent. The Division served a reply brief.

The findings and conclusions herein are based upon the evidence as determined from the record and upon observation of the demeanor of the witnesses. The preponderance of

evidence standard of proof has been applied. <sup>1/</sup>

From 1973 to August 1983, respondent was employed by Thomson McKinnon Securities, Inc. (Thomson McKinnon), a broker-dealer registered with the Commission, as a registered securities sales representative and assistant branch manager in Thomson McKinnon's Nanuet, New York, Branch Office. He was also designated a vice president from 1978 until August 1983.

Prior thereto, respondent attended Rockland University College and received an associate's degree. He thereafter received a Bachelor of Science Degree in economics at the University of Bridgeport. He took correspondence courses from the New York Institute of Finance and certain courses in managing and principles of the New York Stock Exchange. He served in the United States Army for two years from 1966 to 1968.

Respondent is currently employed as a registered representative at a broker-dealer registered with the Commission where he solicits customers and potential customers in the purchase and sale of common stocks.

ROIL is a New Mexico corporation engaged primarily in the business of acquiring, developing and mining of uranium-bearing materials and the milling thereof into uranium concentrate. Among its principal officers is Frank C. Melfi,

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<sup>1/</sup> See Steadman v. SEC., 450 U.S. 91 (1981).

its executive vice president (his brother is president and his father is chairman of its board of directors).

ROIL and Sohio Western Mining Company (Sohio) jointly owned a uranium mine and mill complex in New Mexico. As pertinent to this proceeding, in December of 1979, ROIL called for arbitration under its operating agreement with Sohio in settlement of a dispute regarding the latter's management of the jointly-owned facilities in New Mexico in which ROIL was seeking damages of approximately \$15 million. Arbitration hearings were conducted throughout most of the relevant period hereinafter described. On June 3, 1981, ROIL was awarded damages amounting to a little over \$1 million, which it felt was not sufficient in the light of its claims and expectations.

Moreover, as pertinent hereto, on September 22, 1977, ROIL filed suit against, among others, Gulf Oil Corporation charging violations of the Sherman Anti-trust Act. Its lawsuit was still pending during the relevant period herein.

In every year since 1971 through 1981, except for the year 1978, ROIL had a net loss in its operations. During the relevant period, these losses were reflected in both its quarterly reports (form 10-Q) and its annual reports (form 10-K) filed with the Commission. Its loss for the fiscal year ending August 31, 1979 amounted to more than \$6,636,000. For the following fiscal year it suffered a net loss of over \$3,430,000. These losses were also reflected in press releases issued by ROIL, copies of which were sent

to its stockholders and those on its mailing lists (including respondent, at his request). Thus, on July 10, 1981 the corporation issued a news release reporting a net loss in excess of \$9,146,000 during the first 9 months of its 1981 fiscal year.

Other disclosures contained in filings to the Commission and/or in press releases were the fact that during July of 1980, ROIL had sold 136,700 of its common shares in a private placement, of which 103,000 shares were purchased by one Thomas W. Reid (Reid) which bears relevance to the issues herein; the announcement of its arbitration proceeding against Sohio in December 1979 and of the award of \$1,090,000; that because of decline in uranium prices it made several write-downs of the value of its uranium inventories; and that because of declining uranium prices, no new revenues were being produced through the sales thereof and its milling operations were virtually non-existent.

Respondent first became aware of the existence of ROIL in or about July of 1980 when he was advised by one of his customers, Thomas Pacconi, that Reid, his partner and associate, had made a large purchase of ROIL shares and indicated that there was the possibility of a takeover by a major oil company.<sup>2/</sup> In evaluating this information,

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<sup>2/</sup> Prior to this telephone call from Pacconi, respondent never had an interest in the uranium industry, nor in the stock of any company engaged therein including ROIL.

respondent was impressed by his belief that both Pacconi and Reid had on six or seven previous occasions made purchases of stock in various corporations which thereafter made dramatic upward price moves and rewarded them handsomely.

Spurred on by his belief in the ability of Pacconi and Reid to discover special situations derived from inside information, and by his assessment of Pacconi as being an individual who had been successful in stock trading and who appeared to be very knowledgeable and sophisticated with respect to the securities industry, Kuznetz began to recommend to his clients and others the purchase of ROIL stock on a principal basis from Thomas McKinnon, which was one of several market makers in this security. He also undertook to gather information supportive of his belief in the infallibility of Pacconi and Reid to pick winners.

To this end, respondent looked into the Standard and Poor's Corporation over-the-counter stock reports on ROIL; began to amass a due diligence file on the corporation in which he inserted articles culled from newspapers and trade periodicals showing favorable opinions concerning increasing future demands for uranium and portending a rebound upward from then low market prices; contacted an officer of ROIL, Frank C. Melfi, to obtain information; and solicited the senior energy analyst for Thomson Mckinnon, Donald Fernow, seeking a favorable "buy" recommendation

from him.

The S&P report on ROIL showed its series of annual operating losses since 1971, except for 1978, and its failure to pay any dividends during that time. It further showed that the price of the shares had a high of 19 and a low of 8 in 1974, but that thereafter through 1978 it had reached highs ranging from 38 to 49 and lows ranging from 22 1/2 to 25 1/2 for 1976 through 1978. However in 1979, the high was only 30 and the low was 20 1/2. From this respondent concluded that the stock had a support level of around 20 and could reach highs close to 50.

Kuznetz's due diligence file contained opinions that given the shortage of oil with the possibility of unrest in the Middle East the world would have to turn to atomic energy as an ultimate source of power, that a number of foreign countries had already turned to nuclear energy exclusively, and that the election of a Republican president in 1980 would favor a turning to atomic power by this country as well. <sup>3/</sup>

Melfi, the executive vice president of ROIL, was contacted by respondent via telephone in the summer of 1980. In that and subsequent calls respondent

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<sup>3/</sup> Respondent concedes that as a result of the accident at the Three Mile Island Nuclear Plant in March of 1979, there were contrary opinions expressed as to the future of nuclear energy. He did not agree with these conclusions and therefore did not put any of these or any other adverse articles in his due diligence file.



identified himself, told Melfi of his interest in the ROIL stock and informed Melfi of his knowledge that Tom Reid had a very good track record of picking stocks and was a large investor in ROIL. Respondent made frequent calls to Mr. Melfi, on some occasions several times weekly, to discuss such things as the future of nuclear energy, the arbitration proceedings pending involving Sohio, the anti-trust proceedings against Gulf Oil, and Melfi's belief that the company's operations would prove profitable in the future. None of these calls were ever originated by Melfi.

In February of 1981, respondent invited Melfi to dinner in New York City to which one of his customers was also invited. During this dinner, they discussed the arbitration proceedings in which ROIL was involved and other matters of a general and public nature. During all of his discussions with respondent, Melfi never told him that any company was involved or interested in a takeover of ROIL, never gave him any insider information, never told him anything that was not also disclosed to other members of the public and other brokerage houses, and never expressed a belief by Melfi that the price of the ROIL shares would increase, although he did express his belief in the company's achieving profitability in the future. Melfi knew of Reid's purchases which made him a stockholder of just under 10 percent of the outstanding

shares, but there were other large institutional holders of major blocks of ROIL shares. He was also aware that there were some 8 other market makers in ROIL stock besides Thomson McKinnon.

In addition to his contacts with Melfi, Kuznetz called the analyst for Thomson McKinnon, Donald Fernow, requesting that he issue a favorable research report recommending the sale of ROIL stock, stating that he was quite enthusiastic about the company. Fernow refused to take the time or expend the effort in preparing such a report because the shares of ROIL were too thinly held to warrant a general recommendation to the Thomson McKinnon sales staff of over 1,300 members. However, he did agree to send a "wire report," a much briefer and cursory one.<sup>4/</sup>

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<sup>4/</sup> The research department at Thomson McKinnon prepares basically two types of recommendations. One is an in-depth research recommendation involving a detailed and complete evaluation of a corporation covering many factors including an assessment of management, an evaluation of the statistical record of the company, the industry involved, etc., which results in a recommendation to purchase or sell the subject securities. The analytical staff Thomson McKinnon prepares possibly one or two such written recommendations in a one or two-month period.

The research staff also prepares a "wire recommendation" in response to a request by one of its sales people based upon a cursory check of available data, such as the Standard and Poor's reports and current statements of financial condition which are of record. In a day an analyst may receive as many as 20 or 25 requests for a wire report.

In response to respondent's request, Fernow sent him the following wire on August 4, 1980 (exhibits 199B and 199C):

Reserve Oil and Minerals steady buildup in revenues is expected to restore earnings in near future. Company has good producing properties in New Mexico and attractive uranium prospects in Canada. Though current uranium prices have softened, expect renewed interest in nuclear power to restore price uptrend. Company also has important gold prospects. Has speculative [appeal].

Fernow explains that the use of the term "speculative appeal" meant to indicate that the security did not have investment merit but rather involved a speculative situation which is fraught with very high risk and also the chance of high reward. In addition, a speculative situation could become very volatile and subject to extreme swings in market prices. The use of the term "speculative appeal" would be interpreted as a recommendation for sale only to a client having an interest in a small speculative stock. It would not support a general solicitation by a Thomson McKinnon sales representative or broker. In the opinion of Fernow ROIL stock was such an investment.

Thereafter, Respondent called Fernow on about 5 or 6 occasions, urging him to contact someone in ROIL management for further verification as to value of the company, but Fernow declined to do so because he did not think the situation warranted any more of his time. On the whole, he would not characterize his wire as constituting a strong "buy" recommendation, although he had concluded that the

prospects for the uranium industry generally at that time were favorable.<sup>5/</sup>

Thomson McKinnon issued a list of recommended stocks. This list did not include ROIL. Fernow denies ever giving a "buy" recommendation for ROIL.

#### Sales of ROIL Stock

During the relevant period, from July 1980 to July 1981, respondent recommended the purchase of ROIL shares to most of his active customers. He also solicited new customers to purchase the stock and sold shares to individuals recommended to him by existing customers. In all, some 86 of his accounts purchased approximately 100,000 shares of the ROIL common stock at prices ranging from \$5.00 to \$35.00 per share.<sup>6/</sup>

Some 16 of respondents' customers testified at the hearing herein. Their respective initial purchases were made between August 5, 1980 and January 20, 1981, although many of them made more than one purchase. Their testimony will be

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<sup>5/</sup> During conversations with respondent prior to the one resulting in the wire report of August 4, 1980, Fernow told him that he had just written an in-depth report on "Kerr McGee," a well diversified, large and well-known uranium producing company which provided greater security, was better known and was more marketable than ROIL.

<sup>6/</sup> During this period, the price of the stock was about 32 or 33 in August 1980, declined to 22 by November, rose to about 33 in January, 1981, and then dropped steadily to about 9 in June and 5 1/2 in August of 1981. It continued to decline thereafter.

discussed in the approximate date order of their respective initial purchases.

Allan Schiff, an officer of a truck sales corporation, and a client of respondent, was solicited on August 5, 1980 to purchase ROIL stock on the representations by respondent that the company was going to be acquired by Gulf Oil at a price of \$60.00 a share. Kuznetz gave as the source of his information two very substantial stockholders in ROIL, Reid and Pacconi, whom he knew personally. As a result of these representations, Schiff purchased on margin 1,000 shares on that date. The following day he made an additional margin purchase of 1,000 shares upon the solicitation of respondent who repeated his statements of the day before and suggested that Schiff would make a great deal of money. Thereafter, respondent urged that he make additional purchases.

Following the purchase by Schiff, the price of the stock kept going down, but respondent urged him not to be concerned, that he had visited with Reid and Pacconi, and that they had taken a major position in ROIL. When Schiff suggested that the stock be sold because of the declining price, respondent continued to advise against it, beseeching him to hold on. In December of 1980 Schiff received a margin call from Thomson McKinnon and, over the objection of respondent who urged him to put up money to cover the call, permitted some of his shares to be sold. Thereafter,

the shares of this customer were regularly sold to meet different calls and by May of 1981 he was completely sold out. As a result of these transactions, Schiff suffered a loss of about \$30,000.

Respondent never discussed the financial condition of ROIL with this customer.

Esther Taylor, a 75-year old florist, had opened an account in December of 1979 with respondent at the recommendation of her accountant, Alan Ritter, who was also respondent's cousin. At that time, she deposited a number of securities in the account with the understanding that they be sold and the proceeds invested in a money-market fund. At some time thereafter, she was contacted by respondent who suggested that she purchase ROIL stock. She advised respondent to clear it with Ritter.

Starting with August 7, 1980 some 7 purchases were made in her account during the next 5 weeks amounting to 5,000 shares at prices ranging from 33 1/4 to 26 1/4. 500 shares were sold on January 5, 1981 when the price of the stock came back to 30. On January 20, the sale was offset by a purchase of 500 shares at 32 and a purchase of 1,000 shares a month later at a price of 23. In March there were two sales of 500 shares each at about 24 followed by a purchase of 1,000 shares in April at 22 and a purchase of 500 shares in June at 9 1/4. All purchases were

on margin, although it is not clear whether Mrs. Taylor ever formally authorized margin trading. Kuznetz called her in advance of purchases of ROIL (except possibly the first) and on each occasion she suggested he talk it over with Alan Ritter. She first learned of these transactions when she received monthly account statements, to which she paid little attention because of her great faith in her accountant. The final purchase of 500 shares on June 16, 1981 was made after she told respondent not to buy any more ROIL stock.

Respondent never told her anything concerning the financial condition of the corporation. He mentioned an anticipated greatly increased demand for uranium in the future. Had she known that ROIL had lost money in 4 out of the 5 previous years and had never paid a dividend she would not have purchased the stock. Her monthly account statements show total purchases of ROIL stock, less some sell-offs, amounting to almost \$180,000. She still held 6500 shares as of July 31, 1981 valued at that time at almost \$53,000 resulting in a net loss of about \$127,000.

Charles G. Meyer, a consulting engineer, had maintained a margin account with respondent. In the Summer of 1980, a friend, Herbert Miller, informed him that he learned of a takeover of ROIL and that its stock would increase in value. Based thereon, he approached

Kuznetz and purchased some 400 shares on August 11, 1980 at a price of 32 1/4. Meyer had thereafter participated in discussions at the respondent's office with other customers, at which respondent was also present, concerning the impending takeover. Respondent never discussed the financial condition of ROIL, but this would have made no difference in his decision to buy. He was urged by respondent not to sell, even at a profit, but to await the greater profit to be made later.

Meyer subsequently sold out his interest in anticipation of margin calls and suffered a loss of approximately \$8,000.

In July of 1980, John Nathanson, a retired post office clerk, opened an investment account with respondent for his son, then in military service, and who had recently inherited about \$40,000 in cash and securities. At the initial meeting, Nathanson explained to Kuznetz that he wanted his son's inheritance invested in safe and risk-free securities to be available when he left the Navy.

In August of 1980, respondent recommended the purchase of ROIL stating that it was a good stock, that he was familiar with the people behind it, that it was good enough for his parents to buy and that he, Kuznetz, was going to buy shares for his children. Respondent further told him that the stock, then selling for around



32, would reach a price of 50 in about six months. Nathanson agreed to a cash purchase of 500 shares on August 18 at 33 1/2. In order to make the acquisition, some of his son's holdings in other securities were sold. Shortly thereafter, respondent recommended additional purchases, advising Nathanson that he socializes with the president of ROIL. This resulted in another purchase of 500 shares at 32; and of additional purchases totaling 1,500 shares. Since the account did not have sufficient funds to purchase the last 1500 shares, Kuznetz suggested that Nathanson buy on margin, explaining that when the shares moved up and sold at a profit they would then repay the monies advanced by Thomson McKinnon in the margin transaction. Nathanson was reluctant to buy on margin, but respondent assured him that everything would be all right and that he wanted Nathanson to have as much shares as he could buy.

As a result of these transactions, in less than a month all of Nathanson's other security holdings had been sold and the only stock remaining in his son's portfolio were 2500 shares of ROIL. When Nathanson questioned the desirability of having all of the account in one security, respondent again assured him not to worry.

In subsequent months, as the price of ROIL kept declining and Nathanson began receiving margin calls, respondent encouraged him to hold on and recommended that he should

buy more shares to average down his cost. There being no more money available, the stock was sold off between April and June of 1981 to meet succeeding margin calls. As a result, the account lost all of its \$40,000.

Respondent never gave any information to Nathanson about the financial condition of ROIL, nor its earnings or dividend policy. He would not have agreed to purchase the stock had he known that ROIL operated at a loss during 4 of the 5 years and had never declared a dividend.

Robert G. Byrnes, an iron worker superintendent, opened an account with respondent in early 1980. In August, Kuznetz solicited the purchase of ROIL shares telling Byrnes that the stock was going to make a move upward and suggesting that he sell his other securities holdings in order to buy ROIL. Respondent told him then and several times thereafter that he knew the owner of the company and had dinner with him, that there was a big corporation who owned a substantial block of ROIL stock, that the company was a possible takeover candidate, and estimated that the stock would rise from its then price of 32 to 40 by the end of the year. As a result of these conversations, Brynes sold his other holdings and agreed to the purchase of 700 shares at 32 1/2 on August 21, 1980, for a total cost of \$22,575. This was a margin purchase, although he never authorized buying on margin and became quite

upset over it. Thereafter, the price of the stock began to decline but respondent suggested that Byrnes continue to hold on. Eventually, his positions were sold out in order to meet margin calls and by December he had lost a total of \$11,000 on these transactions.

Barry Mendelson, a medical doctor, had a margin account with respondent. He was solicited by respondent to make a purchase of ROIL and was told that it was a terrific stock that would double in price in a very short period of time. As a result, Mendelson purchased 300 shares of ROIL on September 5, 1980, on margin, at 27 1/4. Respondent assured him that the margin purchase involved very little risk. During some 4 or 5 telephone conversations, respondent advised him that there were many others who had invested in ROIL, including himself, and that it was a guaranteed situation as far as he was concerned.

At a point and time when the ROIL stock reached the price of 33, Mendelson instructed respondent to sell him out if it went below 31. At that time, respondent suggested that he should be purchasing rather than selling because the stock was going to 45. In May of 1981, the accountant was sold out for failure to meet margin calls resulting in a loss to the investor of some \$2,500.

Respondent never discussed the financial condition of ROIL except to say that it was doing very well. Had

Mendelson known about ROIL's losses he would not have made the purchase.

Spencer Botkin, a pharmacist and a resident neighbor of respondent, had maintained a margin account at Thomson McKinnon. As a result of solicitations by Kuznetz who told him that there was supposed to be a takeover of ROIL around the first of 1981 which would result in a price rise of from 3 to 5 points, Botkin purchased 100 shares of ROIL at 24 on September 26, 1980. At the time of purchase, he had owned Kerr-McGee (See footnote 5, ante) which he had sold upon the advice of respondent in order to purchase ROIL. Later, in June of 1981, he made an additional purchase of 200 shares at 9 3/8 at the suggestion that this would be a good way to average down his cost of the stock. Eventually, Botkin sold his 300 shares during August and September of 1981 at about \$5 per share to meet margin calls, resulting in a total loss to him of about \$2,800.

Botkin claims that had he known that ROIL had lost money in every year since 1976 he might not have purchased the stock.

Frederick DeRush, employed as a boilermaker, had maintained a margin account with respondent. As a result of solicitation by respondent, he initially purchased 500 shares of ROIL at 26 1/4 on margin on October 9, 1980.

He was assured by respondent that the stock was going to make money for him to recover previous trading losses and that he could not lose. Four days later he made another margin purchase of 500 shares at the same price. In December of 1980 he purchased 300 more shares at 20 in an attempt to average down his cost per share. In May of 1981, the price continued to decline and a portion of his holdings were being sold to cover margin calls. He made a bank loan to deposit some \$20,000 in his account to cancel the margin call and recover his shares. At that time, Kuznetz convinced him to buy 200 more shares of this stock at 16 1/4 upon the assurance that eventually he would get all of his money back. As a result of these transactions in ROIL Mr. DeRush ultimately lost some \$30,000.

Towards the end of 1980, when the price of the stock was about 31 DeRush asked respondent to sell his shares since he would have earned a profit. However, upon the representation by respondent that the stock was going to go up ever higher he did not persist in having his shares sold.

Henry Fera, a restaurant owner, and a long time friend of respondent, had maintained a brokerage account with him at Thomson McKinnon. In October 1980, respondent told him that the ROIL stock would advance

substantially in the next few months, that he had done a lot of research on it, that friends of his (naming Reid and Pacconi) were large investors in this stock, that there was supposed to be a takeover of ROIL by Gulf Oil Company and that the stock would go as high as \$50 to \$60 a share. Respondent claimed that the source of his information was Melfi, an official of ROIL. Fera also learned at that time that the stock was being heavily bought by people in his area. <sup>7/</sup> Kuznetz stated that the election of Ronald Regan would result in an increased demand for nuclear power, thereby making the uranium holdings of ROIL very valuable. Respondent showed him literature expressing favorable prospects for the uranium

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7/ There was an almost daily gathering of local residents who had invested in the stock in respondent's small office at Thomson McKinnon in Nanuet to discuss the current state of affairs of ROIL. This group included Pacconi, Fera, Meyer, Michael Liebowitz, Irwin Berkowitz, and one, Henry Miller. Frequently, respondent would make telephone calls within their hearing to Melfi, Fernow, and others to make inquiries concerning the status of the corporate activities and would report to those present ostensibly what they were saying.

Mr. Fera described the activities of the group as follows: (transcript pages 271-2): "Because for a time being, in Lester's office, that was the only stock really being watched because there were so many people involved in it, you know, there was -- you know, there was a lot of people at one time involved in the stock; had big positions, so you know, everybody came to the office. That was the general topic; Reserve Oil and Mineral. There wasn't much else to talk about."

industry. He stated that ROIL was involved in a law suit where it was going to collect a large sum of money. Respondent also advised him that there would be no risk in buying on margin since in the past five years the stock never went below \$19 a share, suggesting that he would be able to buy twice as many shares on margin and increase his eventual profits. Kuznetz told him that he himself had bought ROIL stock.

As a result of these conversations with respondent, Fera began a series of margin purchases of ROIL stock commencing November 3, 1980, at a price of 22 1/2 so that by March 6, 1981 he owned a total of 2200 shares. <sup>8/</sup>

There were times when Fera wanted to sell some of his holdings at a profit, such as when it reached \$32 a share, but respondent discouraged him from doing so reminding him about the forthcoming takeover and that he "should not miss the boat". As the price of ROIL shares began to decline after January of 1981 respondent kept urging him to make additional purchases, even to selling other securities to do so.

As a result of the price decline, Fera was forced to sell off some of his ROIL shares to cover margin calls,

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<sup>8/</sup> Fera made these purchases over the objections of his wife, herself a registered representative for a large broker-dealer, because she thought that over-the-counter stocks were too risky.

although Kuznetz suggested that he deposit funds instead and hold on to his stock in order to cash in on the eventual takeover. The sell-off of Fera's shares to meet margin calls continued so that by May 21, 1981 all of his holdings were gone, bringing him a total loss of about \$21,000.

Irving Barenholtz, the president of an electric company and a friend of Kuznetz, was solicited by him in December, 1980, to purchase shares of ROIL stating that interest in uranium would be increasing as a result of the election of President Ronald Regan, that ROIL stock was under-valued and would rise to about \$70, and that the stock was recommended by his firm, Thomson McKinnon.<sup>9/</sup>

Initially, Barenholtz made a cash purchase of 1,000 shares at 28 1/4 on December 30, 1980.<sup>10/</sup> As a result of further solicitation by respondent, who claimed to have spoken to Frank Melfi who was very confident of ROIL's future, he bought an additional 1,000

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<sup>9/</sup> Although initially insisting that these were the only representations made to him by respondent, Barenholtz later admitted, when confronted with his statement given to the Commission during the investigatory stage of the proceeding, that respondent also told him ROIL might be taken over by a major oil company.

<sup>10/</sup> Prior to making his purchase, Barenholtz discussed the stock with a friend employed by another broker and was told that the firm had purchased either 1,000 or 6,000 shares of ROIL stock on the feeling that it was going to go up in price.



shares at 29 1/4 on January 5, 1981 on margin.

Thereafter, as the stock dropped in price respondent continued to solicit Barenholtz to purchase additional shares, repeating that the stock was a good buy recommended by Thomson McKinnon. He thus made a third purchase on margin of 1000 shares at 22, and a final purchase of 1000 shares as late as July 18, 1981 at 8 1/4 in order to "average down" his cost.

During his period of ownership of the stock, Barenholtz received margin calls which he covered by cash payments, as recommended by respondent. Eventually, he sold 1000 shares of stock at 4 7/8 and 3000 shares at 3 1/2, subsequent to the relevant period herein.

Michael Liebowitz, an employed salesman as well as operating a private corporate business, was solicited by Kuznetz in December 1980 to purchase ROIL stock, asserting that it was going to be taken over by another company which would cause the stock to rise sharply in value, and that he had inside information from Pacconi and Reid, a substantial stockholder in ROIL. As a result of these solicitations and representations Liebowitz made an initial purchase on margin of ROIL stock on January 14, 1981.

Immediately prior to this purchase, he was one of the group meeting in the office of respondent (see footnote 7,

above) at a time when Kuznetz emerged after a telephone call to announce to all those present there was going to be a tender offer made by Gulf to takeover ROIL at \$60 a share some 30 or 60 days hence. This convinced Liebowitz that he need not worry about paying margin interest or receiving margin calls because of the impending takeover in so short a time. In all, Liebowitz made four different purchases in January totaling 2000 shares of ROIL at prices ranging from 30 to 33 1/4. As a result of constant solicitation by respondent, he caused his corporation to buy an additional 1000 shares in April of 1981 at 22 3/4. During this period, Liebowitz received a margin call resulting in the sale of 1400 shares of stock, which was cancelled upon his desposit of sufficient funds. Later, Liebowitz sold 500 of his individual shares to raise some money against the urging of respondent not to do so.

Eventually, as the price of ROIL shares declined, Liebowitz's margin accounts were sold out resulting in losses to him of approximately \$60,000. <sup>11/</sup>

During discussions concerning ROIL and its operations, Kuznetz had advised that the corporation was not making

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<sup>11/</sup> Liebowitz is one of the main plaintiffs along with others in a law suit pending against respondent and Thomson McKinnon arising out of these transactions.

any money because it was stockpiling uranium against future rises in price, and that ROIL was involved in arbitration from which it would profit handsomely. At one time, Liebowitz had asked respondent for a copy of ROIL's annual report and 10-K report, which he never received. Nevertheless, he continued with his purchases of the stock.

Lawrence Brodsky, a salesman, upon the recommendation of Michael Liebowitz, contacted Kuznetz with respect to purchasing ROIL stock. Respondent advised him that ROIL was in litigation with Gulf Oil and based upon information he had from officers of the company, Gulf would acquire ROIL at the conclusion of the litigation in about April of 1981 and the stock would double in price to about \$60 a share. Consequently, Brodsky opened an account and made an initial purchase on January 15, 1981 of 200 shares, on margin at the respondent's suggestion. The same day he made an additional purchase of 300 shares on the basis of a price rise of about 1/2 a point.

On March 10, 1981, Brodsky received a margin call because of a price drop of more than 10 points. At respondent's suggestion, he purchased an additional 500 shares as a way of covering the call. On April 27, Brodsky sold stock in another company to buy 500 more ROIL shares upon advise from respondent that the other

company was going into bankruptcy.

The witness recognized from the outset that he was making a speculative investment in ROIL, a uranium producer, although respondent advised that he was embarking on a relatively safe investment. Prior to the first purchase, Brodsky had asked Kuznetz for written information on ROIL but was advised that there was no time, that he had to act quickly, and that the price was going up too fast. Hence, he never discussed the financial condition of ROIL at that or any other time. Had he known about ROIL's losses in earnings during prior years he might have hesitated before making the purchase.

Following the initial purchase of the stock, Brodsky spoke to respondent on several occasions to express concern over the declining price of the stock, but was advised to hold on to his shares since it was definitely going up. In April 1981, he asked respondent why the purported takeover had not as yet taken place and was advised that the lawsuit was dragging longer than expected but that he was sure that the takeover would happen.

Subsequently, Brodsky received several margin calls which he did not want to meet and was sold out on June 10, 1981 at a price of \$9 per share. <sup>12/</sup> When the last margin

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<sup>12/</sup> Brodsky's purchases amounted about \$36,750, the stock was sold for about \$13,500, leaving a net loss on all of the transactions in excess of \$23,000. Brodsky is a co-plaintiff with Liebowitz in the action against Thomson McKinnon.

call was received respondent urged Brodsky to cover it with cash rather than to be sold out since he still felt the stock was going to come back.

Irwin Berkowitz, a practicing physician, was recommended to respondent by his cousin, Michael Liebowitz, to trade in ROIL stock. As the result of telephone conversations with respondent in late December 1980 or early January 1981 wherein he was advised that a major oil company, either Gulf or Exxon, was going to take over ROIL at a price of \$60 a share within about a month, he agreed to purchase on a cash basis 150 shares at 32 1/4 on January 16.

A month or two after the purchase, Berkowitz called respondent because of his concern over a drop in the price of ROIL shares as well as the fact that he had erroneously believed ROIL to be an oil rather than a uranium company. During these conversations, he was reassured by respondent that the takeover would take a little longer but would nevertheless occur. And he suggested that Berkowitz should be buying more shares, even if he had to do it on margin. In June of 1981, following a sharp decline in the price of ROIL stock, the witness sold out his holdings at a price of 13 5/8 thereby suffering a loss of close to \$3,000. Since his motivation in buying the ROIL stock was to make a quick profit from a takeover, he would be unable to state whether the financial

condition of ROIL would have made a difference to him. <sup>13/</sup>

Marvin Berlin, an account executive and office manager for a textile company, was recommended to Kuznetz with respect to ROIL stock. On January 19, 1981, he telephoned respondent, opened a cash account with him, and purchased 100 shares of the stock at 33 1/2. He turned over for sale some stock he owned in six other corporations to cover the cost of ROIL. A week later, he bought 100 additional shares at 30, on margin at the suggestion of respondent.

Berlin was induced to make these purchases upon the representations by respondent during the first telephone conversation that ROIL was producing uranium, which would become a valuable commodity because of the oil shortage, and that there were negotiations pending with Gulf Oil for a merger with ROIL. Ultimately, Berlin sold his 200 shares during 1982 with losses of over \$6,000. Between the time of purchase and the time of sale he spoke to Kuznetz several times concerning the decline in the price of ROIL stock and asked why the merger was taking so long. He was reassured that the negotiations were still pending.

Neil Siegel, a podiatrist, made an initial cash purchase of 100 shares of ROIL on January 19, 1981

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<sup>13/</sup> Berkowitz was requested to join in the lawsuit in which Liebowitz and Brodsky are plaintiffs against Thomson McKinnon but he declined to do so.

at a price of 33 5/8, as a result of solicitation by respondent who told him he had good inside information that a major oil company, Gulf, was contemplating a takeover of ROIL. The price of the stock declined, but Siegel made a second purchase of 100 shares at 26 3/4 on February 2, 1981, on margin, on the assurance by Kuznetz that he could not get hurt since his information concerning a takeover was still good. Siegel does not recall any conversation with respondent other than the two described above.

As the stock further declined, there was one margin call which he covered by a cash deposit, but remaining margin calls wiped out his ROIL holdings for a total loss of about \$4,000. Respondent never told Siegel about the financial condition of ROIL, and had he known that the corporation had reported losses in all but one of its previous years he probably would not have made the purchase.

Norman Isaacson, a sales manager and expeditor for a glass company, was solicited (through his wife) by respondent to purchase ROIL stock on the representation that it was a "good hot stock" that was going to double in price in at least two months because of a prospective takeover by Gulf Oil Company. Consequently, on January 21, 1981, he purchased 300 shares at 31 1/4, using monies set aside for his daughter's education. He opened this account originally as a cash account, but when he did not have enough money to pay for the purchases respondent suggested and

Isaacson did open a margin account. He became concerned between the trade date and settlement date because the stock began to go down in price but he was reassured by Kuznetz that the stock would double in price.

Thereafter, Isaacson received one margin call which he covered with a cash deposit. Several months after the purchase, he suggested to respondent that he would like to get rid of his ROIL stock because its price was continuing to decline and because of the margin interest he was paying. At that point, at respondent's suggestion, Isaacson sold other stock in order to pay off the margin balance. In the summer of 1981, he transferred his account to another broker. He eventually sold ROIL at a price of 1 3/4 suffering a loss of almost \$9,000 of the entire transaction.

Respondent never told Isaacson anything concerning the financial condition of ROIL. Had he known that during the previous five years ROIL lost money in all but one of them, he would never had purchased the stock. <sup>14/</sup>

On November 25, 1980, Kuznetz purchased for his own account 600 shares of ROIL at 24 and 1/8 which he sold several weeks later at a price of 21 3/4. On May 19, 1981, he again purchased 500 shares of ROIL at 16 which he sold about nine days later on May 28th at 15 3/4. Finally, on

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14/ Isaacson was approached by other investors to join in a class action suit against Thomson McKinnon and respondent but he refused to join.



June 19, 1981 he purchased 500 shares at 9 1/2 which he sold about a week later at 9 3/4. These are the only purchases and sales that respondent had made on his own account with respect to the ROIL stock. He never informed any of his customers of his purchases nor that he was selling his stock, although he had implored all of them to continue to hold on to their shares during the period of declining prices. He also represented to them that he was a holder himself of ROIL shares, which was true for only three short periods of time.

#### Discussion and Conclusions

The Order charged respondent, in connection with the purchase and sale of ROIL stock during the relevant period from in or about July 1980 to in or about July 1981, violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and the Commission's Rule 10b-5 promulgated thereunder (the so-called "anti-fraud" provisions) <sup>15/</sup>

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<sup>15/</sup> Section 17(a) of the Securities Act makes it unlawful for any person in the offer or sale of any securities by the use of any means or instrumentalities of transportation or communication in interstate commerce, or by the use of the mails, directly to indirectly -- to do any of the following:

- "(1) to employ any device, scheme or artifice to defraud, or
  - (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the ~~circum~~stances in which they were made, not misleading, or
- (FOOTNOTE CONTINUED)

by making to his customers the following untrue statements of material facts, or omitting to state to them material facts, in the following ways:

(1) Concerning his possession of confidential non-public information regarding an impending takeover of ROIL by a major oil company;

(2) Concerning a prospective increase in the market price for the common stock of ROIL;

(3) That there was a minimal risk of loss in connection with their purchase of the ROIL stock;

(4) Concerning the nature and extent of research regarding ROIL which had been performed by himself and registrant; and

(5) By failing to disclose material information regarding the financial condition of ROIL.

The proof herein warrants the conclusion that respondent made the representations as charged to his

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15/ (FOOTNOTE CONTINUED)

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

Section 10(b) of the Exchange Act makes it unlawful, in connection with the purchase or sale of any security to use or employ, "any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5 promulgated thereunder, extends, in effect and with a few language changes, the provisions of 17(a) relating to the sales of securities to both the purchase or sale thereof.

customers and prospective customers, and failed to disclose to them information concerning ROIL's poor financial state. It is further concluded that these representations were untrue, and that they and the omission were material and wilfully made.

The misrepresentations that ROIL was to be taken over by a major oil company - the name of "Gulf Oil" being most frequently mentioned - together with the statements that the price of ROIL stock would rise to levels of 50, 60 or 70 within a brief period constitute the core of the fraudulent conduct of respondent. Kuznetz's belief in the supposed infallibility of Thomas Reid, upon whom he looked with awe as a successful wheeler-dealer in stock situations, and as a man who must have had inside information to have made his money in stock trading, was the chief factor causing respondent to lead his clients down the path to substantial losses.

Kuznetz told his customers and prospects, first that there was a possibility and later that there was the certainty, that ROIL would be taken over by Gulf or Sohio as a result of litigation and/or arbitration among the parties. He further predicted that the take-over price would be 50 to 70 dollars a share at times when the market price was as high as \$34 and as it steadily declined to less than half that amount. These allegations were probably false and uncorroborated.

They were not substantiated by Frank Melfi or other officers of ROIL, or by the research report by Donald Fernow, nor by any other source - reliable or otherwise - to which respondent looked for guidance. It could not be found in the earnings reports by ROIL, nor by actions or statements issued by Gulf or Sohio, nor in any of the pro-nuclear articles and other materials placed in the due diligence file maintained by respondent.

The only source of such information were the statements by Pacconi, another admirer of Reid, that the latter had acquired a large block of ROIL stock and had told Pacconi first of the possibility and later of the certainty of a takeover at a price of 60. And that was enough for Kuznetz.

Having become convinced that he was the recipient of inside information, respondent sought out justification for his belief in the story as rumored. He repeatedly sought a "buy" recommendation from his company's research department. He set up his due diligence file of articles and comment favorable to the future of the use of uranium for power and nuclear weapons and ignoring and omitting contrary opinion. He even sought support in the election of President Reagan. And finally, he wrongfully translated an opinion by Donald Fernow that ROIL stock had no more than speculative appeal into a positive buy recommendation by Thomson-McKinnon, an opinion he passed on to his customers.

However, had respondent's interest really been aroused by a suddenly acquired belief in the future of nuclear power, rather than by Reid's activities, he might have looked at other companies in this field showing better earnings and more diversified interests. <sup>16/</sup> Had he not become convinced he was privy to real inside information, he might not have encouraged his customers to sell all their other holdings in order to invest in ROIL, nor have urged them to assume the considerable risks in buying on margin in order to acquire more shares, nor have discouraged them from selling ROIL shares when it would have been profitable to do so or necessary to do so to cut back their losses or avoid margin calls, nor have pushed them to "average down" their investments as the price of the stock began to steadily decline. <sup>17/</sup>

The record also warrants the conclusion that Kuznetz repeatedly and wrongfully assured his customers that there was virtually no risk of loss to them. When

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<sup>16/</sup> Such as Kerr McGee. See footnote 5, ante.

<sup>17/</sup> It is noted that in respondent's proposed findings of fact no. 24, he asks a finding that of the sixteen customer-witnesses presented by the Division, "more than half of them could have sold their shares in January, 1981 at a profit (sic)." This is true. It is also found that whenever any of them sought to sell - in January or at any other time - they were exhorted by respondent not to do so because the stock would hit 50 or 60, and that they would miss out on the profits waiting for those who held on until the takeover by Gulf.

discussing the techniques of buying on margin, he advised that based upon his analysis of past price movements, there was no actual possibility of a margin call. He brushed aside any doubt about the ultimate profitability of the investments. Since such optimism could not have been based upon any of the known facts about ROIL, it can only be concluded that it was based upon his Reid-inspired belief of an early takeover. From the facts publicly known or on file, ROIL was a constant loser in its operations, the price of uranium was steadily declining, it had virtually ceased mining and milling operations, and in the opinion of Fernow, its stock only had speculative appeal.

Under these circumstances, it is clear that the repeated assurances by respondent as to a minimal risk of loss were false, were not based upon the facts of record and known to him, and were made in reckless disregard of these facts.

The allegation that Kuznetz falsely misrepresented to his customers the nature and extent of research regarding ROIL is supported by his representations to them that Thomson-McKinnon had issued a "buy" recommendation concerning the stock of that company. <sup>18/</sup> By no stretch of the imagination

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18/ Only one of the customer-witnesses, Barenholtz, testified that respondent represented to him there was a Thomson-McKinnon buy recommendation. However, respondent himself testified that this is what he told his customers. (Transcript, p. 992)

could Fernow's wire that the stock had "speculative appeal" be interpreted as a recommendation to buy. Fernow so indicated when he said that it meant the security should only be acquired by an investor in a very special situation, since it involved a great risk (and the possibility of a great reward). Most of the customer-witnesses hardly qualified to be such an investor. Moreover, there is no proof in the record that respondent advised them that the research of his company resulted in the "speculative appeal" conclusion. And this conclusion affords no basis for telling them it was being recommended.

Finally, the record establishes that Kuznetz withheld information that he either possessed or could have readily ascertained from public records and the press releases issued by ROIL management that the company had for many prior years continuously operated at financial losses (except for the year 1979), had failed to pay a dividend in any year, had been forced to cease producing and milling uranium because of the declining market price for uranium, and that its hope of making money was the expectation of a favorable outcome in its arbitration dispute with Sohio (which, when it did occur, was not nearly enough to help ROIL).

Quite apparently, all of these factors were ignored by respondent, immersed as he was in the euphoria engendered

by the rumors passed on to him by what he considered to be smart operators acting on insider information.

Materiality, Wilfulness and Scierter

It is concluded that all of the false representations and the omission on the part of respondent were "material" to the making of the investments herein. The test of materiality is whether there is a substantial likelihood that a reasonable investor would consider these misrepresentations and the omission important in making their investment decisions. TSC Industries, Inc. v. Northway, Inc., 426 U.S. 837 (1976).

There is no question that representations that there was going to be a corporate takeover at a very substantial increase in market price, that there would be minimal risk of loss; and that the research department of a large and influential broker-dealer had issued a buy recommendation for the stock, as well as the knowledge of the poor financial condition of the corporation involved, would be considered by a reasonable investor before making an investment decision. It matters not whether these particular investors were motivated almost exclusively by the representation of an imminent takeover, and hence not too concerned about the financial condition of the company or the existence of a "buy recommendation", in the making



of their decisions to invest.<sup>19/</sup> The test is that these factors would have been important to a reasonable investor.

The misrepresentations and omission were also done "wilfully", as that term is understood in securities cases.

It is well established that a finding of wilfulness does not require an intent to violate the law; it is sufficient that the one charged with the duty consciously performs the acts constituting the violation. See Tager v. S.E.C., 344 F.2d 5, 8 (2d Cir. 1965); and Arthur Lipper & Co. v. S.E.C., 547 F.2d 171, 180 (2d Cir. 1976).

A further aspect of the anti-fraud violations is that one of the elements required to be established to show a violation of Rule 10(b)-5 and the first subsection of Section 17(a) is that respondents acted with "scienter", defined as "a mental state embracing intent to deceive, manipulate, or defraud". Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193, n.12 (1976). Scienter is established by knowing or intentional conduct. Aaron v. SEC. 446 U.S. 680, 690 (1980). It may also be established by reckless conduct. Nelson v. Serwold, 576 F.2d 1332, 1337-8

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<sup>19/</sup> In this regard, many of the investor-witnesses (Brodsky, Nathanson, Taylor, Siegel, Mendelson, Botkin and Isaacson) stated that had they known of the poor financial condition they might not have made their investments in the ROIL stock, However, others said they were motivated solely by "greed".

(9th Cir.,) cert. den., 439 U.S. 970 (1978). Courts recognize that absent an admission by defendant, scienter may be inferred from circumstantial evidence which "can be more than sufficient". Herman & McLean v. Huddleston, 103 S. Ct. 683, 692 n.30 (1983).

It is quite clear from the findings heretofore made that Kuznetz acted with the requisite scienter in one or more aspects. His representations of an impending-takeover by Gulf were at the very least reckless, since they were based on nothing more than the word of another investor having no known relationship to the takeover company or its purported target. He flew directly in the face of a research analyst's report that the investment was speculative at best when he represented that there was minimal risk, or that he had a buy recommendation from Thomson-McKinnon. He intentionally withheld the facts concerning the poor earnings and other unfavorable matters relating to the ROIL financial situation. These are acts reflecting knowing or intentional conduct, or, at the very least, reckless conduct.

In any event, respondent had also violated Sections 17(2) and (3) of the Securities Act for which it is not necessary to show scienter. Aaron v. S.E.C., 446 U.S. 680, 694 696-7.

Respondent, in his brief, (p. 22), asks that, in considering whether fraud has been perpetrated upon the customers of

Kuznetz, we ". . . must take into account . . . the aspect of greed, acknowledged by some and evidenced in the conduct of these investors". However, as the Commission said in Gilbert F. Tuffli, Jr., et al., 46 S.E.C. 401, 405 (1976):

That a customer is an experienced investor cannot excuse fraudulent representations to him. Nor are such representations privileged when the customer wants to speculate. And there is no right to lie to customers who initiate transactions. (foonotes omitted)

From all of the foregoing, it is concluded that respondent has wilfully violated the anti-fraud provisions of the securities laws as charged in the Order. He asserted without any foundation, and led his customers to believe, that he had inside information of a takeover by ROIL. He has engaged in predictions of very substantial price rises to named figures with respect to a speculative security,<sup>20/</sup> which has been characterized as a "hallmark of fraud". He minimized, without justification, the risks inherent in buying a speculative stock on margin in a company with a very poor earnings record. All in all, he failed in his duty to deal fairly with his customers.<sup>21/</sup>

As stated by the Commission in Alexander Reid & Co., Inc., 40 S.E.C. 986, 990 (1962):

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<sup>20/</sup> See Gilbert F. Tuffli, Jr., supra, P. 405, fn 21: "This principal has been repeated in so many later cases that it is now axiomatic."

<sup>21/</sup> See Mac Robbins & Co., Inc., 41 S.E.C. 116, 118 (1962).

A broker-dealer in his dealings with customers impliedly represents that his opinions and predictions respecting a stock which he had undertaken to recommend are responsibly made on the basis of actual knowledge and careful consideration. Without such basis the opinions and predictions are fraudulent, and where as here they are highly optimistic, enthusiastic and unrestrained, their deceptive quality is intensified since the investor is entitled to assume that there is a particularly sound foundation for them. And it is not sufficient excuse that a dealer personally believes the representation for which he has no adequate basis. (underling added).

#### Public Interest

In its brief, the Division urges that the violations by Kuznetz of the securities laws are so grave and "egregious" that nothing less than an imposition of the severest sanctions, i.e., a total bar from association with any broker or dealer, is required in the public interest. It cites a number of decisions involving fraudulent conduct in which such a sanction had been imposed.

Respondent, on the other hand, argues that no sanction be imposed upon him, and goes to great lengths to differentiate his situation from the cases cited by the Division. <sup>22/</sup>

In assessing a sanction, due regard must be given to the facts and circumstances of each particular case, since sanctions are not intended to punish a respondent but to

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22/ In fact, virtually his entire brief in support of his Proposed Findings of Fact and Conclusions of Law is devoted to the issue of sanction.

protect the public interest from future harm. See Berko v. S.E.C., 316 F.2d, 137, 141 (2d Cir. 1963); Leo Glassman, 46 SEC 209, 211 (1975); Robert F. Lynch, 46 S.E.C. 5, 10 n.17 (1975); and Collins Securities Corp., 46 S.E.C. 20, 42 (1975). Sanctions should also serve as a deterrent to others. Richard C. Spangler, Inc., 46 SEC, 238, 254 n.67 (1976).

In viewing respondent's conduct, as detailed heretofore, it is found that he exhibited a total indifference to the boundaries that separate fact from fiction, a disregard of the interests of his clients, a willingness to subject them to the risks inherent in margin purchases in a security described as "speculative", and an overpowering insistence that they throw all caution to the winds and rely instead on his unsupported belief in the occurrence of an investment miracle - a "takeover" at a high price. The losses sustained as a result of his fraudulent conduct were substantial, and harshly affected a widely diversified group of individuals, including those least able to suffer them, i.e., a member of the armed forces, blue collar workers, an elderly widow, and small businessmen, among others.

Respondent has exhibited a propensity for irrational euphoria and blatant exaggeration, and to permit him to continue to meddle with other people's money would be contrary to the public interest. Hence, a bar from association with any broker or dealer would seem to be the appropriate sanction

under the circumstances herein. See Steadman v. S.E.C., 603 F.2d 1126, 1140 (5th Cir. 1979; aff'd on other grounds), 450 U.S. 91, (1981).

Respondent, in mitigation of a sanction, argues that he has an otherwise unblemished record of more than twenty years of service in the securities industry, that he lost his high position with Thomas McKinnon, has suffered financial hardship, and has endured embarrassing publicity in the small community wherein he works and lives. He complains of the long period of time transpiring between the relevant period and the bringing of this proceeding. He further asserts that he has learned his lesson (although not in his testimony, except with respect to opening margin accounts).

The fact that respondent has suffered in his private or business life as a result of his conduct as hereinabove described must be considered in the context that the sanction is not intended to punish him, but to protect the public interest from future fraudulent activities of this type and to serve as a deterrence to others in the industry who might otherwise be disposed to engage in the same type of practices. And, finally, a lapse of time following the misconduct at issue is necessarily involved in all broker-dealer proceedings that come before the Commission. Collins Securities Corporation, supra, at p. 41.

Taking all of the foregoing factors into consideration, including those offered by respondent in mitigation, it is concluded that the sanction hereinbefore stated to be appropriate in the premises, a bar from association with any broker-dealer, be subject to the proviso that after one year, respondent may reapply to again become associated with a broker dealer in a non-proprietary and non-supervisory capacity. <sup>23/</sup>

ORDER

Under all of the circumstances herein, IT IS ORDERED:

That respondent, Lester Kuznetz, be barred from associating with any broker or dealer, provided, that after one year from the effective date of this order, he may apply to again become associated with any broker or dealer in a non-supervisory and non-proprietary capacity only.

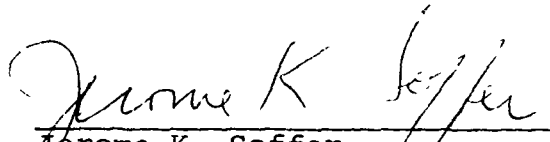
This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party

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23/ In their briefs and arguments, the parties have requested the Administrative Law Judge to make findings of fact and have advanced arguments in support of their respective positions other than those heretofore set forth. All such arguments herein have been fully considered and the Judge concludes that they are without merit, or that further discussion is unnecessary in view of the findings herein.

who has not, within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), 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.

  
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Jerome K. Soffer  
Administrative Law Judge

February 6, 1985  
Washington, D.C.