(Securities Exchange Act Release No. 8004)

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
December 9, 1966

In the Matters of	
HARRIS CLARE & CO., INC. 82 Beaver Street New York, New York File No. 8-10474 HARRIS CLARE & CO. 82 Beaver Street New York, New York MARTIN CLARE File No. 8-11753 TOWNE, HARRIS & CO., INC. 50 Broadway New York, New York HARRIS FREEDMAN File No. 8-10377 Securities Exchange Act of 1934 - Section 15(b)	FINDINGS, OPINION AND ORDER REVOKING BROKER-DEALER REGISTRATIONS AND BARRING INDIVIDUALS

BROKER-DEALER PROCEEDINGS

Grounds for Revocation of Registration

Grounds for Bar from Association with Broker-Dealer

Fraud in Offer and Sale of Securities

Where registered broker-dealer, in offer and sale of speculative securities, made false and misleading representations and predictions regarding, among other things, future market price and issuer's prospects and earnings, *held*, in the public interest to revoke broker-dealer's registration, bar its president and a salesman from being associated with any broker or dealer, and revoke registrations of two other broker-dealers of which president and salesman were principals.

APPEARANCES:

Joseph C. Daley, *Joel M. Leifer*, *Gerald H. Goldsholle* and *Roberta Karmel*, of the New York Regional Office of the Commission, for the Division of Trading and Markets.

Martin M. Frank, of Feldshuh & Frank, for respondents.

Following hearings in these proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), the hearing examiner filed an initial decision in which he concluded that the registrations as brokers and dealers of Harris Clare & Co., Inc. ("Clare Inc."), Harris Clare & Co. ("Clare Co.") and Towne, Harris & Co., Inc. ("Towne") should be revoked, and that Harris Freedman, Martin Clare and Robert Summers should be barred from being associated with a broker or dealer. 1/ Freedman was president, a director and controlling stockholder of Clare Inc. from March 1962 to April 1963 and since early 1964 has been president, a director and controlling stockholder of Towne. Clare was a registered representative of Clare Inc. beginning in May 1962 and he and Summers are the general partners of Clare Co. We granted petitions for review filed by Clare Inc., Clare Co., Towne, Freedman and Clare. 2/ However, no briefs were filed in support of the petitions. 3/ Upon an independent review of the record, and for the reasons stated in this opinion and in the initial decision, we make the findings set forth below.

1. During the period from July 1962 through January 1963 Clare Inc., together with or aided and abetted by Freedman and Clare, willfully violated the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 15cl-2 thereunder in connection with the offer and sale of the common stock of Alaska International Corporation ("Alaska"). Clare Inc., through Freedman, Clare, and its other salesmen, engaged in a high-pressure sales campaign in the course of which false and misleading representations were made concerning, among other things, substantial increases in the price of the stock within a short time, acquisitions and mergers planned by Alaska, the extent and nature of Alaska's holdings and operations, and its future prospects for growth and financial success. Freedman was in charge of the firm's operations and Clare also had supervisory functions with respect to its sales activities. The record demonstrates that they not only failed to exercise proper supervision, but encouraged other salesmen to use improper selling methods. For purposes of this opinion, it is sufficient to recite the representations made by Freedman and Clare themselves without also referring to the representations made by other salesmen.

Freedman variously represented to customers who purchased Alaska stock at prices ranging from 54-58¢ per share that they could recoup unrealized losses on other securities by selling them and purchasing Alaska stock; that such stock would go up to $1 in several months and

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1/ Two other individuals associated with Clare Inc. who failed to file answers as directed by the order for proceedings and failed to appear at the hearings have previously been barred from associating with a broker or dealer. Securities Exchange Act Release No. 7658 (July 27, 1965).

2/ Summers did not seek review of the initial decision and we did not order such review. Accordingly, on January 14, 1966, an order was entered, pursuant to the initial decision, barring him from being associated with any broker or dealer.

3/ On July 5, 1966, we denied a motion by Towne, Freedman and Clare to reopen the hearings. Thereafter, these respondents as well as Clare Inc. and Clare Co. were afforded a further opportunity to file briefs.

that he thought it had a tremendous chance of increasing in value, perhaps to 3 or 4 times its then price in 2 to 3 months; and that Alaska had $1 million in its treasury, was making money, and looked like it would continue to make money. Clare represented to one customer that a purchase of Alaska stock would enable the customer to compensate for another security which had gone down in price; that the company was making money; and that the price of Alaska would double within a matter of weeks. He insistently urged a second customer to buy Alaska stock after she told him she could not buy any because her husband was not working, and he then induced her to purchase a larger amount than she at first agreed to take, representing that the stock would go from its then price of 35¢ to at least $1 in about six months.

As found by the examiner, there was no reasonable basis for the above representations or predictions. Alaska, which was engaged in the development of mining properties and owned interests in real estate, had sustained continuous losses from at least 1959 on, had accumulated net operating losses of approximately $3 million by July 31, 1962, and continued to operate at a loss thereafter. These losses were not disclosed to customers. Moreover, as we have repeatedly held, predictions of substantial price increases within relatively short periods of time with respect to speculative securities are inherently fraudulent. 4/ At the time Clare Inc. began its sales campaign, Freedman and Clare knew that current financial information would not be available for several months, but did not disclose the lack of such information to some of their customers. The information they had consisted in substance of an annual report for the year ended July 31, 1961, an interim report to stockholders dated June 25, 1962, and reprints of two newspaper articles concerning certain of Alaska's projects. The annual report contained a balance sheet as of July 31, 1961 and comparative figures for 1961 and 1960, but did not include a profit and loss statement. While the comparative figures showed a large increase in assets, the balance sheet also showed an earned surplus deficit of over $2.4 million. Moreover, the accounting firm which prepared the balance sheet stated that it was unable to render an opinion regarding it because, among other things, the company had revalued upward various properties and investments on the basis of appraisals, and the books were received too late to permit the accountants to undertake generally accepted auditing procedures. The report also presented a highly optimistic picture regarding the company's prospects for the 1962 fiscal year, including a prediction of "the greatest earnings in the history of the company." The interim report which was issued later, however, made no reference to earnings and contained only generalized statements regarding the company's progress. Clare had visited certain of the company's properties in early 1962, but had made no effort to obtain financial information.

The obvious inadequacies of the 1961 figures and management's optimistic projections were recognized by a registered representative and research assistant hired by Clare Inc. in September 1962. At that time, after a large number of sales had already been effected, that employee, with the knowledge of Freedman and Clare, requested Alaska to furnish detailed information regarding the various asset and liability items in the balance sheet, pointing out that these items were too generalized to be of any significant value. He also sought information concerning the extent to which the optimistic projections had materialized. Although no specific information was ever furnished, sales of Alaska stock continued.

4/ See, e.g., Crow, Brourman & Chatkin, Inc., Securities Exchange Act Release No. 7839, p. 6 (March 15, 1966); Hamilton Waters & Co., Inc., Securities Exchange Act Release No. 7725, p. 4 (October 18, 1965); Alexander Reid & Co., Inc., 40 S.E.C. 986, 991 (1962).

2. Respondents contend that the hearing examiner erred in denying their request that he direct our staff to produce "all papers in their possession, financial statements, brochures and prospectuses of Alaska International, obtained by them, by process or otherwise, not their work products." The request was made in the course of respondents' cross-examination of a former salesman of Clare Inc. who had testified that he saw a brochure regarding Alaska and containing certain financial figures in the firm's office. Respondents' counsel stated that the material was needed for their cross-examination of the witness. Staff counsel stated that the staff had no such brochure in its possession, and the examiner refused to direct the staff to turn over any other material obtained in the course of its investigation and not contained in public files.

In our view, respondents were not entitled to the requested material. The request amounted to a "fishing expedition," and no showing has been made that such material was needed for respondents' defense or that respondents were in any way prejudiced by their inability to inspect it. 5/ There is no merit in their argument that production of the requested material was required under Brady v. Maryland, 373 U.S. 83 (1963), which held in a criminal case that the suppression by the prosecution of material evidence favorable to an accused who has requested it violates due process. We do not read that decision as requiring the wholesale production of investigative material in administrative proceedings. Moreover, subsequent to respondents' request, extensive evidence was adduced regarding Alaska's business, financial condition and related matters and respondents had ample opportunity to ascertain the existence and nature of any relevant documents prepared by or for the company.

3. Respondents contend that it was improper for the examiner to draw an adverse inference from the failure of the individual respondents to testify in these proceedings, arguing that these proceedings are in effect a form of criminal action since violations of the securities acts may carry criminal sanctions. However, the argument as to the nature of these proceedings runs counter to judicial authority, 6/ and it has been specifically held that in proceedings under the Exchange Act an adverse inference may be drawn from the failure of a party to testify. 7/ In any event our review of the record satisfies us that entirely aside from any inference based on such failure, the examiner's conclusions as to the violations charged are supported by the evidence which was adduced. That evidence includes not only the testimony of the investor witnesses and of employees of Clare Inc., but also testimony that was given by the respondents in the investigation which led to the institution of these proceedings and was introduced into the

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5/ See Rule 17 CFR 240.0-4 and General Aeromation, Inc., 40 S.E.C. 21 (1961).

6/ See Wright v. S.E.C., 112 F.2d 89, 94 (C.A. 2, 1940); Pierce v. S.E.C., 239 F.2d 160, 163 (C.A. 9, 1956); Associated Securities Corp. v. S.E.C., 283 F.2d 773, 775 (C.A. 10, 1960); Blaise D'Antoni & Associates v. S.E.C., 289 F.2d 276, 277 (C.A. 5, 1961), rehearing denied 290 F.2d 688.

7/ See N. Sims Organ & Co., Inc., 40 S.E.C. 573, 577 (1961), aff'd 293 F.2d 78, 80-81 (C.A. 2, 1961), cert. denied, 368 U.S. 968. For application of the principle in other types of cases, see the cases cited in 40 S.E.C. 577, n. 13.

record. The customer-witnesses' testimony was consistent and convincing in nature and the employees' testimony provided corroboration as to the making of the misrepresentations; and respondents' investigative testimony reflects their lack of adequate information concerning Alaska.

4. In view of the nature of the willful violations we have found as to Clare Inc., Freedman and Clare, and of those previously found as to Summers, we agree with the examiner that it is in the public interest to revoke the registrations of Clare Inc., Clare Co. and Towne, and to bar Freedman and Clare from being associated with a broker or dealer. 8/

Accordingly, IT IS ORDERED that the registrations as brokers and dealers of Harris Clare & Co., Inc., Harris Clare & Co. and Towne, Harris & Co., Inc. be, and they hereby are, revoked, and that Harris Freedman and Martin Clare be, and they hereby are, barred from associating with a broker or dealer.

By the Commission (Chairman COHEN and Commissioners WOODSIDE, OWENS, BUDGE and WHEAT).

Orval L. DuBois
Secretary

8/ Pursuant to Section 15(b)(5) we are imposing sanctions against Clare Co. and Towne on the basis of the willful violations of Clare, Summers and Freedman during their association with Clare, Inc.