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ADMINISTRATIVE PROCEEDINGS
FILE NO. 3-5150

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :
REVERE MANAGEMENT CO., INC. :
(8-8021) :
AMERICAN FUND SERVICES, LTD. :
WILLIAM N. HESS :
ABLERT KUHN :

Filed

12-2-77

INITIAL DECISION

December 2, 1977
Washington, D.C.

Ralph Hunter Tracy
Administrative Law Judge

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APPEARANCES:

John R. Kiefner and Lynda L. Cole
of the Washington Regional Office
for the Division of Enforcement

William T. Hangle of Goodman &
Ewing for Revere Management Co.,
Inc.

Daniel B. Pierson of Pierson, Jones &
Nelson for William M. Hess

BEFORE:

Ralph Hunter Tracy
Administrative Law Judge

This is a public proceeding instituted by Commission order (Order) dated January 5, 1977, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) and Section 9(b) of the Investment Company Act of 1940 (Investment Company Act), to determine whether the above-named respondents, ^{1/} committed various charged violations of the Exchange Act and regulations thereunder, as alleged by the Division of Enforcement (Division), and the remedial action, if any, that might be appropriate in the public interest.

The Order alleges, in substance, that the remaining respondents in this proceeding, William M. Hess (Hess) and Revere Management Co., Inc., (Management) willfully violated and willfully aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondents Hess and Management were represented by counsel throughout the proceedings. Proposed findings of fact and conclusions of law and supporting briefs were filed on behalf of Hess, Management and the Division.

The findings and conclusions herein are based upon clear and convincing evidence as determined from the record and upon observation of the witnesses.^{2/}

^{1/} Prior to the hearing the Division was unable to obtain service of the Order on respondents Albert Kuhn (Kuhn) or American Fund Service, Ltd. and they did not appear nor were they represented during the proceeding.

^{2/} The Commission has traditionally employed the "preponderance of the evidence" standard of proof. However, in its recent decision in Collins Securities Corporation v. S.E.C., C.A.D.C., August 12, 1977, the Court held that, at least in cases involving alleged fraud and potentially severe sanctions, the higher "clear and convincing evidence" standard must be met. In the instant case, where there are no factual disputes of substance, the application of either standard yields the same results.

The findings herein are applicable only to Hess and Management and are not binding on any of the other respondents named in the Order.

FINDINGS OF FACT AND LAW

Respondents

Revere Management Co., Inc., (Management), a Pennsylvania corporation with its principal offices at 123 South Broad Street, Philadelphia, Pennsylvania, has been registered with this Commission as a broker-dealer pursuant to Section 15(b)(1) of the Exchange Act since November 10, 1959, and is a member of the National Association of Securities Dealers (NASD). Since 1959 Management has been the exclusive underwriter and has provided complete administrative services to Revere Fund, Inc. (Revere), a Delaware corporation which has been registered with this Commission since 1959, as a management, open-end, diversified investment company, pursuant to Section 8(a) of the Investment Company Act.

William Hess (Hess) received a BS degree from the Wharton School of the University of Pennsylvania in 1941. Following military service he entered the securities business in 1946 and is Chairman, Treasurer and 36% shareholder of Hess, Grant and Frazier, Inc. (formerly Hess, Grant & Remington, Inc.) a New York Stock Exchange member firm, Hess is President and Chairman of Revere. He is also Chairman and Treasurer of Philadelphia Financial Management Company (Financial), a wholly-owned subsidiary of Hess, Grant and Frazier, Inc. Financial is registered with the Commission as an investment adviser pursuant to Section 203

of the Investment Advisers Act of 1940, and has provided advisory services to Management since 1971. When Revere registered with the Commission in 1959, Hess was a director and President of Management and Revere, and all of Management's directors were directors and stockholders of Hess, Grant & Remington, Inc. During 1972 and 1973 members of the Hess family held 27.9% of the outstanding shares of Management; members of the family of Richard O. Smith, a director of Revere, held 36.7% of the outstanding shares of Management; the wife of James Grant, a shareholder and director of Hess, Grant & Frazier, Inc., held 16.2% of the shares of Management and Howard Sanders who was President, Treasurer and a director of Management from October 1966 until June 1, 1972, held a 12.2% interest in Management.

Albert Kuhn (Kuhn) is a German national who was a mutual fund dealer with his principal office at Charlotten Strasse 32, Dusseldorf, Germany. He was assisted by his wife Sylvia and at one time had as many as 25 salesmen working for him in West Germany, Belgian and other European countries. He represented Management from 1966 until early 1974.

American Fund Services, Ltd. (ASF) was founded by Kuhn on May 5, 1969, as a Bahamian corporation. It never had an office or personnel in the Bahamas but maintained a Post Office Box in Nassau. A Nassau attorney forwarded the unopened mail to Kuhn's Dusseldorf address.

OTHER PRINCIPALS

Howard Sanders (Sanders) received a BS degree from Temple University in 1962 and a Master of Accounting degree from Ohio State University in 1966. He worked with the public accounting firm of

Price Waterhouse & Co. from February 1962 to September 1965. In February 1966, he was hired as Treasurer of Management and in October 1966 was elected President and a director as well. He was also elected Treasurer of Revere at the same time. He was in charge of sales promotion and was responsible for obtaining dealers for Management. He was also, an assistant professor of accounting at Temple University. He resigned from Management in June 1972, and since then has been operating Sanders Financial Management Inc. in Fort Lauderdale, Florida.

James Michael McFadden (McFadden) received a BS degree in Economics from Villanova University in 1966. He is a CPA and was employed by the public accounting firm of Haskins & Sells from May 1966 to November 1968 when he joined Management as Vice-President and Secretary. In June 1972, he also, became Secretary-Treasurer of Revere and in February 1973, became Executive Vice-President, Secretary-Treasurer and a director of Management. He resigned in January 1974, because Hess suggested he look for another job as Management could no longer afford his salary.

Edwin K. Daly (Daly) is an attorney who was counsel to Revere Fund and Management from about 1966 to about June 1974. During this time he was in private practice but prior to 1966 he was associated with the Philadelphia law firm of Stradley, Ronon, Stevens & Young, which represented Fund and Management at that time. When he left the firm Fund and Management retained him as their counsel. He was consulted on an almost daily basis, when necessary, by McFadden concerning problems which arose at Management, particularly those concerning Kuhn. He also, had frequent discussions with Hess concerning these matters.

Richard May (May) has a BS degree in Industrial Management from LaSalle College and spent 2-1/2 years in the U.S. Army which he left in 1967 with the rank of Captain. In 1968 he joined First Pennsylvania Corporation (Penco) an affiliate of First Pennsylvania Bank. He continued with Fund Plan Services (FPS), a subsidiary of Penco, and in December 1974, he became an assistant vice president of FPS. FPS was the transfer agent for some 40 different mutual funds and in February 1969, became transfer agent and shareholder record keeper for Revere Fund. FPS processed all redemption requests for Revere shareholders from early 1972 until early 1974.

Violations

The Order charges that from on or about June 30, 1972, to on or about December 3, 1973, Management, Hess, Kuhn and AFS willfully violated and willfully aided and abetted violations of Section 10(b) ^{3/} of the Exchange Act and Rule 10b-5 thereunder in redeeming and effecting transactions in the shares of Revere, and in connection therewith, directly

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

and indirectly, made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in transactions, acts, practices and a course of conduct which operated as a fraud and deceit upon the sellers of such shares. As part of this conduct respondents made false and misleading statements of material facts and omitted to state material facts concerning:

1. the redemption procedures employed by Revere;
2. the failure of shareholders to receive redemption proceeds and the disposition of such proceeds;
3. the unauthorized affixing on redemption checks of signatures which were purported to be those of redeeming shareholders;
4. the purported existence of an investigation by the Commission into the activities of Revere;
5. Kuhn's purported role as director of Revere;
6. the processing of improperly guaranteed redemption requests; and,
7. statements and omissions of similar purport and object.

The allegations set forth in the Order involving Management and Hess arose from their employment of Kuhn. Management is the exclusive underwriter of Revere, of which Hess is president, and it has distributed fund shares through NASD dealers. In 1966, Howard Sanders (Sanders), who was then president and treasurer of Management, met Kuhn through a member of the NASD and although Kuhn was not an NASD member he signed him up as a dealer in Germany. Kuhn proved to be a successful salesman and at one time operated as an exclusive distributor of the Revere shares in Germany pursuant to a contract with Management.

From October 28, 1966, the date of his first contact with Management, until November 1, 1969, when the West German government restricted the sales of foreign securities, Kuhn and his salesman sold approximately

3 million dollars worth of Revere shares. Following the action of the German government sales by Kuhn were non existent except for the continuance of contract plans. Moreover, German investors began to redeem their shares, mostly through Kuhn, and in 1972 and 1973, these redemptions totaled over a quarter of a million dollars. In 1974, following complaints by Revere shareholders to the German authorities, Kuhn was arrested and brought to trial in Dusseldorf for having embezzled approximately \$235,000 from Revere shareholders. He was convicted and is now serving a 5-year sentence in a German prison.

In support of its charges in the Order the Division maintains that Management and Hess ignored a series of "red flags" raised by Kuhn's activities; that these "red flags" should have put Hess and Management on notice that something was wrong; that they had a duty to control or curtail Kuhn's activities; and that this duty, if properly carried out, would have prevented the embezzlement of German shareholders by Kuhn. The fact that Management and Hess did nothing to control Kuhn and his activities made them participants in Kuhn's scheme to defraud investors.

Respondents, on the other hand, argue that Kuhn independently performed a fraud on many of his German customers and that Management and Hess had no knowledge of and did not participate in Kuhn's fraudulent activities. That the actions taken by Hess and Management in their dealings with Kuhn in light of the circumstances as they existed prior to Kuhn's conviction, without the benefit of hindsight, did not violate the anti-fraud provisions of the Exchange Act.

The facts herein are not seriously disputed. The parties submitted a stipulation of facts and agreed to the authenticity of some 318 pre-marked Division exhibits at the commencement of the proceedings. The admissibility, relevancy and materiality of the exhibits were ruled on during the course of the hearing. Therefore, the issues to be resolved arise from the interpretation of the statute and rule, which respondents are charged with violating, in light of the applicable facts.

From October 28, 1966, until September 24, 1969, Kuhn was a very active salesman for the Fund. He retailed a lot of shares and during the later part of the period he was an exclusive distributor for Revere Fund shares in Germany pursuant to an agreement with Management which was the underwriter for the Fund. On September 24, 1969, the exclusive agency agreement was terminated.

On October 28, 1966, Management contracted with Kuhn to be a distributor of Fund shares. Sometime in 1967 at Kuhn's request, a second contract was entered into between Management and Kuhn designating him as Management's exclusive distributor in Germany. This exclusive distributor contract was cancelled on September 24, 1969.

Once he became a Fund distributor Kuhn had the Fund prospectus translated into German for distribution to prospective investors. Also, sometime between October 1966 and October 1969, Kuhn published and distributed in Germany a magazine entitled Investment Fund Analysis, a publication featuring stories, performance charts and advertisements relating primarily to American mutual funds. Kuhn sent copies to Sanders and everyone at Management, including Hess, saw the magazine. The magazine carried advertisements for Revere, and one such advertisement included

pictures of Hess and Sanders and referred to Kuhn as Revere's exclusive distributor.

From 1967 to 1970 Management experienced difficulties with Kuhn and American Fund Services (AFS) concerning late payments for Fund shares sold in Germany. The payments made by the German investors to Kuhn were not received by Revere, Management or Fund Plan Services, Inc. (FPS) ^{4/} within seven days of the reported and effective sales of Revere shares as required by Regulation T. ^{5/}

On September 5, 1968, the Revere directors discussed the significantly late payments for (Kuhn's customers') purchases accompanied by an increasing rate of sales. In view of the lateness of the payments, it was determined by the board to refuse further sales to Kuhn until the unpaid orders were resolved. A committee of 2 directors was appointed to review the situation before resuming business with Kuhn on a credit basis. At the November 1968 director's meeting it was reported that sales with Kuhn had been resumed and that Kuhn's payments were on a current basis.

However, subsequent to sales being resumed with Kuhn there were further difficulties and from November 1, 1968 through October 6, 1969, payments for 20 of Kuhn's transactions were more than 10 days

^{4/} A wholly owned subsidiary of First Pennsylvania Banking & Trust Company (Penco) which has served as Revere's transfer and dividend disbursing agent and custodian for all of Revere's securities. FPS was delegated the function of processing Revere's redemptions around April 1972. Neither Penco nor FPS had any part in Revere's management or policy decisions.

^{5/} Regulation T, promulgated by the Federal Reserve Board pursuant to Section 7 of the Exchange Act, provides, among other things not here pertinent, that purchases of securities be paid for within 7 days.

late and at some time during this period Daly found it necessary to discuss the late payment problem with the NASD. An NASD Report of Examination of Management, dated October 9, 1969, stated under comments: "Inadequate customer ledger and failure to notify NASD on late payments by retailer to underwriter." The retailer was Kuhn and the underwriter was Management. On March 26, 1970, the NASD addressed a letter to Sanders setting forth the results of its examination which stated:

"Firm not preparing or maintaining an adequate customers' ledger in accordance with provisions of SEC Rule 17a-3 and 4 as found beginning on page 4021 of the Association's Manual."

The NASD letter stated, also, that during the period from at least November 1, 1968 through October 1969 the firm had not notified the NASD District Office of late payments received for shares of investment companies purchased by the members. Meanwhile, on November 5, 1969, the Revere directors had ordered that future business with Kuhn must be on a cash only basis.

Also, on March 19, 1969, Haskins & Sells, Management's auditors, sent a material inadequacy letter to Management concerning Management's Financial Report on Form X-17A-5, for the year ended December 31, 1968, filed with the Commission. The letter and report called attention to material inadequacies in the accounting system, internal accounting control and procedures for safeguarding securities. It was noted that the custodian bank for Revere had encountered difficulties in handling the volume of transactions occurring in 1968, which resulted in individual inaccuracies in Management's fail and cash balances. Moreover, Haskins & Sells stated that "a European bank account, established to facilitate transfer of funds relating to foreign sales of Fund shares by an independent foreign dealer (Kuhn), was not incorporated into the Company's accounting system nor was the account effectively reconciled during the period due to in-

adequate information supplied by the dealer."

On March 26, 1969, Haskins & Sells submitted a letter of comments and recommendations to Management. Under a section entitled Foreign Sales, it was noted that the German bank account had not been incorporated into Management's accounting system or effectively reconciled during the year and that the current method for the collections on sales in West Germany is not effective. It was recommended that the practice of paying Kuhn's salesmen from funds in the German accounts be stopped immediately and that all correspondence from AFS (which was in German) be translated into English. It was further suggested, in view of SEC Investment Company Act Release No. 5618, that management and counsel immediately review Management's position as related to sales to foreign nationals as "it appears that adoption of these proposals will entail many changes in your contracts and procedures."

On February 5, 1970, Haskins & Sells, sent Management another material inadequacy letter concerning its Financial Report on Form X-17A-5 for the year ended December 31, 1969. This letter contained comments on many of the deficiencies previously noted, including the failure to reconcile the German bank account, but noted that the former custodian bank agreement had been terminated and a new custodian bank (Penco) employed on April 7, 1969. Haskins & Sells states that the performance of Management since transfer to the new custodian bank indicated the problems in handling the volume of transactions experienced during 1968, had been solved.

The European bank account referred to by Haskins & Sells was an account opened by Management at the Dresdner Bank in Dusseldorf, Germany, in 1967, as a conduit for facilitating collections and transfer of funds on sales of Revere shares by Kuhn. Actually there were 2 accounts, one for deutsche marks and one for dollars and the only signatories (two had to sign) were Hess, Sanders and Smith. Deposits from share purchasers would be made into the deutsche mark account and Kuhn would transfer them into the dollar account. Every week or two Management would transfer the accumulated deposits to Penco and the shareholders' accounts would be credited by Management in accordance with investment lists furnished by Kuhn or his wife Sylvia.

In 1969, at Kuhn's suggestion, his son, Hagen Kuhn, was hired by Management to "monitor German problems" and handle the German accounts. Hagen would furnish lists of investors to FPS which indicated to whose account monies deposited in the Dresdner Bank were to be credited. Frequently, the amounts on the lists did not correspond to the amount of the checks. When discrepancies occurred, Hagen Kuhn would make erasures on the lists, adding and eliminating names "to make the whole thing settle." Richard May (May) assistant vice-president of FPS, believed that Hagen Kuhn was not investing the shareholders' monies in a timely fashion and reported this belief to McFadden who "somewhat dismissed" his suspicion that Hagen Kuhn was "accumulating monies." May believed that Hagen Kuhn was an employee of AFS, inasmuch as he had indicated to May that he was a representative for Albert and Sylvia Kuhn.

Sometime in 1969 Hagen Kuhn fraudulently endorsed, converted and cashed approximately \$3,400 in commission checks payable to Kuhn or AFS which Management had entrusted to Hagen Kuhn for forwarding to Germany. The conversion was accomplished without the knowledge or authorization of Kuhn or Management although both soon learned of it. Sanders advised Hess of Hagen Kuhn's conversion of the commission checks.

By letter dated September 23, 1969, Hess and Sanders directed the Dresdner Bank to close the accounts but the German investors were not advised of this action and they continued to make, and the Dresdner Bank continued to accept, investors' deposits. On December 3, 1969, the Dresdner Bank was again instructed to close the accounts and to accept no further deposits.

In addition to the late payment and the Dresdner Bank problems, Management, around 1969, was having other problems with Kuhn caused by his demands for commissions and expenses which Management believed to be excessive, and his threats to cause Revere's German shareholders, whom he referred to as "his investors", to redeem their Revere accounts.

On September 24, 1969, Management and Kuhn entered into an agreement, signed by Sanders and Kuhn and witnessed by Hess, terminating the "exclusive agency agreement" between Management and Kuhn. This termination agreement was written by Daly and was intended to resolve the question of commissions claimed by Kuhn, to enforce his compliance with the NASD Rules of Fair Practice, and to prevent his encouraging Revere shareholders to redeem. In order to settle the commission dispute, Management paid Kuhn \$9,934 when the exclusive agreement was terminated

and agreed to pay another \$2,000. On November 3, 1969, Sanders sent a letter to Sylvia Kuhn enclosing a check for \$2,000 and stating that "It should be noted that the \$2,000 payment received by you includes all past problems of overpayments and commissions."

On July 28, 1969, the German government promulgated a law concerning the Distribution of Foreign Shares and the Taxation of Revenues from Foreign Shares (ForInvestLaw) which became effective on November 1, 1969. This effectively prevented further distribution of Revere shares in Germany. ^{6/} Therefore, Kuhn was retained as a dealer pursuant to this third contract not in anticipation that he was going to sell more Revere shares, but that he would continue to have the right to receive "trail commissions", commissions which are accrued by the payment of installments on Investment plans. However, Management did not advise either the German shareholders or FPS that the exclusive distributorship agreement with Kuhn had been terminated.

Although the 1969 termination contract was designed to end all problems with Kuhn it did not. In May 1970 Hess received a letter from Albert Kuhn and on August 4, 1970, Management received a letter from Albert and Sylvia Kuhn in which they demanded more commissions, alleged that many of the deposits made in the Dresdner Bank accounts had not been invested for shareholders and accused Management of embezzling monies owed to the Kuhns and German shareholders. The Kuhns

^{6/} The new German law required foreign based mutual funds to register and to meet certain requirements which Revere chose not to do.

wanted Management to invest for or return to various shareholders approximately \$3,400 and to pay to AFS \$3,300 as settlement on \$7,000 claimed to be due AFS in commissions. At Daly's suggestion McFadden reconciled the Dresdner Bank accounts and reviewed and analyzed the shareholder investment accounts and the Kuhn commission account.

McFadden established that Management may have owed customers approximately \$1,100. However, his analysis led him to suspect that approximately \$1500 had been withdrawn from the deutsche mark account at the Dresdner Bank without being deposited into the U.S. dollar account. McFadden found that the monies Kuhn wanted invested for customers had been deposited in the Dresdner Bank account prior to September 1969. Since he found that in September 1969 Management had made all investments in accordance with the investment lists furnished by Hagen Kuhn he assumed that the monies Kuhn now wanted invested were monies which had not been properly credited to customers prior to September 1969 but had instead been "used for other purposes." The facts showed that payments being requested were one number higher than the number of payments invested for 32 of 140 accounts listed on Hagen Kuhn's September 1969 list. This led McFadden to suspect the "possibility of a lapping operation." ^{7/}

^{7/} Lapping was described as a device to illegally increase cash flow - the first (A) account payment is pocketed, or diverted, the second (B) account payment is used to cover the A account, the C to cover the B, etc. so that the first account and then the succeeding accounts do not become past due and arouse suspicion.

McFadden prepared a lengthy memorandum entitled Review of the German Matter containing certain findings and assumptions based on the facts developed by his detailed examination of the situation. The memorandum was transmitted to Sanders and Daly on September 30, 1970. McFadden noted in his memorandum that the \$3,400 claimed by Kuhn to be due to customers was the same amount that Hagen Kuhn had converted in commission checks due to Kuhn and he was "sure" that Kuhn would make up this \$3,400 in some manner. McFadden believed that Kuhn would attempt to obtain the \$3,400 (1) from Hagen Kuhn, (2) directly from Management, (3) from Revere's custodian bank, or (4) indirectly from Management by "diverting customer deposits given to him or Dresdner Bank." The fourth alternative was the one McFadden was "most sure was taken." McFadden testified that he spent at least 100 hours reconciling the Dresdner Bank accounts and preparing the 1970 memorandum.

Following a thorough discussion of all the issues involving Management, Kuhn, the Dresdner Bank accounts and the German shareholders, McFadden suggests that some sort of a settlement with Kuhn should be considered in order to avoid an investigation involving the SEC or the NASD. He says: "If my conclusions are correct as to our liabilities we should make an immediate settlement to avoid any unnecessary involvement with regulatory bodies. * * * Remember, the German Bank Account was the subject of a 'material inadequacy' letter to the SEC in 1968 as the result of the Haskins & Sells audit. * * * The SEC sent a representative to our office and he was assured we

had the matter under control. If they are made aware that such is not the case then we can only be put in a bad light. The SEC is not concerned whether or not a dealer or management company loses money. Their primary concern is for the shareholders welfare. If a shareholder is hurt it is no excuse that we had no way of knowing, we remain responsible. We must eliminate the possibility of hurting the shareholders in any case. When this is done we can then procede (sic) to prove who took what money, when and how."

A meeting was held to discuss Kuhn's demands for more commissions and shareholder investments. Present were Kuhn, Hess, Daly, Sanders and McFadden. At this meeting Kuhn again threatened to cause redemptions if he did not get the money he was demanding. Daly responded that (1) Management did not believe that Kuhn was entitled to this money, (2) the 1969 termination agreement had settled all commission disputes, and (3) Kuhn could be expected to be sued if he damaged Revere's reputation. McFadden told Kuhn at this meeting that Management knew he was not entitled to these commissions and accused Kuhn of knowing that Hagen Kuhn had embezzled \$3,400 of his commission money. Kuhn, however, denied knowledge of this embezzlement, taking the position that Management had never paid the money at all.

In the 1970-71 period there were very substantial redemptions ^{8/} by German shareholders, a number of which were written in the exact same format on Kuhn's stationery requesting that the proceeds be forwarded to the transfer agent for the One Hundred Fund, which Kuhn

^{8/} Forty-six German shareholders redeemed in 1969; 94 in 1970; 40 in 1971; and, 30 in 1972.

also represented. Richard May reported these redemption requests to McFadden as being unusual because FPS normally did not have shareholders requesting their accounts be transferred to an unaffiliated fund.

During 1971 Management received complaints from German shareholders which indicated Kuhn and his salesmen were misrepresenting their position vis-a-vis Revere and, also, that investors deposits were not being promptly transmitted or credited to their accounts. In January a German shareholder wrote to Management that an AFS salesman, whom she referred to as Management's "investment advisor", had embezzled \$1,100 of her funds. The letter states that Kuhn had been advised of this matter but had not forwarded the information on to Management. In its reply Management denied that the salesman had been employed by Management "either as a representative or in any other capacity."

In a similar letter received in February 1971, another German shareholder stated that despite her complaints to an AFS salesman, whom she referred to as "investment advisor for Revere Fund", and complaints made by the salesman to "Dusseldorf", three different deposits had not been credited to her account. Management's reply indicates that the three specific deposits had not been made to her account and states that the salesman "is not the investment advisor for Revere Fund, Inc., nor is he related to Revere Fund in any other way. He is a salesman for a dealer, (American Fund Service), who sold Revere Fund in Germany over the past several years."

Another January 1971 letter from a German shareholder to Kuhn and forwarded to Management questioned why it took so long for his deposits to be credited to his account, one apparently taking three months.

A letter received by Management during July 1971, from a German shareholder stated that deposits had been made monthly from November 1967 through December 1970 into a Dresdner Bank account in Dusseldorf but for 1970 only 4 credit entries had been received and that he had stopped payments in January 1971. The shareholder stated that he could not get any clarifying information from Kuhn and, therefore, was requesting Management to investigate the situation. He also indicated that he knew of others who were waiting to have their monies credited to their accounts. Management's reply indicates 8 payments credited to the shareholder's account during 1970, with 6 more having been made between January 20, 1971 and April 5, 1971, but does not explain why 6 payments were entered after the shareholder had discontinued making deposits to the account.

Beginning in 1972 and continuing into 1974, Alfred and Sylvia Kuhn systematically defrauded at least 39 of their customers out of their mutual fund investments amounting to \$246,397.22. Of these customers 36 were Revere shareholders, one of whom had 2 accounts, and one who had a 100 Fund account as well. The other 3 customers had 100 Fund accounts. The Table on the following page affords a summary of the shareholders defrauded as reflected in the German Court Record of the Kuhns' trial and conviction. ^{9/}

^{9/} The judgment entered against Albert and Sylvia Kuhn on December 8, 1975, by the High X Court of Criminal Jurisdiction of the Higher Court of Dusseldorf in the Federal Republic of Germany was received in evidence in this proceeding by stipulation of the parties.

Chronological Table of Investors and Amounts Embezzled by Kuhn

Redemption Date	Shareholder	Transmittal Date*		Revere Fund	One Hundred Fund
		Fr: Management	To: FPS		
7/6/72	Lohmann	7/5/72		22,403.80	
1/2/73	Renninghoff	1/2/73		24,614.73	
1/11/73	Theimann			30,040.63	
2/8/73	Hartel				3,456.22
2/21/73	Dr. Schmid			6,021.73	
2/21/73	Haustein			9,732.41	
3/6/73	Franzen			10,593.81	
3/27/73	Kuss			7,811.73	
3/27/73	Dr. Drueck			14,926.12	
3/28/73	Dr. Drueck			524.68	
3/28/73	Martiz			1,854.21	
5/3/73	Fonk			10,256.99	
5/8/73	Benkmann			4,584.67	
5/8/73	Mertes			5,792.25	
5/8/73	Mathonet			4,261.69	
5/8/73	Bongartz			6,135.17	
5/29/73	Jambrich				4,752.30
6/29/73	Herwig			1,471.55	
7/3/73	Rehrmann			10,807.14	
7/26/73	Finkenmeyer	7/26/73		4,423.69	
7/26/73	Holzbach	7/26/73		7,080.93	
8/27/73	Schneider				890.33
9/10/73	Schmitz	9/10/73		791.87	
9/10/73	Lindermann	9/10/73		13,866.94	
9/10/73	Jaenich	9/10/73		1,402.37	
9/10/73	Bergmann	9/10/73		4,943.51	
9/10/73	Dancke	9/10/73		1,586.03	
10/3/73	Gies	10/3/73		1,197.68	2,593.91
10/3/73	Heckner	10/3/73		10,443.92	
10/4/73	Welck	10/3/73		2,367.27	
10/10/73	Hackmeister(reissued)	10/18/73**		1,416.57	
10/10/73	Mahnken (reissued)	10/18/73		1,520.88	
10/15/73	Senges (reissued)	10/18/73		882.89	
10/18/73	Reich (reissued)	10/18/73		789.13	
10/18/73	Amtmann (reissued)	10/18/73		880.00	
10/24/73	Haentsch			3,353.65	
10/24/73	Heinzelmann	10/24/73		826.47	
11/9/73	Schleppinghoff	11/2/73		2,058.67	
11/20/73	Zeese	11/19/73		2,273.60	
12/4/73	Schunck	12/3/73		846.54	
TOTALS				234,703.96	11,693.26

* This column shows the date for each account on which Management instructed FPS to make checks to Kuhn or AFS and to return to Management. The record does not contain Management instructions on the other accounts.

** On 10/15/73 Management instructed FPS to make checks payable to shareholders only. The accounts marked (reissued) are ones where the check had been made payable to Kuhn or AFS and was reissued in the name of the shareholder in accordance with Management's instructions of 10/15/73.

The fraudulent conversion of investors funds was accomplished by Kuhn persuading the investor to redeem his shares through Kuhn who acted as agent for the investor as well as holding himself out to be a representative of Revere. Kuhn would have the investor assign the payment to Kuhn and forward the necessary papers to Management or FPS. As shown in the Table at least 21 of the fraudulent redemption requests were sent to Management which then sent them to FPS with instructions to liquidate the account and make the check payable to Kuhn or AFS and send the check and all copies of the confirmations to Management's office. The check would then be deposited to Kuhn's account at Penco by McFadden or someone at Management. On some occasions Kuhn would personally pick up checks at Management's office. The money was then supposed to go to the investor or into other investments on behalf of the investor. However, as can be seen from the Table, beginning in July 1972 and continuing through until December 1973, 37 Revere accounts in the names of 36 investors with a total value of \$234,703.96, were converted by Kuhn.

In order to persuade investors to liquidate their shares and to have the proceeds channeled through him, Kuhn made numerous untrue representations that, among other things, Kuhn was a director of Revere; Revere was under investigation by the SEC; the Commission had ordered Revere to cease operations; if a customer redeemed his shares and left the proceeds in Kuhn's control, the proceeds could

subsequently be reinvested in Revere or another fund without any sales charge; the proceeds would have to remain in Kuhn's hands or in a United States bank for at least 3 months and in some cases for as long as 12 months, during which time the proceeds would earn interest at a rate of 1% per month.

The misrepresentations were designed to have the effect of not only persuading investors to redeem their shares and entrust the proceeds to Kuhn, but to prevent such investors from questioning any delay in receipt of proceeds and to prevent others, such as Management and FPS, from learning that the investment proceeds had not been received by the investors.

In June 1972, Kuhn sent a letter to Hess enclosing a properly executed redemption request ^{10/} from a German shareholder, Friedrich Lohmann (Lohmann) directing that his account be liquidated and the proceeds placed in Kuhn's account at Penco. Management forwarded the request to FPS and on July 10, 1972, FPS prepared a check for \$22,403.80, to the order of Albert and Sylvia Kuhn and forwarded it to Management and McFadden deposited it into Kuhn's account at Penco on July 11, 1972. In July 1972 Lohmann received confirmation that his shares had been redeemed in accordance with his instructions. This was the only redemption received by Management during 1972 which

^{10/} Revere's prospectus, dated March 1, 1972, provides for redemption, as follows: "Pursuant to the Investment Company Act of 1940, the Fund will redeem shares within seven days following the tender to the Fund or its designated agent of the certificates representing the shares to be redeemed in proper form for transfer, duly assigned in blank or, where no certificates have been issued, by a letter of request. In either case, with signature guaranteed by a bank or a member house of an exchange. (Emphasis added)

requested that payment be made to Kuhn. Neither Management, Revere, FPS nor any individual received any inquiries from Lohmann or any other customer of Kuhn during 1972 as to the disposition of redemption proceeds.

In January 1973, Hess received a similar letter from Kuhn requesting the redemption of the account of another German shareholder, Heinz Renninghoff (Renninghoff). This was processed as before and \$24,614.73 deposited in Kuhn's account at Penco on January 2, 1973. Management cabled Renninghoff to confirm that his shares had been redeemed and the proceeds paid to Kuhn in accordance with Renninghoff's instructions.

On January 11, 1973, another German investor's account in the amount of \$30,040.63, was liquidated by Kuhn and the money deposited in his account at Penco. However, the record does not show that this request was addressed to Hess or referred to Management.

On January 22, 1973, FPS received and forwarded to Management letters from both Renninghoff and Lohmann. Renninghoff expressed "surprise" that the check had been sent to Kuhn and asked that it be sent to him. Lohmann indicated that he not yet received payment from Kuhn and that Kuhn had told him that the payment had been incorrectly "booked" or "issued." Management telegraphed both Renninghoff and Lohmann that the payment on each account had been made in accordance with their respective instructions.

In February 1973, both Management and FPS received correspondence from Westdeutsche Genossenschafts-Zentral bank (Westdeutsche) a German Bank, stating that neither Lohmann nor Renninghoff had received their redemption checks. McFadden confirmed by cable that Kuhn had been paid, but that Management would speak to him and "advise thereafter."

Meanwhile, during February and March 1973, FPS received 6 redemption requests totalling \$51,000 which it processed and paid to Kuhn.

On March 9, 1973, Kuhn paid an unexpected visit to McFadden at his office in Philadelphia. In his testimony McFadden characterized this visit as a "surprise" because it was the only time Kuhn visited him; Kuhn usually went to see Hess on his trips to Philadelphia. Kuhn told McFadden (who wrote a memorandum) that any further correspondence from Lohmann and Renninghoff relating to "non-receipt" of their proceeds should be ignored; that Revere's telegram had arrived at the small village where Renninghoff and Lohmann lived while they were away on a hunting trip and had become public knowledge, thereby embarrassing them and making it known that the Revere investments by Lohmann and Renninghoff were not, as they stated, worthless.

Kuhn told McFadden that the resulting correspondence from the shareholders stating that they did not receive their proceeds was an effort to prove their investment worthless in order to avoid taxes. Kuhn noted that, after some time had passed, he would write letters to Lohmann and Renninghoff stating that the Revere investments were

worthless. Kuhn's attitude indicated to McFadden that Management should have known better in the first place and should avoid corresponding with German shareholders under such circumstances due to the German Tax laws. Kuhn noted that Lohmann and Renninghoff did not understand English anyway. McFadden told Kuhn that Management would have no part of a tax evasion scheme.

On the same day, March 9, 1973, McFadden repeated Kuhn's tax evasion story to Daly and asked whether it could be believed. Daly felt that Kuhn's story was believable and both McFadden and Daly expressed relief that an explanation had been found as to the whereabouts of Lohmann's and Renninghoff's proceeds. Daly and McFadden both informed Hess of Kuhn's tax evasion explanation.

Sometime during the first several months of 1973, McFadden asked Kuhn to provide proof that Lohmann and Renninghoff had received their funds and Kuhn assured McFadden that he would. However, despite McFadden's reminders Kuhn never produced the promised evidence.

On March 23, 1973, Management received virtually identical letters, written in German and typed on the same typewriter, from Lohmann and Renninghoff in which they each stated that on the basis of Management's January 31, 1973, telegram their redemption proceeds were deposited to the account of Albert and Sylvia Kihn and that this took place without their knowledge. They stated that they were not yet in possession of their money and were asking Revere to see that they received their money. McFadden discussed these letters with Daly, who discussed them with Hess and FPS's counsel. On April 12,

1973, after consultation with Hess and Daly, McFadden wrote in English to Lohmann and Renninghoff confirming the redemptions and advising them to "please recheck this matter with the First Pennsylvania Bank. If you are still unable to locate your funds, we have no choice, of course, but to call for the assistance of the German Authorities to help locate the funds."

Apparently in accordance with McFadden's instructions in his April 12, 1973, letter, Lohmann and Renninghoff, on April 19, 1973, sent identical letters to Penco, reciting their respective redemption dates (July 5, 1972, for Lohmann, and January 2, 1973, for Renninghoff), stating they were not yet in possession of their money and asking when it would be at their disposal. Although FPS notified McFadden of these letters, no one at either FPS or Management responded to them.

On June 22, 1973, Lohmann and Renninghoff again wrote identical letters in German to Revere, Attention Mr. McFadden, referring to their letters of March 23, 1973 and McFadden's letters of April 12, 1973, and stating that they had written to the First Pennsylvania Bank but had gotten no reply. They also stated no reply had been received from Revere (McFadden) or "your German authorized representatives Albert and Sylvia Kuhn - - - " The letters stated that if no reply had been received by July 30, 1973, telling what has happened to their money they will start legal proceedings. The letters concluded, "Your German authorized representatives, Albert and Sylvia Kuhn have, without (the shareholders') knowledge, had the equivalent amounts of the liquidation deposited in your account. A prompt clarification would also be in your interest since several - - - relatives and acquaintances

still have money invested in Revere Fund."

On July 3, 1973, Hess and possibly McFadden, met with Kuhn at Revere's offices to discuss the letters which had been received from Lohmann and Renninghoff. During this meeting Kuhn admitted that the June 22, 1973 letters came from his office and that he had written them to assist Lohmann and Renninghoff in avoiding taxes. Hess admonished Kuhn that such activities must cease and that any problems with the German tax authorities were of no concern to Revere but were between Kuhn and his customers. Kuhn was again asked to supply evidence that Lohmann and Renninghoff had received their proceeds, but no such evidence was ever produced.

Between January 1973 and April 1973, FPS received and processed 7 redemption requests, 6 of which were witnessed by FPS rather than being guaranteed by a commercial bank as stipulated in Revere's prospectus. See footnote 10, page 22. However, this deficiency was not acted upon by FPS nor was Management advised by FPS that the proceeds had been paid to Kuhn upon improperly witnessed signatures. FPS accepted and processed these requests without notifying Management because of May's mistaken belief that Kuhn at that time was Management's "exclusive agent."

On April 26, 1973, Kuhn hand delivered to FPS redemption requests from Jakob and Maria Fonk (Fonk) and Peter and Anna Bongartz (Bongartz) in the respective amounts of \$10,256.99 and \$6,135.17. Both of these requests, which directed that the check for the proceeds be paid and delivered to Kuhn, had shareholders' signatures which had been "witnessed"

by "American Fund Service, Ltd. Investment Banking and Trust Company." These requests were initially processed by FPS, but May, upon learning that the signatures were not properly guaranteed, informed Kuhn on May 1, 1973, that the transactions would be reversed and the accounts reinstated unless Kuhn returned within 48 hours with properly guaranteed signatures. When Kuhn did not return within 48 hours May rescinded the redemptions and reinstated the accounts. Although McFadden and Daly agreed that May was correct in refusing to honor these two improperly guaranteed requests, McFadden does not believe that he inquired of May as to whether there had been any other such improperly guaranteed requests presented by and paid to Kuhn. However, Daly, who discussed these two improper redemption requests with Hess, believes that he inquired of May and learned there had been two other such redemption requests. On May 8, 1973, Kuhn returned to FPS with these two accounts properly guaranteed and received the checks. On May 14, 1973, FPS sent letters to the Fonks and Bongartzes confirming the payments to Kuhn on May 9, 1973. Copies of these letters were forwarded to Management on May 14, 1973.

As a result of the problems it had encountered with Lohmann and Renninghoff and the improperly guaranteed redemption requests, FPS adopted new redemption procedures which included having German redemptions approved by May's supervisor, and sending confirmation letters in English to the redeeming German shareholders.

On July 23, 1973, Management and FPS received a letter in German dated July 16, 1973, from Fonk. The letter, which was translated into English sometime between July 23 and August 7, 1973, stated that the Fonks had not yet received their money and asked whether Kuhn had their money, what they could do to get their money back, and whether FPS could assist them. On August 21, 1973, before either Management or FPS had acted on Fonks' July 16th letter, FPS received another letter from the Fonks written in German and dated August 16, 1973, which stated in its entirety: "I declare the letter which you received from me to be rescinded; it was a misunderstanding." Neither Management nor FPS took any action on either of the Fonk letters.

On October 1, 1973, FPS received a letter from the Fonks' German attorney which stated that the Fonks had not received their proceeds nor any word concerning the proceeds subsequent to the May 14, 1973, confirmation letter from FPS. The attorney asked whether the proceeds had been transferred to another bank or turned over to Kuhn. Management responded to this letter by sending the attorney copies of correspondence and translations thereof relating to the Fonks' redemption. In an accompanying letter, written in German, Management stated that the "proceeds of this liquidation were paid in strict accordance with the instructions of your clients."

On September 10, 1973, Management received a group of 5 redemption requests each directing that the check for the proceeds be paid and delivered to AFS or Kuhn. Management forwarded these to FPS for processing and, upon receipt of the checks and confirmations totalling \$22,590 forwarded them on to Kuhn. Also, on September 10, 1973, Management received a letter from Alfred Heckner (Heckner), complaining that because of Kuhn's failure to follow instructions to stop his systematic withdrawal plan and to reinvest his checks in June, July and August, 1973, he found it necessary to write to Revere directly about the matter.

Between July 6, 1972 and September 10, 1973, some 23 German shareholders had redeemed their accounts for a total of approximately \$205,000, all of which had been paid to Kuhn. In addition, at least 3 different shareholders had complained of not receiving their proceeds and FPS had discovered several instances where Kuhn had improperly attested to shareholders signatures in an effort to obtain the proceeds from their accounts. However, Management did not take any special action or change any of the procedures for the redemption of the German accounts until the beginning of October 1973, and then FPS was told only to "keep and eye" on German redemptions.

By letter dated October 6, 1973, Anita Lindermann (Lindermann), one of the group of redemptions paid on September 10, 1973, wrote to Penco inquiring as to the whereabouts of the \$13,866.94, which she had not received. At this time Management apparently became concerned that Kuhn was "being dilatory" in forwarding the proceeds to customers.

Therefore, on October 15, 1973, following consultation with Hess and Daly, Management effected the following changes in its procedures with reference to future redemption requests which instructed that checks for proceeds be made payable and delivered to Kuhn or AFS:

1. FPS was instructed that all such checks should be made payable to the individual shareholder, notwithstanding his contrary request, although the checks would still be delivered to Kuhn in accordance with the shareholder's instructions.

2. All such future redeeming shareholders, as well as those who had redeemed in September and the first half of October, were sent letters in German which advised that the checks for the proceeds had been delivered to Kuhn or AFS and payable either to the shareholder or Kuhn/AFS.

3. Redemption checks payable to AFS which had been prepared but not delivered as of October 15, 1973, were cancelled and reissued in the name of the redeeming shareholder.

4. A letter dated October 15, 1973, signed by Hess, was sent to Kuhn in which it was stated that redemption procedures had been discussed at a meeting of the Revere board of directors and a determination had been made that henceforth all redemption checks must be made payable to the registered shareholders.

This letter of October 15, 1973, from Hess to Kuhn was prepared by Hess, Daly and McFadden and informed Kuhn that the Revere board of directors had held a meeting on that day and determined that henceforth

all redemption checks must be made payable only to the registered shareholders. As a matter of fact such determination had not been made by the board although copies of the letter were subsequently sent to board members. The reason for stating that it was a board determination was in the event Kuhn became angry about it he would have to become angry at the board rather than at Hess. Also, Hess, Daly and McFadden intended that the change in redemption procedures was to be applicable only to shareholders redeeming through Kuhn and not to all shareholders in general as stated in the letter. None of the German shareholders was advised of the change. It was May's understanding that Management was going to see to it that the redemption checks were delivered to the shareholders as well, but he was mistaken as this was not Management's intention. The checks continued to be delivered to Kuhn. When the new procedure was decided upon Daly stated that if Kuhn was "trying something" then the new procedure would require him to "commit forgery."

Between October 15 and 19, 1973, Management received 5 redemption requests as enclosures to letters written by Kuhn directing that the proceeds be made payable and delivered to Kuhn or AFS. Management, in its transmittal to FPS directed that the checks be made payable to the shareholders "per our new redemption procedures." However, as these checks had already been issued to Kuhn they were cancelled and reissued in the names of the individual shareholders, but were returned to Management which then delivered them to Kuhn. (See Table on page 20 and accounts marked reissued on 10/18/73).

On October 29, 1973, Management received another letter from Heckner, this time stating that while he had received Management's confirmation letter of October 18, 1973, he had not heard from Kuhn and he had not received his redemption check. (Heckner's account had been redeemed on October 3, 1973). Heckner asserted that Kuhn was not entitled to receive his money and he could not understand why Management would send the check "to the wrong address." He stated that "as (Management's) representative (Kuhn) is answerable to (Management) and is a part of (Management's) organization." McFadden called Daly and read Heckner's letter to him. On October 30, 1973 Daly wrote a letter to McFadden which began: "Dear Mike": "Regarding your German letter, which disturbs, but I regret to say, does not amaze me, I think a response along the following lines is indicated." There are then 2 paragraphs of a suggested response. The letter then concludes, "You will, of course, at the same time write to Albert (Kuhn), sending him a copy of his client's letter and a request for an explanation. I am very much afraid that this will not be the last of these, although I hope I'm wrong."

On November 1, 1973, McFadden responded to Heckner and on November 2, 1973, wrote to Kuhn as follows: "Enclosed please find a copy of a letter we received from Alfred Heckner. I would appreciate an explanation as to why he would write us such a letter."

On the same day, November 2, 1973, Management received from Kuhn a redemption request for another shareholder (Schleppinghoff) directing

that the proceeds check be paid and delivered to AFS. This request was processed by FPS which made the check payable to the shareholder in accordance with the new procedure adopted on October 15, 1973. However, on November 8, 1973, Management transmitted the check, which was for \$2,059, to Kuhn. On November 20, 1973, this check was deposited in Kuhn's account at Penco. The check bears endorsement signatures of the shareholders, AFS, Kuhn and Sylvia Kuhn, but it was not endorsed by the hand of the shareholder.

Sometime during this period, in October or November 1973, Daly, after conferring with Hess and McFadden, decided to retain a German lawyer, Herbert Fassbender, to investigate the situation in Germany. Fassbender began looking into the situation in November or December 1973. Sometime prior to the hiring of Fassbender, between 1970 and 1973, Daly cannot recall the date, ^{11/} Daly had asked another German attorney, Horst Niebler, to give Management a "reading" on Kuhn and his operations because of Management's "strained relationships" with Kuhn. Although Niebler had reported that Kuhn "had a bad business reputation and had placed stockholders in unfavorable investments," nothing was done about Niebler's report. Apparently, the principal reason nothing was done was that Kuhn found out about it and made strenuous objections to Hess and Management who then abandoned the investigation.

^{11/} Daly, who appeared to be a straightforward witness, testified that he met Neibler in connection with the enactment of the German Foreign Investment Law which became effective on November 1, 1969, and which Neibler translated for a Philadelphia law firm. Therefore, his employment of Neibler would have to have been between late 1969 or early 1970 and the fall of 1973.

Also, sometime during this period between 1970 and 1973, Daly can only recall that it was prior to 1974, two Revere shareholders from Belgian, visited Daly in Philadelphia. They told Daly that Kuhn was saying that he was a director of Revere; that Revere was being investigated by the SEC, which could lead to disciplinary action against Revere by the SEC; and that Revere was an unsound continuing investment. Daly reported this conversation to Hess and either McFadden or Ursula Schaufler, an employee at Financial. When Kuhn was asked about his purported statements he stated that the Belgian shareholders were lying . Apparently, no further steps were taken to follow up on the allegations which indicated violations of the federal securities laws and the NASD Rules of Fair Practice on the part of Kuhn.

On November 19, 1973, Management received another letter from Heckner, dated November 15, 1973 in which he stated that Kuhn had told him that his proceeds would be deposited in an American Bank and that he (Heckner) would never have signed a redemption request containing instructions that the proceeds be paid to AFS. In addition to inquiring as to the nature of AFS, Heckner stated that Kuhn had called him repeatedly and had stated that (1) Revere "has difficulties"; (2) Revere's management is bad and therefore the value of the shares is low; (3) proceedings by the SEC are "in the wings because of erroneous valuation of the shares;" (4) the value of Revere's shares would fall even more; (5) one could make money by redeeming and reinvesting at

lower prices within the next six months with no sales charges; (6) the redemption proceeds would remain in an American bank until the SEC examined Revere's valuation methods; and (7) Kuhn was a director of Revere and was well informed of everything. None of these assertions were true. Heckner concluded by stating that he had written several letters to Kuhn demanding his money and that if settlement were not made by November 18, 1973, he would inform the District Attorney's office of forgery and embezzlement.

After responding to Heckner, McFadden again sent Kuhn a copy of Heckner's November 1973 letter as well as a copy of Management's response. Also enclosed with these letters to Kuhn was still another redemption check in the amount of \$2,274 made payable to another redeeming shareholder (Zeese). In his letter to Kuhn, McFadden said, "We thought you might be interested in the enclosed letter we received from Alfred Heckner and our response to his letter." However, McFadden did not ask Kuhn for an explanation of Heckner's allegations.

Two days later, on November 30, 1973, Management received a letter from a sixth complaining shareholder, Kurt Gies, who also stated that (1) Kuhn had held himself out as a Revere director, (2) Kuhn had offered to redeem the shareholder's shares and reinvest within six months without sales charge and (3) the shareholder feared Kuhn had defrauded him and converted his money.

On December 3, 1973, Management received another letter from Heckner,

this letter asserting that Heckner had turned the matter of his redemption check over to a lawyer and the court and that Kuhn still had in his possession two "systematic withdrawal checks" which Heckner had given Kuhn for forwarding to Revere. Management, on September 10, 1973, had been apprised by Heckner of the fact that he had delivered these two checks to Kuhn for reinvestment. Management responded to Heckner's last letter by stating that the two checks had been endorsed by Heckner over to AFS. In fact, the two systematic withdrawal checks, each in the amount of \$165.00, are endorsed with Heckner's name written on a typewriter, by AFS, and by Sylvia Kuhn. On June 5, 1974, as a result of Heckner's assertion that the endorsements of his name on the checks had not been typed by him or with his consent, FPS, after determining that the endorsements on Heckner's checks were forgeries, transmitted a check to Heckner in the amount of \$330.00 representing reimbursement for his two checks.

After receiving Heckner's letter on December 3, 1973, Management did not send any more redemption checks to Kuhn. Thus, on December 3, 1973, although Management received a redemption request as an enclosure to a letter from Kuhn directing that the redemption check be made payable to and delivered to AFS, the check was made payable to the shareholder (Schunck) in the amount of \$864.54, and on December 10, 1973, was transmitted to the shareholder. However, no explanation

was given to the shareholder as to why his redemption instructions were being disregarded.

Kuhn was arrested by the German authorities in January 1974. On December 8, 1975, he was found by the High X Court of Criminal Jurisdiction of the Higher Court of Dusseldorf to be criminally liable for continuous failure to keep bookkeeping records, failure to draw up balance sheets, failure to file for bankruptcy in three cases, failure to turn over social security taxes from payroll deductions, and "partly continuous fraud in forty cases." (See Table on page 20). Among the defrauded shareholders were Lohmann, Renninghoff, all of the shareholders whose signatures were improperly guaranteed, all of the shareholders who complained to Management, all of the shareholders whose checks were made payable to the shareholder but delivered to Kuhn, ^{12/} and even the shareholder (Schunck) whose check was made payable and delivered to him without any explanation as to why Management was deviating from routine practices.^{13/} The German court found that Kuhn was able to accomplish his fraudulent objectives by making the following false and misleading statements to many of the shareholders:

^{12/} Kuhn and his wife merely endorsed these checks over to AFS.

^{13/} After the shareholder received his check, Kuhn was able to convince him that he should allow Kuhn to reinvest it for him.

1. that Kuhn was a director of one or more funds, including Revere;
2. that one or more of such funds, including Revere, was under investigation by the Commission;
3. that the Commission had ordered one or more of such funds, including Revere, to cease operations;
4. that if a customer redeemed his shares and left the proceeds in Kuhn's control, the proceeds could subsequently be reinvested in the old fund or another fund without any sales charge;
5. that the proceeds would be required to remain in Kuhn's hands, or in a United States bank, for a period of at least 3 and in some cases as many as 12 months, during which time such proceeds would earn interest at a rate of 1% per month.

Kuhn, whose conviction was upheld on appeal, was sentenced to five years imprisonment. Sylvia Kuhn received a one year sentence.

Each of the respondents has advanced a number of arguments, many of which overlap, as to why they cannot be found to have violated the antifraud provisions of the Exchange Act, as charged in the Order. Their principal common argument is that there was no way they could have known that Kuhn was an embezzler; that they acted in good faith and in accordance with accepted business practices; that their conduct was reasonable under the circumstances; and that they engaged in no transaction, act, practice or course of business which operated as a fraud upon the shareholders of Revere Fund.

Throughout the proceeding and in their briefs respondents have taken the position that while they admittedly had problems with Kuhn almost from the beginning of his employment as a dealer there was nothing so unusual about these routine difficulties to either arouse their suspicions that he was a potential embezzler or to alert them to further precautions for the protection of shareholders. In support of this position it is argued that Management had nothing to do with the redemptions, having delegated the responsibility for them to FPS, and that Hess was not an officer, director or employee of Management, and, therefore, was insulated from all events occurring between Management, Kuhn and FPS for the period from 1966 until 1974.

However, the fact is that Hess was involved in all of the activities and was undoubtedly the key figure in the various

enterprises which made up the Revere complex. He was President and a director of Revere Fund; Chairman and Treasurer of Hess, Grant & Frazier, a New York Stock Exchange member firm, and Chairman of Philadelphia Financial Management, which was the registered investment adviser for the Fund. Management, which had 4 to 5 employees, shared offices with the Fund which had no employees, only directors. Hess was not physically located on the premises of Management or Fund but had an office next door on the same floor with Hess, Grant & Frazier.

When he testified at the hearing Hess stated that he had nothing to do with the hiring of the executives at Management, that it was done by the Fund board of directors. However, when he was questioned by the Division during the investigation prior to the proceeding, he testified that he hired Sanders, who became president of Management, and McFadden, who replaced Sanders and became vice-president of Management. Hess testified that in 1972 McFadden was the principal of Management and that he left in 1974 "because we were running out of money. We replaced him with Gilbert Thomas (who) was an employee also of Hess, Grant & Frazier and we saved a fair amount of outgo cash by doing that." Hess testified that he had the responsibility for making the decision to replace McFadden although he did not know what position he held that would give him the authority to hire McFadden or his replacement but there was a vacuum there that had to be filled. Hess said that he did not have overall responsibility for Management and that he was not involved in

Management; that Fund had a contractual relationship with Management. However, "You observe whether the work's being done or isn't being done. I mean, if I go back there and I see stuff piled a mile high on the desks, and no employees in there, I'd know something was wrong."

McFadden testified that, "As a practical matter, Mr. Hess was there. He personally didn't own any of the Management Company, but his family did, or does, but it is tough to distinguish between the Fund and the Management company due to the size, and Mr. Hess was President of the Fund and Chairman of the Board."

May testified that McFadden was not the top decision maker at Management. "We would have discussions with Mike (McFadden) and Mike was convinced how something should be done and then he went back to Revere and talked to others and changed his mind. Mike would have indicated to me each time that he had talked to either Ed Daly or Bill Hess about a given thing and they viewed something different. And this is the way he is going to do it."

Almost from the beginning of Kuhn's employment there was a constant running battle with Kuhn. As Hess testified: "During this period (1967-69), Mr. Kuhn was a very active salesman for the Fund. He retailed a lot of shares for the Fund and in the operation of this business, I would not say there were problems, there were difficulties that arose because of a language barrier, because of a distance barrier and time difference in there, and there just seemed to be a different way of operating a business

in Germany, compared to adhering to the rather rigid rules that govern the securities business in the United States."

Although Hess down played the problems with Kuhn, the record shows they were numerous and unpleasant. All of the witnesses who came into contact with Kuhn testified concerning the difficulty of doing business with him but perhaps Daly summed it up the best:

"Mr. Kuhn was a difficult personality. He was a successful salesman, who, like I guess most successful salesmen of my acquaintance, could be charming when he was selling something, or when relaxing personally, and who could be very difficult when he was crossed. He furthermore, had a rather authoritarian approach to people he regarded as underlings or incompetents, and sometimes the definition of incompetence was those who didn't see it his way."

The primary fact in this case which the record brings clearly into focus is that there was never any control over Kuhn or his activities. During the active selling period, 1966 to October 1969, there were numerous incidents indicating this lack of control, including the Regulation T violations, the NASD report, the Haskins & Sells reports, the failure to insist on Kuhn keeping books and records, the unsuccessful use of the Dusseldorf Bank accounts, the cash basis for Kuhn's customers temporarily resorted to by the Fund board, the inability to reconcile customers' accounts and the eventual "settlement" of \$11,934 in October 1969. During this period Sanders, Hess and Daly all visited Germany at different times and saw Kuhn but no inquiry was made concerning him nor was any demand made for his books and records.

In 1970, when Kuhn's demands for more commissions and the discrepancies in the Dresdner Bank account resulted in McFadden's exhaustive memo, nothing was done to bring Kuhn under control. In fact the memo suggests, and apparently everyone concerned went along with it, not to rock the boat by doing anything to invite an SEC or NASD inquiry.

Subsequent to October 1969, when Kuhn could no longer produce any substantial amount of business he continued to intimidate Management, Hess and all concerned by threatening redemptions. During 1970-71 May informed McFadden that many of the redemptions coming in from Kuhn's customers were unusual because they requested transfer to another fund. Also, in 1971 complaints were received from German shareholders concerning their accounts and misrepresentations Kuhn and his salesmen were making as to their relationship with Revere Fund. However, aside from replying to the shareholders' letters nothing was done.

In addition to failing to establish any control over Kuhn's activities as they pertained to record keeping or "home office" dealings, respondents did nothing to keep shareholders informed of events such as the termination of the exclusive contract with Kuhn. This failure to make disclosures to the shareholders enabled Kuhn to keep them deluded as to his actual status with Revere Fund. Without exception the shareholders who complained were of the opinion that Kuhn was Fund's representative, or an officer, or a director, and that in dealing with him they were,

in effect, dealing directly with the Fund. This lack of communication enabled Kuhn to distribute circular letters dated July 27, August 8, August 20 and October 1, 1973, recommending that shareholders liquidate their Fund shares and reinvest the proceeds through AFS.

Daly testified that when he prepared the termination agreement between Management and Kuhn in September 1969, he included a statement that Kuhn would abide by NASD regulations and a copy of the NASD Rules of Fair Practice was appended to the agreement. How this was going to have any effect on Kuhn when there were no means of enforcing it is not clear.

One other area of the Management-Kuhn relations where Management disclaims responsibility is the processing of redemptions. Once Management had delegated the processing to the Pennsylvania Bank it took the position that it no longer need be concerned. The instructions for redeeming as set forth in the prospectus and quoted herein in Note 10, on page 22, are fairly routine as concerns local shareholders, but it was not until the May 1, 1977, prospectus that reference was made concerning foreign redemptions. Respondents strongly argue that as long as redemption requests had been properly witnessed, i.e., by a bank or member firm, and the shareholder requested payment to Kuhn, it had to be honored, despite complaints and questions of authenticity that arose during 1973. This resulted in the irony of Management sending copies of Heckner's letters, alleging misrepresentations by Kuhn and

stating he would inform the District Attorney's office of forgery and embezzlement, to Kuhn and enclosing therewith a redemption check for \$2,274, payable to another shareholder, which was also embezzled.

Although the first redemption of a shareholder's account which was converted occurred in July 1972, it was not until January 1973, when the Lohmann and Renninghoff letters were received that Management learned of it. Although these transactions have been described heretofore, together with Kuhn's tax evasion explanation, which was believed by Daly, Hess and McFadden, this episode deserves closer scrutiny, particularly as it should have alerted respondents to a more careful examination of the facts involved and the obvious inconsistencies in Kuhn's story.

McFadden's memo indicates that Kuhn blamed Management for sending a telegram to Lohmann and Renninghoff which became public and served as notice that their Revere shares had value and were not worthless as they were claiming for tax purposes. However, the Lohmann letter of January 18, 1973, says: "please cable immediately." Thereupon, Management sent its telegram on January 31, 1973. In addition, the Westdeutsche Bank, apparently shareholders' bank, sent a letter to Management on February 2, 1973, followed by a cable on February 15, 1973, inquiring as to the whereabouts of the proceeds. Management responded by telegram of February 16, 1973, saying that Kuhn has been paid. It seems unlikely that shareholders would be

requesting telegrams and enlisting the aid of a bank if they were trying to hide assets for the purpose of evading taxes.

On March 23, 1973, Lohmann and Renninghoff wrote letters to Management referring to Management's telegram of January 31st, and stating that they still didn't know where their money was. On April 12, 1973, Management responded to Lohmann and Renninghoff with identical letters:

Dear Mr. Lohmann (Renninghoff):

We are disturbed by your letter of March 23rd, 1973. As I advised you, the liquidation amount was deposited in the First Pennsylvania Bank Account of Albert and Sylvia Kuhn.

Please recheck this matter with the First Pennsylvania Bank. If you still are unable to locate your funds, we have no choice, of course, but to call for the assistance of the German Authorities to help locate the funds.

(Signed) McFadden

On April 19, 1973, Lohmann wrote to the Bank, as suggested by McFadden, and the Bank informed McFadden on May 17, 1973, that it was writing to the shareholders Lohmann and Renninghoff and informing them that the checks had been made payable to Albert and Sylvia Kuhn in accordance with the shareholders instructions. However, on June 22, 1973, Renninghoff again wrote to McFadden saying he had heard nothing from the Bank. He said, also, "If I have not received a reply from you by July 30, 1975 telling me what has happened to my money, I will start legal proceedings." The letter goes on to say:

"A prompt clarification would also be in your interest since several of my relatives and acquaintances still have money invested in the Revere Fund."

In spite of all of the foregoing correspondence and the inquiry of the Westdeutsch Bank no action was taken other than to confront Kuhn. Although Management had stated that it would call for the assistance of the German authorities it never did. The clear implication of the events in the Lohmann-Renninghoff matter, extending over a period of several months is that Management was really doing nothing on behalf of the shareholders. For example, instead of referring the March 23 letters directly to the Bank, or making the inquiry itself in the interest of saving time, Management wrote to shareholders and told them to write the Bank. In addition, Management did not refer the matter to the German authorities or any security regulatory authority such as the NASD or the SEC. All that was done was to notify Kuhn.

Although Management was aware in January 1973, that shareholders, at the very least, were claiming not to have received some \$47,000 in proceeds, it was put off by Kuhn's story of tax evasion and did not initiate any inquiry of its own. Further, Management never demanded the proof which Kuhn stated he would provide showing that the shareholders had in fact received their funds.

The inescapable conclusion to be drawn from the Lohmann-Renninghoff matter is that it should have served as a "red flag," particularly in view of the prior series of problems which also

could be construed as "red flags." Instead, respondents continued to process the redemptions payable to Kuhn, although Hess testified that he knew of no other instances where dealers sought to have proceeds from clients' accounts deposited in their (the dealer's) account.

Following the initial notice concerning the Lohmann-Renninghoff matter in January 1973, there was an exchange of some 10 letters or telegrams between Lohmann-Renninghoff, Management and the Bank without any resolution of the matter. Respondents were hoping that it would "go away." However, complaints from other shareholders followed so that by October 1973, 6 shareholders had inquired as to the whereabouts of their proceeds. Still nothing was done. Hess and Daly testified that they thought Kuhn was being "dilatory." Although Daly testified that he didn't "like the smell" of it and had instituted procedures which would require Kuhn to commit forgery he still felt they did not have "hard, hard evidence" to enable them to take any action against Kuhn. Daly stated "By the time of the second Heckner letter (on November 28, 1973) we were feeling very, very uncomfortable. The horse was out of the barn door. If Kuhn committed a fraud of some sort it was done." Despite all of the concern and the red flags in 1973, respondents still did not notify the German authorities or the Revere shareholders. After January 1974, they felt that it was common knowledge in Germany through the newspapers so it was unnecessary to make any disclosure of the fraud.

Throughout its dealing with shareholders' complaints, particularly during the "embezzlement period", Management seems to have taken the position that the shareholders had an affirmative duty to prove that something was wrong rather than to realize that once it was put on notice of a problem, Management had the affirmative duty to inquire into it. Instead respondents informed Kuhn of the complaints and then did nothing further. As the Commission has held, In the Matter of Merrill Lynch, Pierce, Fenner & Beane, 31 SEC 494, 497-98 (1950):

Under the circumstances respondent should have been aware of the fact that [its wire correspondent's] customers were of the opinion that they were in reality dealing with it; and it was under a duty to exercise a high degree of vigilance to prevent injury to those customers by [the wire correspondent]. Nevertheless, respondent made no adequate effort to supervise [the wire correspondent's] activities, or to determine whether customers' orders were being properly forwarded to him or whether customers' monies and securities were transmitted to them by him; and it did not at any time demand an examination of his books and records. It failed to take any of these steps despite the fact that the omnibus account was a cash account with a relatively large dollar volume of transactions in relation to [the wire correspondent's] resources, which respondent knew were meagre, and that it often showed debit balances, credit balances, and securities held long. While it does not appear that respondent or any of its partners was actually aware of [the wire correspondent's] misappropriations, and the data in respondent's possession did not necessarily indicate the irregularities, the information respondent had at least called for further inquiry to satisfy it that no irregularities existed. Under the circumstances, the failure of respondent to inform itself fully of the manner in which [the wire correspondent] dealt with customers and to take appropriate steps to rectify the features of its relationship with [the wire correspondent] that formed the means for abuse by him must be deemed to have contributed effectively to [the wire correspondent's] ability to defraud the customers. Respondent's course of business thus indirectly "operated as a fraud or deceit" on the customers *** and constituted a violation by respondent of Section 10(b) of the Act and Rule 10b-5 thereunder. (Emphasis supplied)

Upon review of the record and consideration of all of the circumstances, as discussed herein, it is found that Management and Hess willfully violated and willfully aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

OTHER MATTERS

Willfullness

The findings herein that the respondents violated the Exchange Act have been found to have been willful.^{14/} During the course of the proceeding and in their briefs respondents' counsel have contended, relying on Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976), that any violations found to exist must be based on scienter. However, in In the Matter of Steadman Security Corporation, Securities Exchange Act Release No. 13695 12 SEC Docket (June 29, 1977), appeal pending (C.A.) the Commission held that the scienter requirements of Hochfelder were inapplicable to administrative proceedings initiated by the Commission.

JURISDICTION

Respondents urge that the Commission does not have jurisdiction over respondents because Kuhn's fraudulent acts were committed in Germany. Respondents ignore the fact that Management and Revere are registered with the Commission; that

^{14/} It is well established that a finding of willfullness does not require an intent to violate the law. As the Court of Appeals for the Second Circuit has said, the word "willfully" in Section 15(b) of the Exchange Act "means intentionally committing the act which constitutes the
(continued)

the sale of Revere's shares are subject to Commission reporting and disclosure requirements; and that all of the activities engaged in by Hess and Management took place within the United States, as indeed, did many of Kuhn's activities. It is the conduct of respondents, as well as Kuhn's, that is at issue here. The fact that shareholders who suffered harm as a result of respondents' activities resided outside the borders of the United States does not exclude respondents from the Commission's jurisdiction. As the Court of Appeals for the Third Circuit has recently noted in SEC v. Kasser, 548 F.2d 109, 114 (1977):^{15/}

"The federal securities laws, in our view, do grant jurisdiction in transnational securities cases where at least some activity designed to further a fraudulent scheme occurs within this country. There is nothing in Section 10(b) or its companion antifraud provisions to thwart their application to fraudulent transactions when the actual locus of the harm is outside the territorial limits of the United States. Indeed, by their own terms, the anti-fraud laws suggest that such application is proper. The securities acts expressly apply to "foreign commerce," thereby evincing a Congressional intent for a broad jurisdictional scope for the 1933 and 1934 Act. Moreover, Section 10(b) and its related provisions seem to be largely concerned with conduct, having no requirement that accomplishment of the attempted fraud be a precondition to statutory liability.

Advice of Counsel

Respondents contend that all acts and decisions taken by Management, the Revere Board and/or Hess were taken with the advice of counsel, Daly.

14/ (Continued)

violation." Tager v. S.E.C., 344 F.2d 5, 8 (1965), affirming Sidney Tager, 42 S.E.C. 132 (1964). See also. Lamb Brothers, Inc., Securities Exchange Act Release No. 10417/13 SEC Docket 265 (October 3, 1977); Arthur Lipper Corporation v. S.E.C. 547 F.2d 171, 180 (C.A. 2, 1976); Billings Associates, Inc., 43 S.E.C. 641, 649 (1967); Biesel, Way & Company, 40 S.E.C. 532, 536 (1961); Hughes v. S.E.C., 174 F.2d 969, (C.A.D.C. 1949).

15/ See also, Straub v. Vaisman & Co., Inc. 540 F.2d 591, 595 (1976).

The Commission has held that reliance on counsel does not shift the responsibility for complying with the securities acts. In Dow Theory Forecasts, Inc., 43 S.E.C. 821, 831-32 (1968), the Commission said:

"Reliance upon the advice of counsel does not, of course negate willfulness. An investment adviser cannot shift his duty of compliance with the Act to counsel. The investing public is entitled to the fullest protection of the law regardless of what counsel's view may have been."

The record shows that Daly was frequently consulted by McFadden on an almost daily basis concerning operational matters at Management, particularly problems with Kuhn. These were largely factual matters and not questions of law on which Daly, in turn, consulted Hess. In any event, respondents cannot escape responsibility for seeing that Kuhn complied with the law. Hess recognized this when he testified that the way of doing business in Germany was different compared to the rigid rules that govern the securities business in the United States.

In Kidder, Peabody & Co., et al., 43 S.E.C. 911, 914,^{16/} the Commission stated:

"While reliance upon advice of counsel is a fact that may be taken into account in determining what sanctions are appropriate in the public interest, it does not excuse a failure to comply with applicable provisions of law. See, e.g. Dow Theory Forecasts, Inc."

^{16/} See, also Arthur Lipper Corp., et al. v. S.E.C., 547 F.2d 717 (C.A. 2, 1976).

Public Interest

The remaining issue concerns the remedial action which is appropriate in the public interest with respect to the respondents herein. The appropriate remedial action as to a particular respondent depends on the facts and circumstances applicable to the individual case and cannot be measured precisely on the basis of action taken against other respondents.^{17/}

The Division has proposed that the ultimate sanctions be imposed on both Management and Hess. It recommends that Management's registration as a broker-dealer be revoked; pursuant to Section 15(b)(4) of the Exchange Act; that it be expelled from membership in the NASD; and that Management or its subsidiaries or successors be permanently prohibited from serving or acting as an investment adviser of, or principal for, a registered investment company, pursuant to Section 9(b) of the Investment Company Act.

The Division recommends that Hess be barred from being associated with a broker-dealer, from being associated with a member of the NASD and from being associated with any national securities exchange or registered securities association pursuant to Sections 15(b)(6), 19(h)(2) and 19(h)(3), respectively of the Exchange Act; and that he be permanently prohibited from serving or acting as an employee, officer, director, member

^{17/} Dlugash v. S.E.C., 373 F.2d 107, 110 (C.A. 2, 1967).

of an investment advisory board, investment adviser of, or principal underwriter for, a registered investment company or from being an affiliated person of such investment adviser depositor or principal underwriter pursuant to Section 9(b) of the Investment Company Act.

Respondents argue that imposition of sanctions, especially as requested by the Division, is not warranted or required in the public interest; that there is no risk of future repetition of the 1973 events; that the individuals who were active in the operations of Management are no longer associated with Management; and that Hess has an unblemished record of over 30 years in the securities business with no prior charges against him.

Respondents contend, also, that application of sanctions, indeed the finding of violations against them, is precluded because Kuhn was an independent contractor and not an agent of Management and Hess had no connection with Management. This is a form over substance argument. The record is clear that Kuhn was an agent of Management which had the authority and power to control his activities but failed to do so. Management dealt with Kuhn on every level^{18/} and the delegating of the redemptions to the Pennsylvania Bank did not relieve it of the responsibility of complying with the securities laws and maintaining discipline over Kuhn. Hess, although not an employee of Management, was Chairman of Revere and presided at Board

^{18/} Including the paying of Kuhn's printing bills in Germany.

meetings which were held as luncheon meetings at a club in the same building where Hess and Management had offices. However, Hess made all or most of the decisions, i.e., the decision made on October 15, 1973, to henceforth make checks payable only to shareholders was approved by Hess although the letter announcing the action said it was a Board decision. Actually the Board was informed later. Hess was, also, the one visited by Kuhn on his visits to Philadelphia, and the frequency of such visits, particularly when Kuhn was no longer selling Revere shares, should have aroused some curiosity. Rather than being isolated Hess was at the center of activity.

The violations found herein are serious and cannot be excused by a lack of knowledge or understanding of pertinent requirements, particularly where respondents indicated an awareness of proper procedures and then failed to adopt them or to follow through, as in the aborted investigation of Kuhn. As the Commission has recently said in Lamb Brothers, Inc., Securities Exchange Act Release No. 14017/13 SEC Docket 265 (October 3, 1977):

Past misconduct is the essential predicate for liability. Once liability has been established, our concern is with the remedy. And there our orientation is to the future. Two questions are presented. The first is: What action is needed to protect investors from future harm at the particular respondent's hands? Pertinent to that inquiry is the fact that the statute is drawn on the premise that past misconduct gives rise to an inference of probable future misconduct. See Foelber-Patterson, Inc., 12 S.E.C. 330,, 336 (1942); A.J. White & Co., Securities Exchange Act Release No. 10645 (February 15, 1974), 3 SEC Docket 550, 551-552; Arthur Lipper Corporation, Securities Exchange Act Release No. 11773 (October 24, 1975), 8 SEC Docket 273, 281, aff'd in part and reversed in part, 547 F.2d 171 (C.A. 2, 1976); Richard C. Spangler, Inc., Securities Exchange Act Release No. 12104 (February 12, 1976), 8 SEC Docket 1257, 1266-1268. The second question is:

What effect will our action or inaction have on standards of conduct in the securities business generally? As the Court of Appeals for the Second Circuit has recently observed, "The purpose of sanctions must be to demonstrate not only to petitioners but to others that the Commission will deal harshly with egregious cases." *Arthur Lipper Corporation v. S.E.C.*, 547 F.2d 171, 184 (C.A. 2, 1976).

In view of all of the circumstances it is concluded that the public interest requires revocation of Management's registration as a broker-dealer and that Hess be barred from association with an investment company.

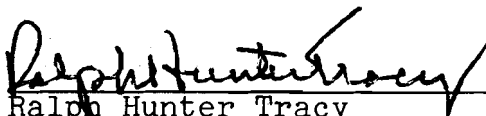
ORDER

Accordingly, IT IS ORDERED that the registration as a broker-dealer of Revere Management Co., Inc., is revoked and the company is expelled from membership in the National Association of Securities Dealers, Inc.; and that Management or its subsidiaries or successors is permanently prohibited from serving or acting as an investment adviser of, or principal for, a registered investment company, pursuant to Section 9(b) of the Investment Company Act; and that William M. Hess, is barred from serving or acting in the capacities enumerated in Section 9(b) of the Investment Company Act of 1940.

FURTHER ORDERED that the charges in the order for proceedings as to Albert Kuhn and American Fund Services, Ltd., are dismissed without prejudice to being reinstated at a future time.

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

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not within fifteen days after service of this initial 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^{19/} shall not become final with respect to that party.


Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.
December 2, 1977

^{19/} All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected.