

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of

RICHARD N. CEA  
JAMES C. CONKLIN  
KENNETH E. FISHER  
ROBERT E. KNESS  
FRANK P. WAYHART  
KEYSTONE STATE INVESTMENT SECURITIES  
COMPANY, INC. (8-12228)

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**FILED**

MAR 14 1968

**SECURITIES & EXCHANGE COMMISSION**

INITIAL DECISION

Washington, D.C.  
March 11, 1968

Samuel Binder  
Hearing Examiner

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**APPEARANCES:** Alexander J. Brown, Jr., Regional Administrator,  
Washington Regional Office, Paul F. Leonard and  
Herbert E. Milstein, Burton H. Finkelstein,  
Attorneys for the Division of Trading and Markets.

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Attorney for Respondents Robert E. Kness and Frank  
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Pennsylvania 15222.

**BEFORE:** Samuel Binder, Hearing Examiner

These public proceedings were instituted by an order of the Commission dated September 14, 1966 pursuant to Sections 15(b) and 15A of the Securities Exchange Act ("Exchange Act") to determine, among other things, whether Richard N. Cea ("Cea"), James C. Conklin ("Conklin"), Kenneth E. Fisher ("Fisher"), Robert E. Kness ("Kness") and Frank P. Wayhart ("Wayhart") while employed by C.A. Benson & Co., Inc. as registered representatives wilfully violated Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder particularly in connection with the offer and sale of the common stocks of Copter Skyways, Inc. ("Copter"), Fieldbrook Foods, Inc. ("Fieldbrook"), Home Makers Savings Corporation ("Home Makers"), Mr. Hot Cup, Inc. ("Hot Cup") and Wyoming Nuclear Corporation ("Wyoming") (hereinafter sometimes referred to collectively as the "basic stocks" or the "basic companies") and whether remedial action is necessary. An additional purpose of this proceeding is to determine whether it is necessary in the public interest or for the protection of investors to revoke the broker-dealer registration or to take other remedial action with regard to Keystone State Investment Securities Company, Inc. ("Keystone").

The respondent, Keystone, a Pennsylvania corporation, is a member of the National Association of Securities Dealers ("NASD") and has been registered with this Commission as a broker-dealer since January 27, 1965. Keystone was organized and is controlled by Fisher and Conklin who are its principal officers and are directors

of the company. 1/ Cea has been employed by Keystone as a registered representative since February, 1967. Kness and Wayhart are employed as registered representatives by another broker-dealer in Pittsburgh, Pennsylvania.

C.A. Benson & Co., Inc., the individual respondents' employer, when the alleged anti-fraud violations were committed, was involved in a number of earlier proceedings requiring remedial action. 2/ The respondents moved to dismiss the instant proceedings relying principally on the doctrine of laches and the hearing examiner denied such motion by an order issued on May 24, 1967.

The Division in the instant proceedings charged that between March 1, 1960 and December 31, 1964 the individual respondents, acting singly and in concert, made materially false and misleading representations to numerous investors concerning the purchase and sale of each one of the basic stocks and that as part of their aforesaid conduct they caused their customers to believe that they would deal

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1/ Fisher is president, treasurer and a director and owns 65% of the outstanding stock of Keystone. Conklin is vice president, secretary and a director and owns 35% of the outstanding stock of Keystone.

2/ C.A. Benson & Co., Inc., Securities Exchange Act Release No. 7044 (March 26, 1963), C.A. Benson & Co., Inc., Securities Exchange Act Release No. 7346 (June 15, 1964); District Business Conduct Committee No. 11 v. C.A. Benson & Co., Inc., Complaint No. P. 106 in District No. 11, NASD (May 5, 1960), C.A. Benson & Co., Inc., Securities Exchange Act Release No. 7856 (April 8, 1966) affirming the expulsion of C.A. Benson & Co., Inc. from membership in the NASD; C.A. Benson & Co., Inc., Securities Exchange Act Release No. 7857 (April 8, 1966) revoking the registration of C.A. Benson & Co., Inc., and barring Carl A. Benson, president of C.A. Benson & Co., Inc. from being associated with a broker-dealer.

fairly with them in connection with all purchases and sales of securities and that they violated their customers' trust and confidence by inducing them to buy the five basic stocks, which were unseasoned and speculative, without regard to their customers' financial needs, circumstances or objectives. In addition the Division alleged that the respondents failed to disclose to customers their adverse interests. Furthermore, the Division alleged that the respondents made baseless representations concerning substantial increases in the market price of Home Makers' stock; made false and misleading statements to numerous investors concerning the impact on the company's business of the seizure in June 1963 by the United States of "Mr. Enzyme", an antacid pill, at that time Home Makers only product, for misbranding and false advertising in violation of the Food and Drug Act; made false and misleading statements concerning the maintenance by C.A. Benson & Co., Inc. between June 1963 and December 1964 of a "work-out" market in Home Makers' stock consisting of a refusal by C.A. Benson & Co., Inc. the only "market" for these securities to purchase such stock from its customers unless a buyer for such stock could be found, resulting in purchasers being "locked in" and unable to sell their stock; and alleged that while C.A. Benson & Co., Inc. was maintaining the "work-out" market in which not all customers of the broker-dealer could sell their stock, Wayhart, one of the respondents recommended and sold his own Home Makers' stock to customers. Further, the Division charged that respondents frequently recommended that

customers switch from stock in companies listed on the New York Stock Exchange to one of the basic stocks or from one basic stock to another without purpose, except to make additional profits and commissions for C.A. Benson & Co., Inc. and themselves, and that Conklin and Kness churned customers' accounts. 3/

General denials of the alleged violations, or assertions of lack of sufficient information to admit or deny such allegations were filed on behalf of respondents and all respondents were represented by counsel and participated fully in the proceedings. 4/

As part of the post-hearing procedures all parties filed proposed findings, conclusions of law and briefs and supplemental memoranda, and upon request of the respondents oral argument was afforded all parties.

In addition to the oral evidence given by numerous customers evidence was received, without objection, consisting in part, of a series of prospectuses and offering circulars put out by the five

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3/ The respondent Cea filed a motion for a more definite statement. The broad sweep of the charges made against the respondents were not only set forth in the order, but were further explicated in the Division's answer to Cea's motion. In its answer in opposition to the motion the Division pointed out that it was charging that the respondents had violated the anti-fraud provisions with regard to each one of the basic stocks and that it was not required to furnish respondents with the evidence it intended to submit in support of its charges. In its response to the hearing examiner's order the Division also pointed out that the Division was charging fraud as to each one of the basic stocks. The respondents accordingly were fully apprised of the Division's claim that respondents had violated the anti-fraud provisions with regard to their sales and purchases of each one of the basic stocks.

4/ All the individual respondents except Cea testified on their own behalf during the proceedings.

basic companies. The Division also introduced into evidence, without objection, numerous financial statements prepared on behalf of the basic companies by their respective accountants reflecting the financial condition of each one of the companies. The documentary evidence was offered in support of the Division's charges that the respondents misrepresented the facts regarding those stocks and that they omitted disclosing to customers material information concerning the financial facts bearing upon securities offered to customers and to support the Division's charges that the respondents violated their customers' trust and confidence in inducing their customers to buy the five basic stocks and that respondents recommended such stocks without regard to their customers' financial needs and circumstances.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses and upon consideration of all the proposed findings of fact, conclusions of law, all the supporting briefs and memoranda filed herein and the oral arguments of counsel on the issues in these proceedings.

Background -- the Business of C.A. Benson & Co., Inc. and the Respondents

The principal business of C.A. Benson & Co., Inc. and the major activity of the individual respondents herein was offering and selling the five basic stocks. For example, during 1963 and 1964

the purchase and sale of the five basic stocks comprised 80% of the business of C.A. Benson & Co., Inc. Furthermore, during the period from June 1, 1963 through August 31, 1963 90% of Cea's commissions, 95% of Conklin's commissions, 92% of Fisher's commissions, 91% of Kness' commissions and 90% of Wayhart's commissions were earned from the sale of the basic stocks to customers.

C.A. Benson & Co., Inc. was the sole underwriter for each one of the five basic stocks, except Copter. In the case of Copter, C.A. Benson & Co., Inc. was the principal underwriter but two dealers sold a very small number of shares as part of the underwriting group headed by C.A. Benson & Co., Inc.

During the period involved in these proceedings, C.A. Benson & Co., Inc. bought and sold each of the basic stocks at prices fixed by Carl A. Benson ("Benson") the president of C.A. Benson & Co., Inc., usually after consultation with James H. Alm ("Alm"), an officer and registered representative of C.A. Benson & Co., Inc. and with the respondent Fisher.

C.A. Benson & Co., Inc. subscribed to the National Daily Quotation Sheets ("pink sheets") throughout 1963 and 1964.

There were occasional and rare instances of interest in the basic stocks in the pink sheets by other broker-dealers. Essentially, however, the principal dealer in the basic stocks was C.A. Benson & Co., Inc., which dominated and controlled the market and fixed the prices of the basic stocks. Benson & Co.'s position as to the "market"



for the five basic stocks was not disclosed to any customer by the respondents and the failure to advise the customers of such fact was a material omission violative of the anti-fraud provisions. 5/

All transactions in the basic stocks were confirmed on a principal basis through the mails.

In connection with sales by C.A. Benson & Co., Inc., in the basic stocks, salesmen received 50% of the mark-up but received no compensation for such stocks purchased from customers. The salesmen also received 50% of the commissions on all agency transactions. Salesmen made out their own order tickets and computed their own commissions or profits on each order ticket.

Benson testified that stock acquired for \$1 per share was marked up  $1/8$  to  $1/4$  of a point; stocks bought for \$2 per share were marked up  $3/8$  of a point, and stocks bought for \$3 per share would be marked up as much as  $1/2$  a point. The trader for C.A. Benson & Co., Inc. informed each of the salesmen at least on a daily basis of the bid and ask prices for each of the basic stocks.

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5/ As the Commission pointed out in Sterling Securities Company, 39 S.E.C. 487 at p. 492:

"It is well established that a dealer, in quoting prices to customers and selling at such prices, impliedly represented that the sale price bears 'some relation to a price prevailing in a free and open market.' Such representation is false where, as here, the dealer dominates and controls the market and fixes the price of the stock. As we stated in Norris v. Hirshberg:

' . . . the vice inherent in respondent's . . . sales without full disclosure of the fact that the market was dominated by respondent is the same as that inherent in a classic manipulation: The substitution of a private system of pricing for the collective judgment of buyers and sellers in an open market.'"

Part of Alm's job was to study financial data including balance sheets and income statements and other financial material relating to the five basic stocks. Alm, an accountant, as an officer of the underwriter, regularly received financial statements and other material reports from the five basic companies. After studying such financial data, Alm met regularly with C.A. Benson & Co., Inc.'s registered representatives including the individual respondents.

Alm, with Benson usually presiding, conducted classes in 1962 usually on a bi-weekly basis to familiarize the respondents and other registered representatives with the financial and other material facts pertaining to the five basic stocks and the companies which issued them. During 1963 the classes were conducted on a monthly basis. When Carl A. Benson was absent, either Alm or Fisher presided at these meetings. During the course of these meetings the registered representatives including the respondents were given correct and current data regarding the financial condition of the basic companies and each of the respondents was required to keep a file containing such data on each of the basic stocks. The respondents were required by Benson to attend these meetings and did in fact attend such meetings on a regular basis.

The respondents were kept well-informed of the material financial facts relating to the five basic stocks by Benson, Alm, and Fisher. They were supplied with offering circulars which were

mailed to customers and with copies of financial statements either distributed to them directly by Alm or made available to the respondents at the office of C.A. Benson & Co., Inc.

Fisher also kept a written position record on all the basic stocks and when he was trader informed the salesmen of the bid and ask prices fixed by C.A. Benson & Co., Inc. and also advised the respondents whether C.A. Benson & Co., Inc. was willing to purchase any of the basic stocks.

C.A. Benson & Co., Inc. required each of the salesmen to call their customers at least once a month.

C.A. Benson & Co., Inc. had only one office during the entire period covering the alleged violations. The respondents and other salesmen sat in one large open area each with a telephone at his desk which he used to make repeated telephone solicitations to investors to persuade them to buy the basic stocks being distributed by C.A. Benson & Co., Inc.

Fisher was employed as a registered representative by another broker-dealer for six months in 1959. In November 1959 Fisher became a registered representative employed by C.A. Benson & Co., Inc. and he continued in that capacity through December 1964. He left shortly thereafter and together with Conklin organized Keystone. During 1963 as sales manager and during 1964 as sales manager and sometimes as trader for C.A. Benson & Co., Inc., Fisher, under Carl A. Benson's direction, supervised as many as 12 other salesmen and was

paid \$75 per week in addition to commissions and other earnings on securities which he sold for C.A. Benson & Co., Inc. As part of his duties, Fisher reviewed and checked the files which each salesman kept on the five basic stocks and advised the respondents and other registered representatives daily on "market conditions", concerning the basic stocks. In substance this consisted of instructing the salesmen as to the bid and ask prices which were fixed by C.A. Benson & Co., Inc. for the basic stocks.

Cea was employed as a registered representative at C.A. Benson & Co., Inc. during the period August 1961 through December 19, 1964 and was compensated solely by commissions.

Conklin was employed as a registered representative at C.A. Benson & Co., Inc. during the period of November 1958 through December 1964 and was compensated solely by commissions except for a short period of time when he was the trader for C.A. Benson & Co., Inc.

Kness was employed as a registered representative at C.A. Benson & Co., Inc. between February 1962 and December 20, 1963 and was compensated solely by commissions. Prior thereto he had sold mutual funds as a registered representative for another broker-dealer.

Wayhart was employed as a registered representative at C.A. Benson & Co., Inc. from February 2, 1962 to November 8, 1963 and while so employed was compensated solely by commissions.

Conklin together with Fisher organized and controlled the respondent Keystone.

The principal characteristics of each one of the basic companies whose stocks were offered by C.A. Benson & Co., Inc. and recommended by respondents to their customers were continual losses in operations, increasing deficits, immediate and substantial diminution of the investment in the companies made by the public, extraordinarily high underwriting fees and commissions in relation to the amounts received by the issuers from the public, and prospectuses or offering circulars which were misleading and deceptive.

The principal method of selling the basic stocks consisted of high pressure sales talks by each of the respondents usually over the telephone to persons who theretofore were usually strangers to the respondents and included the making of false, exaggerated, and unwarranted statements to such persons concerning the financial position of the basic companies, their prospects, and the possibility of early and substantial rises in the "market" prices of the five basic stocks, the "market" prices being fixed arbitrarily at all times pertinent herein by C.A. Benson & Co., Inc., followed frequently thereafter by recommendations to switch from one basic stock to another for the sole purpose of obtaining more commissions and further compensation for the respondents and C.A. Benson & Co., Inc.

It should also be noted that C.A. Benson & Co., Inc. was the principal underwriter for each of the basic stocks and that respondents as sales employees of the underwriter used the offering circulars and prospectuses put out by the principal underwriter in making sales

of the basic stocks to the public. Pertinent facts derived from the offering circulars and prospectuses and from financial data prepared by the accountants for these companies are described under the following heading.

The Background and Financial History of the Basic Companies and the Securities Issued by Them 6/

1. Copter

In October 1958 David E. Mackey purchased 1,000 shares of Pittsburgh Airways, Inc., an inactive company from a bankrupt company for \$805.27. The only asset of Pittsburgh Airways was a certificate of public convenience and necessity to operate a helicopter service in Pennsylvania which asset was carried on the books of the bankrupt at the nominal amount of \$1.00.

On August 9, 1960 Copter was organized by Mackey with authorized capital stock of 7,500 shares at \$5 par value per share and Mackey became its president and was a director.

On September 15, 1960 Copter issued 3,200 shares of its \$5 par value stock (\$16,000 par value) to David E. Mackey in exchange for the 1,000 shares of Pittsburgh Airways. The cost of Pittsburgh Airways to Copter was recorded on the latter's books at \$805.27 the amount paid by Mackey to the bankrupt company and the stockholders' equity in Copter consequently reflected a deficit of \$15,194.73.

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6/ The facts set forth under this heading were derived from exhibits received in evidence without objection, particularly, offering circulars, prospectuses and financial statements of the basic companies. Consideration of these documents is pertinent and material to determine the validity of the Division's charges that respondents violated the anti-fraud provisions under the Securities Acts with regard to the sale of each one of the basic stocks.

On the same day, i.e., September 15, 1960 Copter sold 600 shares of its stock to other officers of the company at \$5 per share for \$3,000 and sold 200 shares each to Carl A. Benson and Peter A. Lagi, then secretary of C.A. Benson & Co., Inc. for \$5 per share. Thus, Copter issued a total 4,200 shares to Mackey, other officers of the company, and Benson and Lagi of C.A. Benson & Co., Inc. for a total investment by the promoters and organizers of \$5,805.27.

On December 27, 1960 the company split its stock 5,000 for 1 with a stated value of 1 mill per share, the effect being that Mackey's 3,200 shares were converted into 16 million shares, Benson's and Lagi's 200 shares each became 1,000,000 shares, and the other officers and directors' 600 shares became 3,000,000 shares totaling 21 million shares out of a total authorized capital stock of Copter of 37,500,000 shares.

Three months later on March 31, 1961 Copter's registration statement with the Commission became effective and the company offered 15,000,000 shares of its unissued stock to the public at three cents a share or at a price of approximately 1,000% over its book value of 2-3/4 mills per share. 7/

Between March 31, 1961 and October 4, 1961 C.A. Benson & Co., Inc. sold 9,716,150 shares at three cents a share to the public for a total of \$291,484.50. 8/ C.A. Benson & Co.'s direct underwriting commissions were \$43,681. In further compensation for its

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7/ The book value was determined by dividing the number of shares into the total amount invested in the company by its promoters.

8/ Copter filed an amendment on April 28, 1961 providing C.A. Benson & Co., Inc. with authority to enter into an agreement permitting selected dealers to assist in the underwriting effort.

efforts the underwriter received one share for each ten shares sold amounting to 971,615 shares which when considered at the offering price to the public amounted to an additional \$29,148.50. In addition, it should be noted that Carl A. Benson's 200 shares of Copter had become 1,000,000 shares due to the 5,000 for 1 split as had Lagi's shares. Accordingly it appears that Copter as part of its underwriting fees and commissions issued stock to Benson, which at three cents per share, amounted to \$30,000, and a like amount which can be attributed to Lagi. As a result of the initial underwriting Copter had expended \$43,681 in cash to the underwriter and had issued to the underwriter and its employees stock which when estimated at the public offering price, namely three cents per share, amounted to \$82,148.50 for a total of \$132,829.50. In addition Copter had expended \$19,129 for registration and broker's expenses leaving a net amount to the company of \$228,674 as a result of the underwriting.

Immediately prior to the public offering, all the promoters including Benson, owned collectively the then 21,000,000 shares of Copter outstanding and such shares had a book value of 2-3/4 mills per share. As a result of the public offering the book value of all of Copter's shares then outstanding, i.e., 31,995,650 shares 9/ went up to 8 mills per share. Accordingly, the book value of the stock in the hands of the promoters went up approximately 290% but

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9/ The 31,995,650 shares included shares issued pursuant to warrants distributed by the company after its initial offering.



the public shareholders suffered a diminution in the book value of their investment from three cents per share to 8 mills per share, and immediate book loss of 73% of their investment.

On November 2, 1961 Copter had a reverse split in which each 100 shares of stock outstanding became one share with ten cents stated par value.

The initial underwriting had been completed by October 4, 1961. On October 3, 1962, approximately a year later, a period during which the company had had no business operations, Copter filed a supplement to its initial prospectus and offered 18,274 shares of the company at \$3.50 per share as a secondary offering for the benefit of underwriters and associates including the respondents Fisher, Conklin and Cea as follows: Carl A. Benson, 1,826 shares; Kenneth E. Fisher, 1,767 shares; James C. Conklin, 1,523 shares; Patrick M. Flannery, 507 shares; Joseph P. Webb, 126 shares; James H. Alm, 100 shares; Richard N. Cea, 90 shares; Robert E. Horne, 56 shares; General Securities Corp., 166 shares; S.W. Gordon & Co., 125 shares; C.A. Benson & Co., Inc., 11,988 shares for a total secondary offering of 18,274 shares for \$63,959.

The supplement to the prospectus provided, in pertinent part, that "In the event all of the shares offered hereunder are sold, the selling group would realize the gross sum of \$63,959 for which said group had paid a cash consideration of \$1,000 and would receive a gross profit of \$62,959.00 less selling commissions." 10/

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10/ Carl A. Benson paid the \$1,000.

Furthermore, Copter paid all the accounting and legal fees pertaining to the secondary offering without charge to the beneficiaries of the offering.

At the time of the initial offering the company had had no operations and only about \$7,800 in assets.

At the time of the secondary offering in October 1, 1962 the financial statements presented were through May 1962, and Copter's operating statement showed only expenditures and no receipts, indicating no business operations. The accumulated deficit as of May 31, 1962 was shown as \$37,361. Book value per share at this point had been reduced to 6½ mills or a diminution of 78% of the original three cents per share investment by persons who had been induced to purchase Copter on the initial underwriting.

Salesmen at C.A. Benson & Co., Inc. including the respondents knew there was no interdealer market in Copter in 1963; that no broker except C.A. Benson & Co., Inc. made any market in Copter in 1963; that C.A. Benson & Co., Inc.'s market in Copter was the purchase and sale of this stock among its own retail customers; and that during 1963 C.A. Benson & Co., Inc. set the price for Copter stock and maintained a work-out market in which a sell order for a customer was not executed unless there was a buy order from another customer. During 1963 salesmen of C.A. Benson & Co., Inc. solicited customers to purchase Copter stock although they knew Copter's financial condition had deteriorated to the point that it might cease doing business. In October 1963, C.A. Benson & Co., Inc. stopped all trading in Copter. On November 28, 1963 the stockholders of Copter voted to dissolve the company.

Copies of the following reports for Copter were supplied to salesmen within thirty days of the date of the statement: Operating

statement and other financial data for January 1, 1961 through May 31, 1962; operating statement for 1962 and balance sheet as of December 31, 1962; operating statement for January 1, 1963 through May 31, 1963 and balance sheet as of May 31, 1963, and operating statement for June 1, 1963 through September 30, 1963 and balance sheet as of September 30, 1963.

During the period of January 1, 1961 through May 31, 1962, Copter had no operating income and an operating deficit of \$37,361. During the year 1962, Copter had revenue of \$5,369 and expenses of \$105,142 sustaining an operating loss of \$99,773 thereby increasing its deficit in retained earnings to \$119,316. During the first five months of 1963, Copter had gross revenues of \$5,080 and operating expenses of \$31,059. During this period Copter sustained a net loss of \$22,023 thereby increasing its deficit in retained earnings to \$141,339. During the first nine months of 1963, Copter had gross revenues of \$9,612 and expenses of \$57,156 sustaining a net loss of \$43,501 thereby increasing its deficit in retained earnings to \$162,817. As of September 30, 1963, Copter's current liabilities of \$21,814 exceeded its current assets of \$3,143 indicating a possible inability to meet current obligations.

## 2. Hot Cup

Hot Cup issued an offering circular dated March 6, 1963 covering an alleged intrastate offering of 105,750 shares at \$2 per share to the public consisting of 75,000 shares on behalf of

the issuer and 30,750 shares on behalf of C.A. Benson & Co., Inc. as the underwriter and finder. The underwriters' discounts and commissions as set forth on the first page of the offering circular to cover the shares being offered by the issuer were 30 cents per share or 15% of the offering price. The proceeds to the company with regard to the 75,000 shares to be offered on its behalf were stated to be \$1.70 per share.

Hot Cup, a Pennsylvania corporation, was organized to sell, distribute and franchise dispensers and ingredients for smaller users.

The offering circular reflected that the capitalization of Hot Cup upon completion of the offering would consist of 456,900 shares of common stock. The outstanding shares authorized prior to this offering were 300,000 shares.

The text of the offering circular shows that in addition to the 30,750 shares to be received by C.A. Benson & Co., Inc. the issuer also agreed that the latter would receive as further compensation in the underwriting "one share of the common capital stock of the company for each 20 shares actually sold and paid for through the efforts of the underwriter." Additionally Carl A. Benson, individually, was to receive "so many shares of the issued and outstanding common capital stock on the sale in full of all the shares offered under the circular as to give him 20% of the total issued and outstanding shares of the company." The company also agreed to pay an additional \$2,500 in expenses which would include

expenses for printing the offering circular and further agreed to pay an additional \$2,500 for legal fees, accounting fees, and delivery and stock transfer expenses.

The bonus of one share of stock for each 20 shares sold by C.A. Benson & Co., Inc. amounted to 3,750 shares.

Hot Cup's offering circular stated in large type that the offering covered 105,750 shares. However, the offering, if successful, involved the issuance of a total of 156,900 shares of which 105,570 shares were being offered to the public. This may be broken down as follows:

Seventy-five thousand shares were to be sold to the public on behalf of Hot Cup for which the company was to receive \$150,000 less \$22,500 to be paid to C.A. Benson & Co., Inc. for underwriting commissions leaving \$127,500 for the issuer prior to the payment of printing, accounting, legal and other expenses amounting to \$8,350 leaving a net to Hot Cup of \$119,150. The offering also involved 30,750 shares to C.A. Benson & Co., Inc. and its salesmen for their efforts in selling the 75,000 shares. Furthermore, Hot Cup was to issue to C.A. Benson & Co., Inc. 3,750 additional shares as further compensation. Moreover, Carl A. Benson, individually, was to receive an additional 47,500 shares for his efforts on behalf of Hot Cup so that he would have 20% of the total issued and outstanding shares of Hot Cup. The number of shares being issued by Hot Cup were 81,900 shares to C.A. Benson & Co., Inc. and its

salesmen and Carl A. Benson. When multiplied by the price to the public, the shares received by C.A. Benson & Co., Inc. and its associates amounted to \$163,800. In addition C.A. Benson & Co., Inc. received \$22,500 in cash commissions and thus received a grand total of \$186,300 made up of cash and securities as compared to \$119,150 realized by Hot Cup as a result of the offering.

The original incorporators received 300,000 shares for an investment of \$60,000, i.e., they paid 20 cents per share.

The public investors contributed 70% of the capital of the enterprise and received 16% of the stock. The original incorporators contributed 30% of the capital and obtained in excess of 65% of the capital stock. C.A. Benson & Co., Inc. contributed its services as an underwriter and received 18% of the stock, i.e., they received more in equity than the public investors received.

The investor paid \$2 a share for stock which had a book value of 39 cents per share and he incurred an immediate book value diminution of \$1.61 per share for each \$2 per share he invested.

The past history of the business enterprise in which the public stockholders were persuaded by respondents to invest their money may be summarized as follows:

From November 1, 1962 to February 19, 1963 the company operated as a de facto corporation. Hot Cup was incorporated on February 19, 1963. The offering circular was issued on March 6, 1963. The company had not obtained a corporate charter until February 19, 1963 or approximately a month before the offering circular was issued. Between November 1, 1962 and February 20, 1963 the net sales of the

company were only \$3,644 on which it had incurred a net loss of \$2,400.

As of February 20, 1963, the current liabilities of Hot Cup, \$38,623 exceeded its current assets, \$27,346. Hot Cup operated at a deficit of \$2,400 for its initial period of operations, November 1, 1962 to February 20, 1963.

Hot Cup according to the offering circular had assets of \$81,223 of which more than half were "intangible assets" capitalized at \$44,993. These assets could be realized upon only if the enterprise were successful. Of course, as the financial statements disclosed the enterprise was, at the time of the offering, very small and had no history of successful operations, having been in existence only a very short time and was engaged in a highly competitive field and the intangible assets were of a highly questionable character.

Hot Cup made a second intrastate offering by an offering circular dated December 14, 1964. The company offered 30,000 shares on its own behalf and an additional 30,000 shares were offered on behalf of C.A. Benson & Co., Inc., the latter shares being part of the compensation received by C.A. Benson & Co., Inc. as underwriter in its previous Hot Cup offering of March 6, 1963. C.A. Benson & Co., Inc. was to receive 15% as the underwriter's commission on the 30,000 shares offered by Hot Cup and these shares were offered at \$3.25 per share. C.A. Benson & Co., Inc.'s underwriting commissions

at this rate on sale of the shares offered on behalf of Hot Cup amounted to \$10,125. The net amount received by Hot Cup after underwriters' discounts and commissions was \$57,375. C.A. Benson & Co., Inc. would realize \$67,500 for its shares less commissions paid Benson's salesmen. The offering circular also reflected that Hot Cup contemplated the issuance of an additional 37,600 shares to acquire the stock of General Vending Corporation, a company engaged in the distribution of comic books, on the basis of one share of Hot Cup stock for three shares of General Vending Corporation stock. The total capitalization contemplated upon completion of the second offering (including the 37,600 shares to acquire General Vending Corporation) was 524,500 shares of stock. However, the authorized capital was only 500,000 shares.

The offering circular pointed out that "it will be necessary to amend the charter of the corporation to secure the additional 24,500 shares necessary to repay the major stockholders for their stock which they are lending to the corporation."

There is no other reference in the offering circular as to which stockholders, or why or when the major stockholders would lend the stock to the corporation or when it was to be repaid or what compensation, if any, would be paid for the lending of the stock.

The offering circular referred to 37,600 shares of Hot Cup "which is available as treasury stock". However, the notes to the



balance sheet make clear that there was no treasury stock and that Hot Cup would issue previously unissued shares of Hot Cup for the acquisition of General Vending Corporation when authorized by the stockholders to do so.

The statement of financial position made a part of the offering circular reflects that as at September 30, 1964 after more than a full year of operation, the company had an accumulated deficit of \$139,896 and it may also be pointed out that the stockholders' equity at that time was only \$39,254, i.e., out of an original contribution of \$179,150, there was only \$39,254 left in stockholders' equity.

The financial condition of the company was markedly worse at the time of the second offering than it was at the time of the first offering and it was extremely poor at the time of the first offering, but the stock was being offered after a disastrous period of operation at a higher price than that fixed in the original offering. The price of the stock was fixed arbitrarily by C.A. Benson & Co., Inc.

During the period of November 1, 1962 through September 30, 1963 Hot Cup sustained an operating loss of \$40,813 on revenues of \$68,436.

At the time of the second offering the company had more than one year in which to operate and had shown no profits, but instead had incurred substantial losses. For the year ended September 30, 1964 the net loss was \$99,083 which when added to the prior losses

resulted in a deficit of \$139,896. Despite the large capital contributions made by the investing public, the company had as of September 30, 1964 only a little over \$88,000 in assets.

An interesting aspect of Hot Cup's statement of financial position as at September 30, 1964 is that it reflected cash in the amount of \$30,827 which would appear to be substantial in relation to its total assets of \$88,523. However, in a footnote to the financial statement it appeared that Hot Cup had pledged a time deposit of \$26,010 as collateral for a loan of \$25,000. In effect the \$30,827 shown in cash was "window dressing" in that there was only a little over \$4,800 available as cash instead of \$30,827.

This was a highly deceptive presentation of the company's current assets and financial position.

The circulars were used by C.A. Benson & Co., Inc. and the respondents in their efforts to sell the stock of Hot Cup. 11/

Salesmen at C.A. Benson & Co., Inc. knew during 1963 and 1964 that there was no inter-dealer market in Hot Cup; that no broker except C.A. Benson & Co., Inc. made any market in Hot Cup in 1963 and 1964; that C.A. Benson & Co., Inc.'s market in Hot Cup was the purchase and sale of the stock among its own retail customers; that during 1963 and 1964 C.A. Benson & Co., Inc. maintained a work-out market in Hot Cup in which a sell order for a

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11/ A third offering circular issued by Hot Cup on May 26, 1965 was received in evidence without objection but since the date of this offering appears to be beyond the date set forth in the order initiating these proceedings, no findings are made herein with regard to this circular.

customer was not executed unless there was a buy order from another customer; and that C.A. Benson & Co., Inc. set the price for the stock throughout this period. At times during 1963 and 1964, Benson required each salesman to keep his own inventory sheets on Hot Cup to remind the salesman that he was expected to sell retail customers as much Hot Cup as he purchased from customers.

During 1963 and 1964, except for one bid, no other broker except C.A. Benson & Co., Inc. placed bids in the "Pink Sheets" for Hot Cup.

During 1963 and 1964 Benson requested and received periodic balance sheets and profit and loss statements from Hot Cup. Except for December 1963, C.A. Benson & Co., Inc. requested and received within thirty days of the date of their preparation, monthly balance sheets and/or profit and loss statements during the period of August 1963 through August 1964. Either photostatic copies of these statements were supplied or the statements themselves were made available to all salesmen shortly after C.A. Benson & Co., Inc. received them. In addition, Alm discussed these monthly financial statements in the accounting classes with the salesmen.

### 3. Wyoming Nuclear Corporation

Wyoming Nuclear Corporation, a company engaged in the general mining business, filed an offering circular with the Commission pursuant to Regulation A, dated October 28, 1959. The offering

circular provided for an offering of 10,000,000 shares to the public at three cents per share. The underwriting commissions to Carl A. Benson & Co., Inc. if all shares were sold would be \$45,000 with the net proceeds to the company stated to be \$255,000.

A financial statement of Wyoming Nuclear reflected that as at April 30, 1961 the company had received \$243,859.51 as net proceeds from the sale of stock pursuant to Regulation A. The company's balance sheet as at December 31, 1962 contained in the third annual report of the corporation dated March 14, 1960 stated that the company had retained earnings as of that date of \$1,176.25. In addition the annual report contains a statement to the effect that Wyoming had consented to the entry of a permanent suspension with regard to any offering of Wyoming Nuclear stock under Regulation A. However, the company's annual report added that the permanent order of suspension did not affect the right of stockholders to buy additional stock or to sell stock in the over-the-counter market and referred to the "sound financial condition of the company." The same balance sheet consists principally of representations to the effect that the company had investments in mining claims, apparently undeveloped, and had capitalized exploration costs. The record also included a balance sheet of Wyoming Nuclear as at November 30, 1963 showing, among other things, that as a result of its operations there was a retained earnings deficit in

the amount of \$19,399.24, and for the period the losses were in excess of \$20,000 as a result of its operations.

Salesmen at C.A. Benson & Co., Inc. knew that except for a short period of time in 1959 or 1960, there was no inter-dealer market in Wyoming stock throughout the period of 1959 to 1964; that no broker except C.A. Benson & Co., Inc. made any market in Wyoming; that C.A. Benson & Co., Inc.'s market in Wyoming was the purchase and sale of this stock among its own retail customers; that C.A. Benson & Co., Inc. set the price for Wyoming stock; and that C.A. Benson & Co., Inc. maintained a work-out market for Wyoming stock in which a sell order for a customer was not executed unless there was a buy order from another customer. At times during 1963 and 1964 Benson required each salesman to keep his own inventory sheets on Wyoming stock to remind the salesman that he had to sell to customers as much Wyoming as he bought from customers.

Throughout the period 1961 through 1964, C.A. Benson & Co., Inc. received periodic financial reports from Wyoming. Copies of at least three of these reports were reproduced and supplied to all salesmen. All reports not reproduced were made available to salesmen for their review. Alm discussed the financial reports for Wyoming in the accounting classes with salesmen.

#### 4. Fieldbrook

As at January 1964 Sheldon Smilack ("Smilack") was president of Fieldbrook Foods, Inc., a Pennsylvania corporation, engaged in

the business of processing, freezing, and distribution of meat and other products. He was its sole stockholder and had an equity in the company in the amount of \$55,197.62. The equity was represented by all of the outstanding shares of Fieldbrook, namely, 200 shares at a stated par value of \$100 per share equaling \$20,000, plus paid in capital of \$11,098.65 and retained earnings of \$24,108.06, aggregating \$55,197.62.

The company in an offering circular dated March 18, 1964 covering an alleged intrastate offering stated in a footnote to its financial statements that "Subsequent to the date of the balance sheet [i.e. January 31, 1964], the company recapitalized by splitting its common stock 2,000 for 1. Also, 715,000 shares have been donated to the company as treasury shares." The text of the offering circular after referring to the 2,000 for 1 stock split states that "the original 200 shares of stock . . . were eventually split into 2,000,000 shares." However, there is no further reference in the offering circular to a subsequent stock split. If Fieldbrook wanted to have authorized capital stock consisting of 2,000,000 shares, it would be necessary to split the original stock again on a 5 for 1 basis so that the original shares issued would be split 10,000 for 1 instead of 2,000 for 1. There is no explanation in the offering circular as to how the 200 original shares became 2,000,000 shares. Nevertheless, the offering circular of March 18, 1964 stated that the capitalization of the company as at March 5, 1964

was 2,000,000 common shares with authorized par value of 1 cent of which 1,285,000 shares were outstanding and of which 715,000 shares had been donated by Smilack without consideration as treasury stock. The offering to the public was to be made out of the latter shares. In any event it appeared that the company issued more than 2,000,000 shares, i.e., it issued 2,015,000 shares as follows: 300,000 shares were to be offered to the public under the offering circular; Smilack was to retain 1,285,000 shares, Benson, individually, was to receive 400,000 shares in order to award him 20% of all of the outstanding shares as required by the underwriting agreement. Benson was also to receive 15,000 additional shares on the basis that he was to get 20 shares for each share of Fieldbrook sold. C.A. Benson & Co., Inc. was to receive an additional 10,000 shares and C.A. Benson & Co., Inc.'s salesmen were to receive 15,000 shares, the total amounting to 2,015,000 shares. In addition to the bonus shares, Benson received 15% of the offering price as underwriting commission.

Smilack's 1,285,000 shares when computed at the offering price amounted to \$1,285,000 as contrasted with his initial equity of \$55,197.62 immediately prior to the split and the issuance of the offering circular, an increase in excess of \$1,000,000 brought about merely by splitting stock and issuing an offering circular. Benson's individual shares when calculated at the offering price represented \$400,000.

The offering circular employed in this public offering reveals that as of January 1, 1964, Fieldbrook's current liabilities of \$68,574.16 exceeded its current assets of \$46,379.49. The offering circular further indicates that the company had a contingent liability of \$71,992.69 as of January 31, 1964.

Fieldbrook's business operations for the fiscal years from 1959 through 1963 and for the first ten months of fiscal 1964 ending January 31, 1964 were as follows: Net income of \$108.17 for fiscal 1959, \$14,580.84 for fiscal 1960, \$11,978.89 for fiscal 1961, \$1,903.77 for fiscal 1962, \$212.64 for fiscal 1963 and \$3,871.25 for the first ten months of fiscal 1964.

Under the terms of Fieldbrook's offering to the public, Smilack would own 64% of the outstanding stock. Benson's salesman would own 1% and Benson personally would own 20% of the stock making a total of 85% of the stock. The public would own the remaining 15%. Accordingly, the public would contribute 82% of the capital or \$255,000 and would obtain 15% of the equity. The original incorporators would have contributed \$55,000 or 18% of the capital and C.A. Benson & Co., Inc. and its salesman would have contributed no cash but would have contributed underwriting services. Benson would receive 20% of the equity.

The book value of the 2,000,000 shares outstanding after the underwriting was 15 cents per share. In other words, the public investors would have suffered an immediate diminution of 85% of



their investment in the enterprise. Finally, the company's statements of financial condition as at January 31, 1964 showed \$20,304.24 as "cash in bank" and at the same time, the current liabilities section showed without explanation that there was a bank over-draft of \$1,455.56.

The salesmen including the respondents knew during 1964 that there was no inter-dealer market for Fieldbrook stock; that no broker except C.A. Benson & Co., Inc. had any market in Fieldbrook in 1964; that C.A. Benson & Co., Inc.'s market in Fieldbrook was the purchase and sale of this stock among its own retail customers; that during 1964 C.A. Benson & Co., Inc. maintained a work-out market in Fieldbrook in which a sell order for a customer was not executed unless there was a buy order from another customer, and that C.A. Benson & Co., Inc. set the price for the stock in 1964. In 1964 no broker inserted quotations in the "Pink Sheets" for Fieldbrook.

In the fall of 1964 C.A. Benson & Co., Inc. distributed to salesmen copies of a profit and loss statement for Fieldbrook for the six-month period ending September 30, 1964 showing that Fieldbrook had a profit of \$1,823.94 on sales of \$105,002.99.

##### 5. Home Makers

Home Makers, a Pennsylvania corporation, incorporated on February 6, 1961, was organized to sell and distribute household appliances. Shortly thereafter it marketed vitamin products called

Vita-All, Geri-Homo, and Vita-Kids. By January 23, 1963 Home Makers had discontinued distribution of its vitamin products and devoted all of its attention to the distribution of "Mr. Enzyme", an ant-acid product.

Home Makers made its first offering of stock to the public in January 1962 and made a second public offering in September 1962, approximately 8 months later, both offerings totaling \$205,000.

The record in this proceeding shows that the net cash proceeds Home Makers received from the first offering consisting of 35,000 shares of common stock at \$3 per share were \$78,419.12 and the net cash proceeds received by Home Makers from the second offering of 20,000 shares of common stock at \$5 per share were \$79,021.82, making the total net cash proceeds to Home Makers \$157,440.94 from both offerings prior to deducting additional expenses including legal and accounting fees attributable to the offering.

On May 14, 1962 Benson was elected to the Board of Directors of Home Makers and has continually served in that capacity up to the present time. During the period of June 20, 1962 until December 15, 1964, Benson served as vice-president of Home Makers. During the period of July 28, 1964 through December 15, 1964, Benson was the acting president of Home Makers following the resignation of the president. On December 15, 1964 Benson was elected president of the company and continues to serve in that capacity until this time.

On December 20, 1962 at Benson's suggestion, the Board of Directors of Home Makers retained C.A. Benson & Co., Inc. as a

financial adviser to Home Makers at a yearly payments of \$4,000 to be paid quarterly. As a result of this agreement, C.A. Benson & Co., Inc. received a payment of \$1,000 in April 1963.

According to an "Audit Report" prepared by Home Makers' accountants dated December 31, 1962, C.A. Benson & Co., Inc., the underwriter, Carl A. Benson, the underwriter's president, individually, and certain of the registered representatives employed by the underwriter received the following underwriting fees, commissions and expenses from the offerings made to the public: 12/

The underwriter received \$15,750 in underwriting commissions from the first public offering and \$15,000 in underwriting commissions from the second public offering, making a total of \$30,750 or 15% of the amount received from the public. In addition, Carl A. Benson, president of the underwriter personally received 20% of the total issued and outstanding shares of the company after the sale to the public of the initial 35,000 shares. A similar provision for Carl A. Benson's benefit was made a part of the second underwriting agreement. Accordingly, Carl A. Benson received 26,857½ shares of Home Makers' stock in connection with his efforts in the first offering and an additional 5,735½ shares of common stock for his efforts in connection with the second offering, making a total of 32,593 shares received by Carl A. Benson personally. In addition,

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12/ Home Makers did not file a registration statement or make a filing pursuant to Regulation A under the Securities Act presumably because it claimed an exemption under Section 3(a)(11) of the Securities Act as an intrastate offering.

1,215 common shares were awarded to certain of C.A. Benson & Co., Inc.'s registered representatives for their efforts in these underwritings.

Computing the 32,593 shares held by Benson personally as at September, 1962 at the same price paid by the public at that time, namely \$5 per share, the amount attributable to Benson personally for his services was \$162,965 and the amount attributable to the 1,215 shares received by Benson's salesmen was \$6,075 for a total of \$169,040. In addition, the underwriting commissions to C.A. Benson & Co., Inc. were \$30,750. When this is added to the proceeds already received, the amounts received totalled \$199,790. This amount contrasts with the net proceeds received by Home Makers from the two offerings of \$157,440.94 less other expenses related to the underwriting. In addition to these amounts the company expended \$5,000 to C.A. Benson & Co., Inc. for expenses in the underwriting and it expended \$11,809.06 for the legal fees, accounting fees, and other expenses connected with the underwriting.

According to the "Audit Report" dated September 30, 1962, prepared by Home Makers' accountants, the total stockholders' equity after both offerings were concluded amounted to \$92,120. Accordingly, the book value was only 58 cents per share, and thus the shareholders who had purchased under the first underwriting incurred a dilution in the book value of their \$3 per share investment amounting to \$2.42 per share while those who had purchased under the second offering

had incurred a dilution in their \$5 per share investment in the amount of \$4.42 per share. It also appeared that the offering price in the case of each offering was fixed arbitrarily and had no relationship to earnings or investments or any other objective criterion.

After the two underwritings had been completed and 55,000 shares had been sold to the public, it appeared that the investing public had contributed \$205,000 to the enterprise. The cash contribution of the promoters was \$18,300. The promoters and the underwriters owned 65.6% and the public owned 34.3% of the stock.

The financial statements prepared by Home Makers' accountants showed that Home Makers had sustained losses in each year of its existence. The company had a history of continuing and increasing deficits.

Home Makers' sales for the year ended December 31, 1961 amounted to \$55,442.99 on which it sustained a net loss of \$17,240.61. Its working capital as at December 31, 1961 was a minus figure of \$8,985.47, i.e., its current liabilities exceeded its current assets by the latter amount. The stockholders' equity at that time amounted to \$1,059.39 and its total assets were stated to be \$24,709.53.

The first underwriting was concluded by June 30, 1962 and resulted in a contribution by the public to Home Makers' capital of \$105,000. Although the company had received \$78,419.12 in net

proceeds from the first underwriting, it only had working capital of \$18,003.49 and the stockholders' equity was only \$28,849.42 and its total assets were only \$32,542.96 by the end of June, 1962. In substance a major part of the proceeds were used to finance the company's deficits.

As at December 31, 1961 Home Makers had sustained a net loss of \$17,000 and had an accumulated deficit in approximately the same amount. For the first quarter of 1962 the financial statements contained in this record reflected that there were sales of only \$10,772 and that the company had sustained a net loss of over \$32,000 and it had an accumulated deficit of over \$49,000 for the quarter. At the end of the second quarter of 1962 when the first underwriting had been completed the financial statements reflected that net sales were less than \$7,000, apparently because sales returns after the first quarter had exceeded sales in the second quarter by approximately \$3,800. The financial statements reflected a net loss in the first half of 1962 of over \$40,000 and an accumulated deficit of over \$63,000. The second underwriting consisting of 20,000 shares at \$5 per share was begun on September 12, 1962 and completed by September 30, 1962. The financial statements prepared by the company's accountants dated September 30, 1962 reflected that net sales from January 1, 1962 to September 30, 1962, i.e., for a period of approximately 9 months, were only \$1,081.54. Thus the accountants' report showed

that practically all of the merchandise sold earlier in the year 1962 had been returned to the company by the end of September 1962 and that Home Makers had net sales of approximately only \$1,000 for the first nine months of 1962. It was in this context that Home Makers made its second offering of 20,000 shares of stock at \$5 per share, i.e., \$2 more per share than it had sold Home Makers stock for in June 1962. The financial statements prepared by Home Makers' accountants showed the company had a net loss at September 30, 1962 exceeding \$62,000 and that it had an accumulated deficit at that time of almost \$80,000. It was in this context that on October 26, 1962 at Benson's suggestion that Home Makers split its stock 5 for 1. Benson recommended the stock split to increase the number of shares available for trading.

Since the stock split, Home Makers has had 797,440 shares of stock outstanding of which approximately 275,000 were actively traded. As a result of two underwritings and stock purchases, Benson has owned since December 31, 1962 and still owns 268,682 shares of Home Makers or 33.7% of the company's outstanding stock. Since the stock split, two other directors of Home Makers have owned approximately 1/3 of the company's outstanding shares.

During the period of 1962 through 1964, Benson as an officer, director and controlling stockholder, attended board of directors' meetings and various informal meetings of Home Makers, offered financial advice and aided the company in securing bank loans and credit.

When Home Makers completed its second underwriting on September 30, 1962, the company received a net amount of \$79,346.30. At that time and by reason of receiving the aforesaid amount, the working capital was \$81,514.05; stockholders' equity was \$92,120 and the total assets of the company were slightly in excess of \$95,000. As at September 30, 1962 the company had obtained from the public over \$157,000, but the stockholders' equity was only slightly in excess of \$92,000.

The deterioration in the company's condition continued for the balance of 1962. The net loss for the year 1962 exceeded \$100,000 and Home Makers' accumulated deficit at year end was \$117,300. As at December 31, 1962 the working capital of Home Makers was slightly in excess of \$43,000; stockholders equity had declined to a little over \$54,000 and the total assets of the company were down to approximately \$72,000.

The book value per share based on the number of outstanding shares computed as they existed before the split had gone down to approximately 32 cents per share and following the split, the book value was approximately 7 cents per share.

In 1962 Home Makers became very active in marketing a new product call "Mr. Enzyme" and by 1963 the company devoted almost all of its attention to the new product which was manufactured for the company by a firm in Cleveland, Ohio because Home Makers had no manufacturing facilities. In this connection the accountants' reports reflected that for the first four months of 1962 the



company had incurred expenses of approximately \$75,000 for advertising. The gross sales for the first four months of the year 1963 were approximately \$63,000 and Home Makers' advertising costs exceeded gross sales for the period by 120%. In addition, it should be observed that gross sales for the entire year 1963 were only \$80,175.72, on which the company sustained net losses of \$110,231.17. By April 30, 1963 the company's accumulated deficit was \$198,217.95 and by the end of the year its accumulated deficit had soared to \$227,531. The company sustained losses on its operations in every single month of 1963. The financial statements reflected that the company expended only about \$600 in advertising in June 1963 and that thereafter Home Makers ceased advertising Mr. Enzyme. At the end of April 1963 the assets of Home Makers amounted to slightly under \$90,000 and the company had a working capital deficit of almost \$27,000. It was clear that Home Makers could not continue its large advertising program.

For the year 1964 total sales of Home Makers were approximately \$88,000 and on this level of sales the company sustained a net loss of \$18,000. The deficit in the company's working capital was over \$82,000 and the deficit in retained earnings was approaching a quarter of a million dollars. The deficit in stockholders' equity was over \$75,000 and Home Makers' assets had diminished to a little over \$37,000.

Home Makers entered into an agreement on December 3, 1962 with Norwich Pharmacy Company ("Norwich") making it the exclusive distributor

of "Mr. Enzyme" in the United States. Home Makers supplied the tablets in packaged form to Norwich for distribution.

On May 29, 1963, officials of the State of Pennsylvania accompanied by officials from the federal Food and Drug Administration ("FDA") embargoed 78 cases of Mr. Enzyme containing 449,280 tablets as well as the company's advertising material alleging that the goods embargoed were misbranded in violation of State law.

On June 3, 1963 13/ the United States Marshal accompanied by officials of the FDA seized the company's stock of Mr. Enzyme and its advertising material pursuant to a complaint filed by the FDA on May 27, 1963 in the United States District Court for the Western District of Pennsylvania.

The federal government alleged that the name "Mr. Enzyme" and Home Makers' advertising material were misleading and violated the Food and Drug Act. On the day of the seizure the manufacturer of Mr. Enzyme notified Home Makers that it would not make any further shipments of the product and that they had stopped production of all tablets. On the same day in a conference between officials of the FDA and Home Makers, the FDA requested Home Makers to change the name of Mr. Enzyme, to strike enzyme from the advertising material as an active ingredient and to stop advertising the beneficial value of the enzyme ingredient in the product.

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13/ The State of Pennsylvania lifted its embargo at the time of the federal seizure, and there was no time gap between the State embargo and the federal seizure.

Home Makers refused. Two weeks thereafter, Norwich refused to continue further distribution of Mr. Enzyme, but arranged for another but smaller distributor in California to distribute the remaining supply of Mr. Enzyme which Norwich had in a warehouse in California. After the seizure, the Western National Bank of Pennsylvania which had previously loaned money to the company refused to make any further loans to Home Makers. The company vacated its office in May 1964 owing two months back rent and its landlord retained the company's office fixtures because such rent had not been paid.

Norwich after conducting clinical experiments beginning in September 1963 notified the company in July 1964 it had no further interest in the product.

In mid-December 1965 a jury in the federal court reached a verdict sustaining the embargo previously imposed. 14/

In April 1963, i.e., prior to the seizure, Home Makers was equitably insolvent. In order to survive as a business entity it would have been necessary for Home Makers not only to be successful in the litigation which ensued following the seizure of its product, but it would have had to obtain additional long-term capital from some source. The position of Home Makers was financially bleak before the seizure and became worse thereafter.

The financial facts relating to Home Makers and the facts concerning the litigation and the inability of the company to settle its dispute

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14/ U.S. of America, 38 cases more or less, Civil Action No. 63-427 (D.C.W.D., Pa., 1963).

with the government were reported to the respondents by Benson and Alm and they were kept fully and currently informed throughout 1963 and 1964 of all the material facts relating to the litigation and Home Makers' financial condition and they knew that Home Makers was unable to pay its bills. Shortly after Benson received a financial report, the report was made available to all salesmen of C.A. Benson & Co., Inc. and copies of some of the financial statements were given to each of the salesmen. In addition, Alm who reviewed Home Makers' books and records, discussed the financial statements in the accounting classes. In May or early June 1963, Alm pointed out to all the salesmen that the Home Makers' financial statement for the month of May 1963 showed a deficit in stockholders' equity of \$26,927.70. Alm informed the salesmen that the company was in a position of possible bankruptcy. Benson also pointed out to the salesmen Home Makers' deficiency in stockholders' equity. Benson who was fully familiar with the operations of Home Makers since he had been a member of its board of directors since May, 1962, vice president of the company from June 1962 to December 1964, acting president from July 1964 through December 15, 1964 and has been president since that time, specifically told the respondents that Home Makers could not operate profitably after the seizure, that Norwich had stopped distributing Mr. Enzyme, that the manufacturer of Mr. Enzyme would not ship further orders, that all advertising had been cancelled, that the

bank would not extend further credit to the company and that settlement talks with the FDA were unproductive. During 1963 and 1964, officers of Home Makers met with the salesmen of C.A. Benson & Co., Inc. on at least six occasions to discuss the financial and operating conditions of Home Makers. Shortly after the federal seizure, all the officers of Home Makers met with the salesmen of C.A. Benson & Co., Inc. to discuss the impact of the embargo on Home Makers. An attorney for Norwich met with the salesmen at C.A. Benson & Co., Inc. to discuss the FDA embargo.

On October 12, 1964 the attorneys for Home Makers met with the salesmen of C.A. Benson & Co., Inc. including Cea, Conklin, and Fisher to discuss the progress of the FDA condemnation action. In the fall of 1964, Benson had sold a 1963 Cadillac automobile owned by Home Makers for \$3,200 to provide funds necessary to finance the continuation of the lawsuit. The sale of this automobile was discussed at the meeting of October 12, 1964. Nevertheless, the respondents continued to recommend the stock of Home Makers continuously as a good investment to unsophisticated investors whose trust and confidence they had obtained and they misrepresented to their customers the facts concerning the financial condition of the company and the facts relating to the seizure of its product and its impact on Home Makers' business and further in this connection made unwarrantedly optimistic statements concerning the company's prospects of winning its lawsuit with the government.

Between January 1, 1963 and December 31, 1964 C.A. Benson & Co., Inc. with the active aid of the individual respondents sold

282,143 shares of Home Makers to retail customers for \$487,805.55. During the same period C.A. Benson & Co., Inc. bought 276,669 shares from customers for \$413,797.31. In the same period it purchased 8,695 shares of Home Makers from dealers for slightly over \$10,000 and sold to dealers 1,625 shares of Home Makers for almost \$2,900.

It should be noted that the transactions between C.A. Benson & Co., Inc. and dealers were negligible in comparison to its transactions with retail customers and that C.A. Benson & Co., Inc. dominated the market in Home Makers.

It is striking that the greatest activity in Home Makers' stock followed immediately after the seizure of the company's product by the federal government. Between June 1, 1963 and December 31, 1963 when Home Makers was equitably insolvent and unable to pay its bills, and during a major part of the period when C.A. Benson & Co., Inc. was engaged in a "work-out" market in the stock, the number of shares sold to retail customers by C.A. Benson & Co., Inc. aided and abetted by the respondents was about 50% above the amount sold in the preceding six-month period. In the latter half of 1963, C.A. Benson & Co., Inc. aided by the respondents acquired 133,486 shares of Home Makers stock for \$191,028.02 and sold 140,352 shares for \$231,209.27.

During 1963 Cea sold 33,571 Home Makers' shares to 57 customers in 97 separate transactions for \$63,974.04 which accounted

for 14% of all the shares sold by C.A. Benson & Co., Inc. in 1963. During 1964 Cea sold 10,540 Home Makers' shares to 26 customers in 30 separate transactions for \$14,294.40 accounting for 21% of all the shares sold by C.A. Benson & Co., Inc. during that year.

In 1963 Conklin sold 44,945 shares of Home Makers to 61 customers in 166 separate transactions for \$78,921.76 accounting for 19% of all the shares sold by C.A. Benson & Co., Inc. in 1963. In 1964 Conklin sold 19,225 shares of Home Makers to 28 retail customers in 55 separate transactions for \$28,140 accounting for 39% of all shares sold by C.A. Benson & Co., Inc. in 1964.

In 1963 Fisher sold 28,835 Home Makers shares to 62 retail customers in 119 separate transactions for \$52,295.66 accounting for 12% of all the shares sold by C.A. Benson & Co., Inc. in 1963. In 1964, Fisher sold 9,958 shares of Home Makers to 18 retail customers in 26 separate transactions for \$14,154.26 accounting for 20% of all shares sold by C.A. Benson & Co., Inc. in 1964.

In 1963 Kness sold 19,182 Home Makers' shares to retail customers in 47 separate transactions for \$35,144.38 accounting for 8% of all the shares sold by C.A. Benson & Co., Inc. in 1963.

In 1963 Wayhart sold 19,705 Home Makers' shares to retail customers in 78 separate transactions for \$36,458.13 accounting for 8% of all the shares sold by C.A. Benson & Co., Inc. in 1963.

During 1963 and 1964 all of C.A. Benson & Co., Inc.'s transactions relating to Home Makers involving 839 customers in 1963

and 154 in 1964 were nearly all transactions solicited principally over the telephone by salesmen of C.A. Benson & Co., Inc. and were executed on a principal basis. For the most part the customers did not know the difference between a principal and an agency transaction.

During 1963 and 1964 salesmen at C.A. Benson & Co., Inc. knew that there was no inter-dealer market in Home Makers, that no broker except C.A. Benson & Co., Inc. made any market in Home Makers; and that C.A. Benson & Co., Inc.'s market was the purchase and sale of this stock among its own customers at prices arbitrarily fixed by Carl A. Benson after consultation with Alm and Fisher. During the period 1962 and at all times thereafter when they offered the securities of Home Makers, the respondents were fully aware of the company's serious financial condition.

During the period of January through May 1963, except for 11 days, no other broker but C.A. Benson & Co., Inc. inserted bids in the "Pink Sheets." During the period of June 7, 1963 through August 1, 1963, C.A. Benson & Co., Inc. did not insert any quotations in the "Pink Sheets" as C.A. Benson & Co., Inc. wanted to discourage other brokers from offering to it stock which it was unwilling to purchase. During the period of May 28, 1963 through December 31, 1964 except for two bids, no other broker except C.A. Benson & Co., Inc. placed bids in the "Pink Sheets" for Home Makers and there was negligible other dealer interest in this security.

From May 6, 1963 through August 5, 1963, Home Makers was sold to retail customers at a price of 2-1/8 a share, the highest price



for the stock during the entire year and a substantial part of this period was subsequent to the FDA embargo, a period when the salesmen were fully aware of Home Makers' desperate financial condition and were fully aware of the impact of the FDA lawsuit on Home Makers' business and its prospects. On May 29, 1963, C.A. Benson & Co., Inc. had a long position in Home Makers of 1,984 shares. On June 27, 1963, C.A. Benson & Co., Inc. had a long position of 9,913 shares. By August 5, 1963, C.A. Benson & Co., Inc. had reduced its long position to 565 shares. On August 7, 1963 C.A. Benson & Co., Inc. sold Home Makers to retail customers at prices ranging from  $1\frac{1}{2}$  to  $1\frac{5}{8}$  per share.

C.A. Benson & Co., Inc. maintained during 1963 and 1964 a uniform spread of  $\frac{1}{4}$  of a point between the bid and the offer price and realized a markup of  $\frac{1}{4}$  of a point per share on the sale to retail customers.

In 1963 and 1964 C.A. Benson & Co., Inc. maintained a work-out market in Home Makers' stock in which C.A. Benson & Co., Inc. did not buy from brokers and retail customers all the stock which such brokers and customers offered it. During the entire year of 1963, including the period of the work-out market, and including the period following the embargo, salesmen of C.A. Benson & Co., Inc. mailed copies of Home Makers' 1962 Annual Report as sales literature to retail customers. The Report represented that the company was in a "very strong financial position"

and that market tests made "in Pittsburgh, Wheeling and Harrisburg" indicated "annual sales of \$7 to \$10 million" for Mr. Enzyme. The Report was a 1962 report but was used thereafter and the mailings made in 1963 failed to disclose the current available financial information on Home Makers including the sharp decline in the company's sales after June 1, 1963, the substantial increase in the company's deficit, the existence of many unpaid bills, and the company's insolvency. A salesman who wished to sell his own Home Makers' stock had to find retail customers willing to purchase Home Makers. In 1963 and 1964 C.A. Benson & Co., Inc. was continually attempting to reduce its inventory in Home Makers' stock. Benson informed all the salesmen of the work-out market and of his desire to reduce the inventory. At times during 1963 and 1964, Benson required each salesman to keep his own inventory sheets in Home Makers' stock to remind each salesman that he had to sell as much Home Makers as he bought from retail customers. Benson, Alm and Fisher reviewed each salesman's inventory sheet. Benson and Fisher informed all salesmen how much Home Makers' stock, if any, C.A. Benson & Co., Inc. were prepared to purchase from customers.

The recommendations to customers made by respondents involved repeated and serious failures by the respondents to deal fairly with their customers in connection with the purchase and sales of Home Makers' stock. Each one of the individual respondents failed to advise their customers of Home Makers' financial condition, of the seizure of the company's product by the federal government and of the facts regarding the litigation with the FDA, and of the facts regarding the "work-out" market and the danger

of investors being locked into their investments as well as the exceedingly precarious nature of the investment they were recommending prior to as well as after the seizure, and thereby each one of the individual respondents violated the anti-fraud provisions of the Securities Acts as alleged in the Commission's order instituting this proceeding. In addition each one of the respondents violated the anti-fraud provisions of the Securities Acts in making other materially false and misleading statements to customers.

When there were too many retail customers who wanted to sell Home Makers' stock, customers willing to purchase the other basic stocks recommended by respondents with the proceeds of the sales of Home Makers were given preferential treatment over those desiring to sell for cash.

The customers who purchased the basic stocks were on the whole unsophisticated, trusting and of comparatively modest means. Each one of the respondents offered Home Makers stock and employed in their offers of such stock the material omissions recounted hereinabove. The individual respondents also made false representations to the effect that an investment in the basic stocks by an investor could be used for the education of his children or would help him to finance his retirement or would enable him to double or triple his investment in a short time.

A total of 29 investor witnesses testified in this proceeding concerning the misrepresentations made to them by the five individual

respondents in selling and purchasing the five basic stocks. The testimony of these witnesses was on the whole, convincing and persuasive and in important aspects reflected a substantially similar pattern of fraudulent conduct by each of the individual respondents. 15/

Each one of the individual respondents except Cea testified on his own behalf. The testimony given by Cea's customers was not contradicted.

In substance all the respondents claimed that the testimony of each one of the investor witnesses was false or mistaken or both and that they had never made any of the false or misleading statements attributed to them by the investor witnesses, that they had never established any position of trust or confidence with any of the customers and that the decision to buy the basic stocks was made by each investor as a result of independent judgment reached by the investor himself after he was informed that the basic stocks were speculative and such judgments were not influenced by any of the representations or statements made by the respondents. The testimony of the respondents and their demeanor on the witness stand has been fully considered. Their testimony as to how they sold the basic stocks and their claims that they made no false and misleading statements in selling the basic stocks strains credulity and it is not credited.

Kness and Wayhart also claimed that they should be excused from culpability because they were inexperienced at the time when

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15/One of the witnesses testified to false and misleading statements made to him by both Kness and Cea and another witness testified concerning false and misleading statements made by both Wayhart and Cea and a third witness testified to false and misleading statements made by Wayhart and Fisher.

they were employed as registered representatives by C.A. Benson & Co., Inc. This alleged lack of experience was even relied upon by Kness in proposed findings and briefs defending their conduct in regard to churning the account of one of the investors some 3.76 times every six months.

Kness has been a registered representative since January 1961. He was not without experience at the time he sold the basic stocks. Wayhart had become a registered representative in 1958 and there was no basis for claiming that he was inexperienced. In any event the making of false statements cannot be excused on the ground of inexperience.

#### Kness

Five investors who bought the basic stocks as a result of conversations held over the telephone with Kness testified in these proceedings. These investors included a 38 year old mill worker who supported his wife and three small children on earnings of between \$7,000 and \$7,500 a year and had approximately \$3,000 in savings. His only experience with stocks prior to transacting business with C.A. Benson & Co., Inc. had been the purchase of five shares of Westinghouse stock under a company payroll plan. A second investor who bought securities through Kness was a 66 year old school custodian, married and the sole support of his wife and four minor daughters. Except for one purchase of stock for \$300 approximately 30 years ago, he had had no experience in

buying securities before transacting business with C.A. Benson & Co., Inc. A third investor was a self-employed florist who was married and the father of two children whom he supported and who had never purchased a security prior to dealing with C.A. Benson & Co., Inc. A fourth investor was a housewife, the mother of three small children whose husband was employed as a tool and dye maker who had inherited an undisclosed amount of money when her father died in 1961. Prior to dealing with C.A. Benson & Co., Inc. she owned stocks having a value of about \$750 in American Telephone & Telegraph Corporation, American Motors, and one other company. A fifth investor, 42 years old, married and the father of four children aged two to ten years whom he supported on a salary of about \$9,000 a year was employed as a comptroller for a church organization. Prior to dealing with C.A. Benson & Co., Inc. his only experience in purchasing stock was a single purchase totaling \$200. The money he invested in the basic stocks sold by C.A. Benson & Co., Inc. came from the savings of his wife who was formerly employed as a secretary and from funds supplied by his mother-in-law.

Kness telephoned the mill worker approximately twice a month in 1962 and 1963 to sell him stock in Copter, Hot Cup, Wyoming, and Home Makers. During the course of this investor's dealings with Kness, he informed the latter in February 1963 that he wanted an investment that he could watch in the newspapers and that he could

use for the education of his children. Shortly thereafter, Kness sold him shares in a mutual fund. However, in September, 1963 (i.e., after the federal embargo) Kness sold him 117 additional shares of Home Makers at \$1.50 per share and following his usual practice Kness omitted to inform the customer of the financial or other material facts concerning Home Makers including the seizure and its impact on the company and its operations. The customer in buying this stock reposed complete trust and confidence in Kness.

Kness called the school custodian approximately every other week recommending that he buy or sell or switch in and out of Wyoming, Hot Cup, and Home Makers and the customer followed his advice. This witness could not recall when he started doing business with C.A. Benson & Co., Inc. and was uncertain whether the first registered representative he bought stocks through was Fisher or Kness, but he did recall that the first stock which he purchased was Wyoming. In any event the evidence was clear that most of his transactions in the basic stocks were made through Kness. Kness recommended to the customer in one of their numerous telephone conversations that the witness buy Wyoming because it should double in price and at a subsequent time Kness suggested that he buy more Wyoming stock as "it would go up". The witness also testified that he never bought two issues of the basic stocks at any one time because "we always sold one [stock] to buy another", and that he took Kness "at his word, whatever he said, and, why, we bought." The witness sold Wyoming to buy Hot Cup because Kness told him

that Hot Cup had great possibilities. Kness then suggested that "We unload Hot Cup and buy Home Makers Savings Corporation." The witness testified that he "didn't know one [stock] from another", that Kness made all the recommendations to buy stock and he followed them. He conceded that his purpose in buying stocks was to take risks up to a few hundred dollars to make capital gains.

Kness attacked the credibility of the witness claiming, among other things, that he had been convicted for embezzlement of funds from the government when employed in the United States Post Office.

The witness testified that he had received a presidential pardon.

This investor's testimony was buttressed by the fact that it was completely consistent with the usual pattern of misrepresentation employed by Kness as testified to by other witnesses. The witness did not appear eager to testify and testified under subpoena. He conceded, in substance, that his purpose was to gamble in stocks up to a few hundred dollars and he was careful not to give positive testimony in a number of instances because he did not have a clear recollection of some of the facts.

The real issue insofar as this witness is concerned is whether the testimony on which his recollection was clear should be credited. The examiner has observed both the witness and Kness and credits the testimony of the witness. The respondents are not free under the Securities Acts to defraud persons who have been



convicted of a crime, or to take advantage of persons by making false statements in an appeal to arouse an investor's cupidity.

Kness inherited the florist's account when Lagi, a former officer left C.A. Benson & Co., Inc. in 1962. Between March 1962 and December 4, 1963 the florist who had never purchased a security before dealing with C.A. Benson & Co., Inc. bought Wyoming, Hot Cup, and Home Makers relying upon Kness' recommendations as having been made by the registered representative in good faith. Three of this witness' transactions in 1963 involved switching transactions, i.e., he purchased one basic stock with the proceeds of another basic stock sold within the same business day.

The fourth witness to testify concerning her transactions with Kness was a housewife, who had originally been a customer of another one of C.A. Benson & Co., Inc.'s registered representatives who had left the firm. Thereafter she began dealing with Kness who called her four to five times a month to sell her the basic stocks.

In November 1962 Kness recommended that she buy Home Makers and represented in this connection she could double her money in a year. She bought 100 shares of Home Makers on November 16, 1962 at \$1.50 per share. Five days later he called her again and told her that the stock had gone up to 1-5/8 a share and she bought 150 additional shares of Home Makers at 1-5/8. He omitted to tell her that C.A. Benson & Co., Inc. fixed the price for the stock arbitrarily. A week later Kness called her again and recommended

she sell her stock in American Motors and buy more Home Makers' stock. Relying upon Kness' recommendations she sold 51 shares of American Motors for \$846.66 and bought 250 shares of Home Makers for \$406.25. About April 9, 1962 she called Kness to order 150 shares of Home Makers at \$2 a share for her brother-in-law.

On May 3, 1963 Kness called her to tell her that she should buy more Home Makers before the stock went higher and she bought 300 additional shares of Home Makers for \$2 a share.

On June 27, 1963 about three weeks after the seizure, Kness called the witness to recommend that she sell her Home Makers' stock because as he put it the company was involved in a little trouble with the FDA and he recommended that she buy Copter with the proceeds from the sale of Home Makers. Following his advice she sold 800 shares of of Home Makers at 1-7/8 a share for \$1,499.40 and bought 500 shares of Copter at \$3 a share for \$1,500.

Kness in 1962 and 1963 recommended that she sell all her shares of American Motors to buy Hot Cup, but she did not follow his advice in this respect.

In early 1962 Kness who was a stranger telephoned the fifth investor. Between February 1962 and December 1963 Kness called him two or three times a week to recommend either the purchase or sale of securities. Kness never inquired as to the customer's financial condition or investment objectives and recommended almost exclusively the purchase and sale of the basic stocks. The

investor was employed as a comptroller for a conference of churches and in 1962 earned \$9,000 a year. The money he invested on Kness' recommendations came from money his wife had saved when she had been employed and from funds supplied by his mother-in-law. Between April 30, 1963 and September 1963 the customer relying solely on Kness' recommendations bought 10,300 shares of Home Makers in 11 separate transactions.

In about September 1963 the investor suffered a nervous breakdown and was away from work for approximately three months. During this period, Kness, however, continued to telephone him regularly and make recommendations for the purchase of the basic stocks. Between October 8, 1963 and December 4, 1963 on Kness' recommendations, the investor sold 13,900 shares of Home Makers in 8 separate transactions for the purpose of switching his investment to other basic stocks recommended by Kness. About December, 1963 or about six months after the FDA embargo, Kness for the first time informed the investor of this event, but did not inform the investor of its significance on the company or on his investment. Its significance has been described hereinabove. The investor placed such confidence and trust in Kness that at the latter's request he signed at least 8 blank stock powers in order to facilitate the handling of his securities by Kness and told Kness to handle his account as the latter wished.

Between February 14, 1962 when he opened his account and December 4, 1963, the investor had an average monthly investment of

\$25,257.42 and during this period made 67 purchases totaling \$95,061.08 and 26 sales totaling \$47,038.36. He withdrew from his account \$3,671.64.

The investor's average monthly investment was turned over by Kness every six months or 3.76 times. During this period, Kness realized commissions of \$7,012.99 of which \$6,763.12 or 96% were from the sale of the basic stocks to this one investor. C.A. Benson & Co., Inc. realized the same amounts from the sale of stocks to this investor and it also earned profits of \$6,218.75 from resale of stock sold to the broker-dealer by the investor. The investor during this period had an unrealized loss of approximately \$10,000 and a realized loss of \$1,849.14.

Kness sold the investor 3,400 shares of Copter, 23,575 shares of Home Makers, 10,550 shares of Hot Cup, and 20,500 shares of Wyoming. In 1962 Kness derived 55.1% of his income or \$3,015.22 from transactions in this account. In 1963 Kness derived 51.1% of his income or \$3,997.37 from transactions in this investor's account. Kness induced transactions in this account which were excessive in size and frequency in the light of the nature of the account and the financial resources and investment needs and objectives of the customer.

Kness never gave any consideration to the financial condition or investment objectives of any of his customers who were witnesses in this proceeding, but recommended almost exclusively the purchase and sale of the basic stocks. In the case of one customer (designated

herein as the fourth witness) he was aware of the fact that she owned some listed securities and attempted with some success to have her sell such securities to buy the basic stocks.

He never informed any of his customers of Home Makers' financial and operating condition, the economic impact of the FDA embargo on the company, the nature of C.A. Benson & Co., Inc.'s limited work-out market in Home Makers' stock, and the fact that the customers might be locked into their purchases of Home Makers.

None of Kness' customers who testified in this proceeding knew the difference between a principal and an agency transaction, although the purchases and sales of the basic stocks were confirmed to them on a principal basis. None of the customers, all of whom reposed trust and confidence in Kness were informed by him or anyone else associated with C.A. Benson & Co., Inc. of the profits or commissions which the respondents or C.A. Benson & Co., Inc. were earning from the securities transactions in which they engaged.

There is no question whatever that Kness was engaged in churning the securities in at least one of the customer's account. "The 'churning' of a securities account occurs when a dealer acting in his own interest and against those of his customer induces transactions in the customer's account which are excessive in size and frequency in light of the character of the account." 16/

In the case of the fifth investor it is clear that the customer had given control of the account to Kness and that the customer reposed complete trust and confidence in him.

The Securities and Exchange Commission has manifested its serious concern with the fiduciary aspect of the dealer's role and this has been illustrated in its "shingle theory" under which a broker-dealer is held to make an implied representation that when he hangs out his "shingle", he will deal with his customer fairly and honestly. 17/ This representation is violated when a dealer churns an account under which he has control. While it is correct that this customer was an accountant, it is clear from his testimony and his appearance that he was unsophisticated and trusting and was induced to follow Kness' recommendations and reposed complete trust and confidence in him. Kness' arguments to the effect that the customer was an accountant and acted independently and did not rely on Kness' recommendations are rejected, as are his claims that he made no false or misleading representations.

Kness made numerous grossly false and misleading statements to each one of his customers. Kness' recommendations were not designed to further the customers' interests, but to obtain as much in commissions as possible in total disregard of the best interests of his customers. 18/ "Inherent in the conduct of a securities business by a broker-dealer is the implied representation

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17/ Charles Hughes & Co. v. S.E.C., 139 F.2d 434 (2d Cir. 1943); Heft, Kahn & Infante, Inc. v. S.E.C., Securities Exchange Act Release No. 7020 at p. 4 (February 11, 1963).

18/ As the Commission pointed out in Powell and McGowen, Inc., 41 S.E.C. 933, 935 (1964), a registered representative has a duty "not to recommend a course of action clearly contrary to the best interests of the customer whether or not there was full disclosure."

that customers will be treated fairly and in accordance with the standards of the industry."19/ Recommendations by a securities dealer of a security to prospective purchasers should have a reasonable basis and should be accompanied by the disclosure of known or easily ascertained facts bearing upon the justification for the recommendation. 20/

These principles are equally applicable to registered representatives.

Cea

Eight witnesses gave testimony concerning their conversations and transactions with Cea including the fifth investor whose testimony with regard to his transactions with Kness has been discussed herein-above. Another of these witnesses had been serviced by Wayhart.

After Kness left C.A. Benson & Co., Inc. the fifth investor's account was taken over by Cea. Cea made numerous telephone calls to this investor strongly urging that he purchase Fieldbrook and Hot Cup. The investor by this time was running out of money and informed Cea that he did not have funds to make the purchases being recommended by Cea.

About the middle of June 1964 Cea telephoned the customer on three different occasions to persuade him to purchase Fieldbrook.

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19/ N. Finsker & Co., Inc., 40 S.E.C. 285, 291 (1960); Duker v. Duker, 6 S.E.C. 386 (1939); Jack Goldberg, 10 S.E.C. 975 (1942); Lewis H. Ankeny, 29 S.E.C. 514 (1949); Batkin & Co., 38 S.E.C. 436 (1958).

20/ Leonard Burton Corporation, 39 S.E.C. 211 (1959); Barnett & Co., Inc., 40 S.E.C. 1 (1960).

The customer informed Cea that he was still ill. However, on June 17, 1964 the customer agreed to buy 1,000 shares of Fieldbrook at \$1 per share. On August 19, 1964 the investor pursuant to the urgent recommendations of Cea sold Life Insurance Investors, a mutual fund purchased by him through Kness in order to buy Fieldbrook. He sold his shares of Life Insurance Investors for the sum of a little over \$2,000 in order to buy 2,000 shares of Fieldbrook at \$1 per share. Life Insurance Investors was a seasoned security in a company which had net assets of over \$82,000,000. Fieldbrook has been described above. This customer on Cea's recommendation also purchased Hot Cup.

During 1964, in addition to the proceeds earned by C.A. Benson & Co., Inc. Cea earned \$825 or 9.4% of his income for 1964 from the sale to this customer of 1,400 shares of Hot Cup for \$4,900, and 8,400 shares of Fieldbrook for \$10,050. Neither Cea nor anyone else discussed with the investor any of the facts concerning the financial condition of the basic companies whose stock was being sold nor were any of the earnings of Cea in making the sales to the customer disclosed. The customer on the other hand reposed the same complete trust and confidence in Cea and his recommendations as he had in Kness.

Cea also inherited a second account which had originally been serviced by Wayhart. This customer was a tavern keeper in Pittsburgh, was married, supported four children and had never invested in securities prior to dealing with C.A. Benson & Co., Inc. except for an



investment of \$100 made through a stock club. Wayhart asked this customer how much he could afford to gamble and the customer told him \$300. He also told Wayhart, however, that he had "to think from now on about [his] boy going to college." Wayhart told him to ". . . buy this Hot Cup you can't go wrong with it", and he bought 200 shares of Hot Cup in April, 1963 for \$2 a share. Wayhart sold him Hot Cup, Wyoming, and Home Makers. 21/ The customer on Wayhart's recommendation bought Home Makers' stock on three different occasions in September 1963 for a total of 500 shares and his investment in Home Makers amounted to \$787.50. Wayhart falsely represented to him that an investment in Home Makers' stock would make \$300 to \$400 for the investor in five months and that Home Makers would go up a couple of points. The investments in Home Makers were recommended by Wayhart in September 1963 which was subsequent to the seizure of Mr. Enzyme by the FDA, but Wayhart never told the customer at that time about the seizure which had occurred in June of the same year. However, subsequent to the customer's purchases of Home Makers he told the customer of the FDA lawsuit against the company.

In early 1964, after Wayhart had left C.A. Benson & Co., Inc., Cea telephoned this customer, a stranger to him, and recommended that he buy more shares of Home Makers. The customer explained to Cea that he had lost his business and had no money to buy stocks. Cea called again and falsely represented that Home Makers would win its lawsuit with the

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21/ The customer initially bought U.S. Hoffman Machinery through C.A. Benson & Co., Inc. upon the advice of another member of the investment club.

government and following respondents' standard practice with customers omitted to disclose the facts concerning the impact of the embargo on Home Makers or concerning the work-out market and its effect on investors. Cea knew nothing about the investor's objectives, although the customer had informed him of his business reverses, and he persuaded the customer to buy on January 21, 1964 65 additional shares of Home Makers at \$1.50 per share.

Another Cea customer was employed as a waitress and hostess. Her husband was a machinest employed at Westinghouse and she was working to help support their two children. This customer and her husband had a joint account at C.A. Benson & Co., Inc. but all the transactions with C.A. Benson & Co., Inc. were handled by the wife.

Between 1962 and 1964 Cea telephoned her and recommended and the customer purchased Home Makers, Wyoming, Hot Cup and Fieldbrook. Cea called her on the telephone about twice a month concerning the purchase or sale of the basic stocks. She and her husband held Franklin Broadcasting and Brooks Laboratories stock and also owned some Westinghouse stock. Cea recommended that she sell the Westinghouse stock because it "was going to drop at the time and buy Hot Cup because it was the new thing coming up, that he thought would grow and make money". Cea also recommended that she cash in her government bonds to buy the basic stocks he was recommending. The customer gave Cea discretionary authority orally to handle her account as he wished. In November 1964 Cea wrote a letter to this customer. He addressed her in this letter by her first name and signed it "Dick". In the letter

he asked her to execute and mail back to him a power of attorney in connection with the sale of Westinghouse Electric stock and to use the proceeds to buy 550 shares of Home Makers. The customer reposed full faith and confidence in Cea and complied with his request.

The customer told Cea that she was interested primarily in long-term gains. Cea falsely represented to this customer that Home Makers was a good stock and would combine with a large pharmaceutical house.

Cea never informed her of the profits made by him or C.A. Benson & Co., Inc. on the sale of the over-the-counter stock to her. In fact, he told her he was not making any money on the sale of these stocks to her. During 1963 and 1964, in addition to the profits earned by C.A. Benson & Co., Inc., Cea earned \$269.56 from 12 purchases of over-the-counter stock confirmed on a principal basis involving an investment by the customer of approximately \$1,130. Eleven of the 12 purchases involved switching transactions. Between February 1963 and November 1964 on Cea's recommendation the customer sold Westinghouse Electric stock on five different occasions to buy Home Makers, Hot Cup, and Fieldbrook. In addition the customer was induced in this period to sell shares of San Diego Imperial to buy Fieldbrook.

Cea following his standard practice failed to inform this customer of the material facts relating to Home Makers including the facts relating to the seizure of Mr. Enzyme and its impact on Home Makers.

In response to a newspaper advertisement another investor requested C.A. Benson & Co., Inc. for a booklet on the stock market which the latter mailed to him. Thereafter Cea telephoned this customer during the period between January 1962 and December 1964 principally to persuade him to buy and sell the basic stocks. The investor, a 30 year old chemist engaged to be married, earning between \$7,000 and \$9,000 a year had invested between \$1,000 and \$2,000 in stocks listed on the New York Stock Exchange prior to dealing with C.A. Benson & Co., Inc. Cea never made any inquiries concerning the investor's investment objectives, although he learned from time to time about the securities owned by the customer.

The customer bought and sold Fieldbrook, Home Makers, Hot Cup and Wyoming, all pursuant to Cea's recommendations. Cea falsely represented to the investor that the basic stocks which he persuaded the customer to buy were readily marketable. During 1963 and 1964 Cea persuaded the customer to buy and sell Home Makers and Hot Cup and to switch from one of these basic stocks to the other.

In a seven-month period beginning in January 1963, the customer purchased and sold Home Makers' stock seven different times. In August 1963 following the seizure of Mr. Enzyme and when C.A. Benson & Co., Inc. had lowered the price of Home Makers, Cea recommended that the customer buy more shares so that he could average out his costs and the customer bought more shares. As the customer put it, other than his refusal to buy Copter, he "more or less let Mr. Cea handle the account to the point where I pretty much followed

his advice."

Cea falsely represented to the customer that Mr. Enzyme was being distributed on a nationwide basis. The customer learned from a source other than Cea or C.A. Benson & Co., Inc. that the "federal government" was investigating Mr. Enzyme and he asked Cea about it. At first Cea said he knew nothing about it, but at a later date Cea "did admit" that the federal government was investigating the product but Cea said in substance, that the government had no evidence. On June 19, 1963 shortly after the embargo, Cea recommended and the investor purchased 2,900 shares of Home Makers for \$6,162.

Cea in recommending Home Makers followed his standard practice of omitting to inform the customer of the facts concerning Home Makers' financial condition, the impact of the embargo, the limited work-out market or any other material fact concerning the company.

In about May 1964 Cea assured the investor that Hot Cup and Fieldbrook, the basic stocks which he owned at that time, were readily marketable securities and failed to advise him concerning the true market conditions of these securities.

On April 30, 1962, the investor ordered the purchase of 10 shares of American Tobacco at the request of his fiancée. In June 1963 the customer on Cea's recommendation directed the sale of the American Tobacco stock and bought more shares of Hot Cup.

The customer requested cash from his own account but was never able to obtain any cash through Cea except for one occasion.

As with Cea's other customers, this customer did not know the difference between a principal and an agency transaction. Cea earned over \$1,200 from 11 purchases of over-the-counter stocks made by this customer involving an investment of over \$7,000. Eight of the 11 transactions involved switching transactions.

A fifth witness who testified concerning his transactions with Cea was a brick and block contractor, 44, married and the father of two minor children. This contractor had done some work on a home built for Cea, and thereafter Cea called him usually once a week and upon occasion as often as four times a week to recommend the purchase or sale of the basic stocks. This witness had never purchased any stock prior to doing business with Cea and followed Cea's recommendations. The witness has never had any discussion with Cea about either his investment needs or objectives but was purchasing securities for the future education of his small children.

The investor purchased Copter, Wyoming, Home Makers and Hot Cup between 1962 and 1964. Cea represented to the customer that he could triple his investment in Hot Cup and Home Makers and assured the customer on every transaction that he would make money. Cea frequently recommended switches from one of the basic stocks to another so that the customer "would make more money". Between January 7, 1963 and June 4, 1963 the customer sold 4,000

shares of Home Makers on Cea's recommendation to buy other basic stocks. After the embargo and between August 1963 and January 22, 1964 the customer bought 4,750 shares of Home Makers in four separate transactions. Cea falsely assured the customer that he had nothing to worry about concerning the FDA embargo, that the price of Home Makers' stock would recover and that the company would merge with Norwich and that Home Makers was distributing Mr. Enzyme. Cea followed his standard practice of failing to disclose the financial and operating condition of Home Makers or the impact of the FDA lawsuit on Home Makers, or any of the facts concerning the company's limited work-out market and did not inform the customer that he might be locked into his purchases of Home Makers. Cea could not sell the customer's stockholdings in Home Makers and Hot Cup and in January 1964 when the customer requested some cash he advised him to sell some mutual funds which he had purchased through Cea on March 30, 1962.

The customer did not know the difference between a principal and an agency transaction. Cea earned over \$1,200 in commissions from 8 purchases of over-the-counter stocks confirmed on a principal basis and involving an investment by the customer of over \$12,000. Five of these purchases involved switching transactions. Cea did not disclose any of his earnings to the customer who reposed the utmost trust and confidence in him.

Substantially similar misrepresentations were made by Cea to a clothier, age 59, married who supported his daughter. Cea

sold this customer Copter, Home Makers, Hot Cup and Wyoming between June 1962 and December 1964. In this connection Cea assured the customer that if he invested money with him the customer would make money and certainly would not lose any money. The investor repeatedly told Cea that he could not risk his capital, that he was putting his trust and confidence in Cea and in 1964 he told Cea he would need the money he had invested to finance his daughter's education and that he could not afford to lose money. Cea never made any other inquiry concerning the customer's financial objectives or his financial condition. Cea advised the customer that he would make money for him, more than three times the money which was needed and that the customer would have securities which were readily marketable. The customer trusting in Cea's recommendations bought, sold and switched in and out of the basic stocks. In August 1963 when the customer asked Cea to liquidate \$300 worth of stock, Cea sold on the customer's behalf shares of Copter and Hot Cup, and told the customer that it would be foolish for him to sell any more of the basic stocks which he owned, including Copter, Home Makers and Hot Cup as these stocks would appreciate in price.

The customer bought on September 3, 1963 75 additional shares of Home Makers at \$1.25 per share and bought on May 8, 1964 200 additional shares of Home Makers at \$1.50 per share. In this connection Cea falsely represented to the customer that another drug company was going to buy Home Makers and that the stock would appreciate in price and that Mr. Enzyme was going over. Cea also falsely advised the customer that Home Makers would win its lawsuit



with the government and, as usual, gave the customer no information concerning the impact of the lawsuit or the work-out market and in fact in late 1963 and early 1964 advised the customer to retain the basic stocks which he then owned including Home Makers, Hot Cup and Wyoming. Furthermore, when the customer asked Cea about profits he was earning from his account, Cea falsely represented to the customer that he was making no commissions on the sale of the basic stocks, but that if he sold a certain number of shares, he would receive a bonus at the end of the year.

Cea earned commissions through the sales of the basic stocks to the customer, but never disclosed any of these earnings to the customer, who reposed complete trust and confidence in him.

Cea began to do business in about May 1964 with another customer who had been previously serviced by a different salesman of C.A. Benson & Co., Inc. who sold the customer Copter and Wyoming. This customer was married, the father of five children aged 1 to 14 was employed as a draw bench operator for U.S. Steel Corporation, and earned approximately \$7,500 per year. His formal education ended in the eighth grade. Prior to any dealings with C.A. Benson & Co., Inc. he had invested approximately \$20,000 in listed securities and mutual funds.

In May 1964 the customer received a telephone call from Cea, a stranger. Cea made no inquiry concerning the customer's financial needs or investment objectives. He recommended that the

customer buy Home Makers and sell Hot Cup, falsely representing that while Home Makers had had a little trouble with the government everything was being settled and Home Makers would go up in price, that the customer would triple his investment in Home Makers in six months and that he should sell Hot Cup to buy Home Makers' stock. Accordingly the customer sold Hot Cup stock for approximately \$550 and bought Home Makers at \$1.50 per share for \$600. Cea as usual failed to disclose to the customer any of the facts concerning Home Makers' operating and financial condition or any of the facts concerning the impact of the lawsuit or the facts concerning the lack of marketability of the stock.

The purchaser had no knowledge of the difference between a principal and an agency transaction. However, he asked Cea about the source of his income at C.A. Benson & Co., Inc. and Cea falsely represented that C.A. Benson & Co., Inc. bought a big block of stock and that the salesmen were compensated in stock on the basis of the number of shares that they sold.

Another Cea customer was a 54 year old machine operator who was supporting his wife and son. Other than a purchase of securities in 1941 this customer had had no experience in securities prior to dealing with C.A. Benson & Co., Inc. In 1961 he answered a C.A. Benson & Co.'s newspaper advertisement concerning mutual funds. Shortly thereafter Cea telephoned the customer. The customer visited Cea at C.A. Benson & Co., Inc. in early 1962

and told Cea he was interested in purchasing mutual funds. Cea, however, recommended that he buy Copter, and the customer followed his recommendation. The customer thereafter purchased on Cea's recommendations Home Makers, Copter, Hot Cup and other securities. The customer had no conversations with Cea concerning his financial needs or objectives, but was purchasing securities for retirement and relied on Cea's investment advice and trusted him.

The customer earned approximately \$6,500 a year and received monthly insurance payments of \$39. On May 9, 1963 the customer bought 250 shares of Hot Cup principally with the proceeds from the sale of 250 shares of Home Makers. On June 28, 1963 following the seizure of Mr. Enzyme the customer bought 700 shares of Home Makers for almost \$1,500 with the proceeds from the sale of Hot Cup for \$1,200. At the time of this transaction, Cea falsely represented to the customer that Norwich was going to take over Home Makers and that Home Makers would be a good stock. He followed his usual custom of failing to inform the customer concerning the impact of the embargo, Home Makers' operating and financial condition or the position in which the customer would find himself if he wished to sell his stock. About a month later the customer asked Cea to liquidate all the securities which he owned so that he could buy a farm and at that time Cea told the customer that there was no market for Copter, Home Makers or Hot Cup.

Wayhart

Eight witnesses testified concerning their securities transactions with Wayhart.

In May, 1963 a clerical worker and comptometer operator earning approximately \$350 a month mailed a request for a booklet on securities to C.A. Benson & Co., Inc. This witness told Wayhart that she was divorced and was the sole support for her daughter who was attending college. She also told Wayhart that she had savings of approximately \$2,500, and that she had no prior experience in buying securities. She met Wayhart at C.A. Benson & Co., Inc. and told him that she was primarily interested in a mutual fund because she believed it would involve less risk. Wayhart was amazed that a customer with such limited income and resources wanted to buy securities. Nevertheless, he recommended that she start out by investing in one of the basic stocks, namely, Home Makers. Wayhart also recommended and the customer bought Hot Cup and Copter Skyways. These transactions occurred between May 1963 and the early part of October 1963. In May 1963 Wayhart falsely represented to the customer that Home Makers' stock looked good, was a good buy, would probably go up \$1.00 per share in the near future and that the company was making money. On June 3, 1963 the day the customer mailed her check for her purchases of Home Makers, Wayhart called her, falsely representing that the stock would go up in price and looked good. He failed to inform the customer of the seizure by the

State of Pennsylvania at the end of May 1963 or the seizure on that day by the FDA, or the financial and operating condition of the company. Wayhart called the customer about once a week to sell her additional stock. Upon Wayhart's recommendation the customer purchased 100 additional shares of Home Makers at \$1.50 per share on September 18, 1963. In this connection Wayhart told the customer that the government had brought an action against Home Makers, but that Norwich was defending the action, that it was a good time to purchase some more of that stock and that she would have her money by Christmas, and that the case would be settled and the stock would go up \$1.00 per share. Wayhart never informed the customer of the nature of C.A. Benson & Co., Inc.'s limited work-out market in Home Makers.

On Wayhart's recommendation she also bought 100 shares of Hot Cup on June 3, 1963 and 115 shares of Copter on September 18, 1963. She believed that Wayhart was the best judge of what to do about her investments and relied upon him. Thereafter, the customer told Wayhart she had no more money to invest and Wayhart did not call her again.

In the spring of 1962 Wayhart telephoned another customer who had been a research associate at Pittsburgh Plate Glass prior to a disabling heart attack on February 1, 1964. This customer supported a wife and daughter on an annual salary of about \$10,000. He owned securities which for the most part were listed on either the New York Stock Exchange or the American Stock Exchange and had

a market value of about \$40,000, some of which his wife inherited and some of which he had bought through a local bank.

Wayhart called the customer approximately once a month between September 1962 and October 1963 to sell or buy stock. Wayhart never met the customer personally, never made any inquiry concerning his financial needs or investment objectives, but assured the customer that he would make money for him and that if there were any danger in any of the stocks he recommended, he would get the customer out of the stocks. Relying on Wayhart's recommendations the customer bought Copter, Home Makers, Hot Cup and Wyoming on Wayhart's false representations that these stocks would go up in price and were very promising.

The customer never told Wayhart that he had any desire to buy speculative or unseasoned securities. On May 6, 1963 in accordance with Wayhart's recommendations the customer sold 40 shares of Allen Industries listed on the New York Stock Exchange for approximately \$1,000 to buy 400 shares of Hot Cup for \$800. In this connection, Wayhart urged the customer to put all the money he had available into Hot Cup. In March 1963 Wayhart recommended that the customer buy Home Makers falsely representing that the company was making money and failing to disclose its financial and operating condition. The customer bought 300 shares for \$600 on March 29, 1963 relying on Wayhart's recommendations. On September 11, 1963 some months after the seizure, Wayhart telephoned

the customer and again recommended that he buy Home Makers, falsely representing that the litigation in connection with Mr. Enzyme was about to be concluded, that the outcome was extremely promising for Home Makers, that Home Makers was making money, and that the price of the stock which was depressed would greatly appreciate when the litigation was concluded. Wayhart followed the standard practice of C.A. Benson & Co., Inc.'s salesmen in failing to disclose the financial and operating condition of Home Makers, and the economic impact of the FDA lawsuit against Home Makers.

Another witness who testified concerning her transactions with Wayhart was a married woman with two small children who worked part time as a registered nurse during 1963. In February 1963 she mailed a newspaper coupon to C.A. Benson & Co., Inc. which was part of an advertisement inserted in a newspaper by the broker-dealer. Thereafter Wayhart telephoned her. She told him that neither she nor her husband had any experience in buying securities. Between February 1963 and October 1963 pursuant to Wayhart's recommendations she bought stock in Copter, Home Makers and Hot Cup. During February 1963 after three or four telephone calls she was persuaded by Wayhart to buy Home Makers on the false representation that the price was right, the stock would go up in price and that Home Makers made vitamins. However, Wayhart omitted to tell her any of the facts concerning the financial and operating condition of the company and the nature of the limited

work-out market in Home Makers. Again on September 4, 1963 Wayhart telephoned and recommended an additional purchase of Home Makers representing that although the market was down he believed that the stock would go up, that the company was good, that she would make money by purchasing the stock, that Mr. Enzyme was doing well in California and was on TV commercials. Wayhart used the standard ploy of failing to disclose any of the facts concerning the embargo, the limited work-out market, the financial and operating condition of Home Makers or that she might be locked into her purchase of Home Makers' stock. Having full trust and confidence in Wayhart she bought 100 shares of Home Makers at \$1.50 per share.

Another witness was a 43 year old tool and dye maker, married and the father of three minor children. He had invested \$6,000 in securities through other brokers prior to dealing with C.A. Benson & Co., Inc. He also responded to a C.A. Benson & Co., Inc. newspaper advertisement. Thereafter between March 1962 and October 1963 Wayhart called him about once a week to recommend the purchase or sale of securities. Wayhart never inquired concerning the investor's financial condition or investment objectives, although prior to August 1962 the investor informed Wayhart concerning the securities he owned. The witness bought through Wayhart, among other things, Copter, Wyoming, Home Makers, Hot Cup and Fieldbrook Foods. The witness never expressed to Wayhart any desire to purchase speculative or unseasoned securities and relied completely on Wayhart and always followed his recommendations. Wayhart recommended purchasing,



selling and switching in and out of the basic stocks.

In addition Wayhart advised the investor in August 1962 to sell Lone Star Cement because he "didn't think it was going too good" and to buy Home Makers stock with the proceeds. The customer followed the recommendation.

In early 1963 the witness told Wayhart he wanted to sell the stocks he owned to buy stocks on the New York Stock Exchange. However, on Wayhart's recommendation between February 25, 1963 and June 19, 1963 the witness sold 1,500 shares of Home Makers in three transactions to buy Wyoming and Hot Cup. Wayhart told the witness he would probably recommend a switch back into Home Makers at a future date. In August 1963 Wayhart recommended that the witness buy Home Makers falsely representing that Norwich was buying Mr. Enzyme, that Home Makers was distributing Mr. Enzyme on the West Coast and as usual failed to inform the witness of the company's operating and financial condition and the impact of the embargo. As a result the witness bought 1,100 shares of Home Makers at \$1.25 per share on August 9, 1963.

During the period beginning March 6, 1962 when the investor first started doing business with C.A. Benson & Co., Inc. through November 8, 1963, the day Wayhart terminated his employment with C.A. Benson & Co., Inc., the investor had an average monthly investment of almost \$4,000. During this period the investor withdrew approximately \$1,000 from his account while Wayhart bought for the investor's account almost \$13,500 in securities in 22 separate

transactions turning the average monthly investment over every six months or 3.37 times. Wayhart sold in 20 transactions for his investor's account almost \$11,500 in securities. Wayhart's commissions and Benson's profits in the sale of stock to the investor each year totalled almost \$1,200 and C.A. Benson & Co., Inc. realized a profit of approximately \$1,100 from the resale of stock sold by the investor to C.A. Benson & Co., Inc.

The witness did not know the difference between a principal and an agency transaction, although the witness' securities transactions were confirmed to him on a principal basis. No one disclosed to the witness the profits earned in the transactions with C.A. Benson & Co., Inc.

Another witness was a 57 year old widower who supported two children ages 17 and 19. This witness had been employed as a financial reporter and writer, and met with Wayhart while taking a Dale Carnegie course. On Wayhart's recommendation the witness bought, among other securities, Hot Cup and Home Makers. He bought 100 shares of Hot Cup on May 9, 1963 and between May 1963 and August 1963 on Wayhart's recommendation the customer bought Home Makers' stock. The respondent falsely represented to the customer that Home Makers was a good candidate for immediate price appreciation, that it was manufacturing Mr. Enzyme as well as another product, that the company was spending money for research and development and that the stock had a possibility of going up to either \$7 or \$9 per share. In August 1963 Wayhart told the customer of the FDA embargo, but represented falsely that there was no important

financial information on the company. On August 23, 1963 on Wayhart's recommendation the customer bought 250 Home Makers at 1-3/8 per share but as usual Wayhart omitted to inform the customer of the company's operating and financial condition or the impact of the FDA seizure or its possible effect on the marketability of the stock. After the customer's purchase of Home Makers on August 23, 1963, Wayhart mailed the customer a copy of Home Makers' 1962 annual report. This report was one issued prior to the embargo, but reflected a deficit of \$117,300. Wayhart told the customer not to worry about the deficit as the company had the backing of Norwich and omitted to disclose to the customer any current information. In fact, Wayhart called the customer thereafter to tell him that the price of Home Makers had gone up from 1-3/8 to as high as 1-3/4 and that there was stock available at 1-1/2. He also falsely represented that the stock looked as if it was really going to start to move. He omitted to tell the customer that C.A. Benson & Co., Inc. fixed the price of the stock and that there was no real market. Relying on Wayhart's recommendations and representations the customer bought 50 additional shares of Home Makers at \$1.50 per share. Furthermore, on Wayhart's recommendation, the customer sold 25 shares of Thiokol Chemical to pay for the purchases of Home Makers. In addition, Wayhart recommended that the customer use the cash surrender value of his life insurance policy to buy stocks which he recommended.

In February 1962 Wayhart telephoned an investor who had been a widow at that time for almost ten years. When she testified in these proceedings in February 1967 she was 70 years of age. During the period when Wayhart was selling her securities, she supported herself principally through payments of approximately \$225 a month received from insurance which had been taken out by her late husband and she had also received occasional payments from a small pharmacy which she had inherited from her husband which was being operated by a manager which she sold in 1963. She had bought Wellington Fund through Wayhart when he was a registered representative with another broker. This was her only experience in buying stocks until she received a telephone call in 1962 from Wayhart. She had at that time approximately \$2,000 to \$3,000 in the bank and no assets other than the pharmacy. In 1962 Wayhart telephoned her and told her that he was going to make her a rich woman. She told Wayhart that she had no money to buy stock. After a series of high pressure telephone calls in which Wayhart promised to make her rich so that she could travel frequently to California where one of her children lived, this customer agreed to buy the stock which he recommended. She had been persuaded by Wayhart to repose complete trust and confidence in him and bought in accordance with the advice which she received from him. Wayhart at times called this witness as often as four or five times a day to sell her securities. She bought on Wayhart's recommendations Home Makers, Copter, Hot Cup and Wyoming. She bought and sold only the basic stocks. On May 2, 1963 she wrote out

three separate checks in the amount of \$500 to pay for purchases of Hot Cup. When her checking account was overdrawn she borrowed \$1,000 from a savings and loan association to cover these checks. In January 1963 she sold 700 shares of Home Makers in two separate transactions to buy Wyoming and Copter. On January 31, 1963 she bought 300 shares of Home Makers for \$600, and on June 5, 1963 after the seizure she bought 800 shares of Home Makers for \$1,700. In the summer of 1963 when this witness demanded cash of Wayhart because she needed money for the wedding of one of her daughters, Wayhart sold for her account 1,100 shares of Home Makers for \$1.00 per share. When the customer pointed out that she had paid \$2.00 or more a share, Wayhart asked the customer how she knew she had lost money. The customer told him that she had saved her confirmation slips and then Wayhart advised her to burn them. On October 4, 1963 relying on Wayhart's recommendation she bought 200 more shares of Home Makers for \$325. Subsequently Wayhart telephoned her again and recommended further purchases of stock, but after the customer told him that she did not want to buy any more stock, he did not call her again.

Wayhart falsely represented to the customer that Home Makers was a good stock and never told her of the operating and financial condition of Home Makers, the FDA embargo and its impact and the nature of C.A. Benson & Co., Inc.'s limited work-out market, and the effect on the marketability of her securities. While the customer did not know the difference between a principal and an agency transaction, all stocks were sold to the customer on a principal basis.

The customer invested approximately \$5,700 in 16 purchases of the basic stocks, five of which involved switching transactions.

In February 1962 a wiring man at Westinghouse, age 62 who earned about \$150 a week and supported two children, telephoned C.A. Benson & Co., Inc. to inquiry about Copter. He had heard about Copter from a fellow employee and had seen a newspaper advertisement inserted by C.A. Benson & Co., Inc. concerning the company. He was connected with Wayhart and purchased 10 shares at \$3.50 per share. The investor's only previous experience in buying stocks was the purchase of 30 shares of Westinghouse through the company payroll plan. Thereafter Wayhart telephoned him and recommended that he buy, sell, and switch in and out of Hot Cup, Copter, Home Makers and Wyoming, and the customer followed Wayhart's recommendations. This customer advised Wayhart that he was purchasing securities for the education of his youngest son who was about 11 years of age. Other than the initial purchase of Copter and a purchase of Westinghouse in July and October, all other purchases of stock were initiated by Wayhart. On June 4, 1963 Wayhart falsely represented that the customer could earn more money through ownership of Hot Cup than through ownership of Westinghouse and the customer on June 4, 1963 sold shares of Westinghouse for \$483 to buy 200 shares of Hot Cup for \$500. Relying completely on Wayhart, the customer bought 100 shares of Home Makers on October 23, 1963 for \$162.50, and 100 more shares of Home Makers on October 30, 1963 for the same price. In

this connection Wayhart represented falsely to the customer that Home Makers was making Mr. Enzyme, that it was a good thing to buy, that some drug company was going to take over Home Makers and sell Mr. Enzyme nationwide, and that Home Makers was going up in price and he never disclosed to the customer any of the facts regarding the company's operating and financial condition, the FDA seizure and its impact on the company, the marketability of the stock, nor that C.A. Benson & Co., Inc. set the price for the stock. Sometime after the October purchases of Home Makers, Wayhart informed the customer for the first time of the FDA seizure which had taken place in June 1963. Wayhart earned almost \$100 from seven purchases of the basic stocks confirmed to the customer on a principal basis and involving an investment by him of over \$1,500. The customer did not know the difference between a principal and an agency transaction and reposed complete trust and confidence in Wayhart. Wayhart omitted to tell the customer that C.A. Benson & Co., Inc. set the price for Home Makers.

The facts concerning the tavern keeper who was initially a customer of Wayhart and subsequently became a customer of Cea have been set forth hereinabove.

### Fisher

Seven persons gave testimony concerning their transactions with Fisher.

About February 3, 1964 the last witness whose transactions with Wayhart were just described, telephoned Wayhart to ask him to get rid of his Home Makers' stock but the customer was informed that Wayhart had left the company and he was then connected with Fisher. The customer told Fisher that he wanted to sell the Hot Cup and Home Makers stock which he owned. Fisher recommended that he

buy Wyoming to average down the cost of Wyoming stock he already owned. The customer told Fisher that if he sold his Home Makers' and Hot Cup stocks, he would consider buying Wyoming. The next day February 4, 1964 Fisher called the customer and told him that he had sold 100 shares of Home Makers and 100 shares of Hot Cup for a little over \$300 and had bought 800 shares of Wyoming for \$300.75. Fisher told the customer that Home Makers was hard to sell as there were no buyers. However, the customer protested that he had not authorized Fisher to buy the Wyoming stock, but Fisher told the customer he had already committed himself and besides it would lower the average price which he had already paid for Wyoming stock. Neither Fisher nor Wayhart ever asked the customer for any information concerning his financial condition.

Another Fisher customer who was a building contractor was incapacitated following a heart attack in April 1963. He was married and had two children, a son 19 years old attending college and a 16 year old daughter. After April 1963 his wife's salary of \$300 per month earned as a registered nurse and \$200 a month from a sickness and accident insurance policy provided the sole income to support the family. This customer received a telephone call in March 1963 from Fisher whom he had never met. Fisher asked the customer for a list of his stock holdings which included eight listed securities with a value of approximately \$5,000. In addition, he filled out a questionnaire disclosing his assets.



Between March 20, 1963 and March 18, 1964, Fisher called the customer approximately once a month advising him to switch from the listed securities which he owned into Fieldbrook, Hot Cup, Home Makers and other securities. Fisher falsely told the customer that he was buying securities that were marketable and which were good buys for price appreciation. In this connection the customer followed Fisher's recommendations in March, June and November 1963 and sold Whirlpool, Automatic Retailers of America, and American Airlines, all listed on the New York Stock Exchange to buy Hot Cup and followed Fisher's recommendation in March 1964 to sell Drug Fair listed on the American Stock Exchange to buy Fieldbrook.

In April 1963 Fisher recommended that the customer sell New York, Chicago, and St. Louis Railway to buy Home Makers because Home Makers would go up in price. In May 1963 Fisher recommended that the purchaser sell Thompson Ramo Woolridge to buy Home Makers because the latter was going up in price. The customer followed these recommendations. In August 1963 Fisher recommended the customer sell Robinson Technical to buy more shares of Home Makers. In this connection, Fisher falsely represented that Home Makers would win the lawsuit and Home Makers would go up in price. He failed to state that C.A. Benson & Co., Inc. set the price for the basic stocks and falsely represented that the customer would make more money with Home Makers than with the listed stocks. The securities which the customer sold to buy the basic stocks were seasoned

securities listed on the New York Stock Exchange, with the exception of Robinson Technical which was listed on the American Stock Exchange, but the basic stocks were unseasoned and extremely speculative.

Fisher omitted to tell the customer of the impact of the FDA embargo on Home Makers, of the financial and operating condition of the company or of the limited work-out market in Home Makers' stock.

The purchases of over-the-counter securities were confirmed to the customer on a principal basis, but the customer did not know the difference between a principal and an agency transaction. There were nine over-the-counter purchases in which Fisher earned about \$275 and they involved an investment by the customer of over \$4,600 and all nine purchases involved switching transactions. The customer had full trust and confidence in Fisher and the latter did not disclose his earnings to the customer.

Another customer of Fisher was a rural route carrier for the post office between 1960 and 1963. He had never met Fisher, when he began doing business with him in 1960 and he had had no experience in buying stocks theretofore. In 1962 this customer bought 500 shares of Home Makers and in July 1963 he still owned 300 shares. In May 1963 this customer called Fisher to buy shares of Hot Cup for an investment club to which he belonged. Fisher recommended Home Makers failing to disclose the company's operating and financial condition or the nature of C.A. Benson & Co., Inc.'s limited work-out market. On May 27, 1963 relying on Fisher the customer bought 100 shares of Home Makers at 2-1/8 for the account of the investment club.

In July 1963 the customer called Fisher to ask that he sell the 300 shares of Home Makers which he owned personally as he needed the cash for his daughter's college tuition in the fall. Fisher told the customer there was not much of a market in Home Makers but would try to sell 100 shares. A month later Fisher told the customer that he was unable to sell any of the customer's Home Makers shares because the company was involved in litigation.

Another customer who had bought and sold the basic stocks through Patrick Flannery, formerly a salesman with C.A. Benson & Co., Inc., received a telephone call at the beginning of 1964 from Fisher, a stranger. The customer, a part-time secretary who had had no experience in stocks prior to dealing with C.A. Benson & Co., Inc., told Fisher that she wanted to liquidate all the stocks she owned in Copter, Home Makers, Hot Cup, and Wyoming because she needed the money to purchase a home. Thereafter, Fisher without any further inquiry concerning the customer's investment needs and objectives bought and sold the basic stocks for her account without calling her before each transaction on the representation that he was trying to get her out of the stock for which there was no market and into stocks in which there was a market so that he could liquidate her account. In the course of his transactions he bought for the customer's account 218 shares of Home Makers on January 14, 1964 for over \$350 and 625 shares on February 27, 1964 for almost \$950. Fisher never informed the customer of the operating and financial condition of Home Makers, the FDA embargo or its impact

on Home Makers or that she might be locked into her purchases. The customer reposed complete trust and confidence in Fisher but Fisher did not disclose his earnings in the stock transactions to her.

Towards the end of 1961 a 28 year old radio operator for RCA Communications, married, the father of four small children answered an advertisement in the Pittsburgh Press inserted by C.A. Benson & Co., Inc. referring to a booklet entitled "How to Succeed in the Stock Market" which C.A. Benson & Co., Inc. mailed to him. Thereafter, he received a telephone call from Fisher. Fisher at that time sold him 100 shares of Wyoming for \$88. At that time his only experience in buying securities had been an investment of \$500 in a mutual fund. In January 1962 Fisher visited the customer and the latter told Fisher that he would need any money he invested for a down payment on a house in two or three years. The customer advised Fisher how much he wanted to invest and what his plans were for the future and Fisher set up an investment program for the customer. At the time of this interview the customer's sole source of income was his salary of \$7,500 a year. On Fisher's recommendation the customer invested in Columbia Gas Systems, Boeing Company and Keystone S-4 which Fisher characterized as having "good quality" and he bought Teletray Electronics, Pacific Intermountain Express and San Diego Imperial as a speculation. Later in 1962 Fisher recommended and the customer agreed to an additional purchase of Keystone S-4 and the purchase of Papercraft Corporation. Thereafter Fisher called the customer about once a month to recommend the purchase of the basic stocks. Subsequently, the customer sold these stocks and on

Fisher's recommendation bought Copter, Fieldbrook, Home Makers and Wyoming and on Fisher's recommendations he bought, sold and switched in and out of the basic stocks. The customer had never advised Fisher that he wanted to purchase low-priced speculative securities, and he trusted and relied on him and bought only securities Fisher recommended. In a series of transactions between March 12, 1962 and January 22, 1963 the customer was switched by Fisher out of Pacific Intermountain Express and into Home Makers, from Boeing Company into Home Makers and from Papercraft Corporation into Home Makers. The stocks which the customer was switched out of were listed on the New York Stock Exchange and were seasoned securities whereas Home Makers was not. In 1963 on Fisher's recommendation the customer sold shares of Keystone S-4, a seasoned security to buy shares of Home Makers on two different occasions.

Between January 22, 1963 and August 14, 1963 the customer bought 700 shares of Home Makers. Fisher falsely represented to the customer that Home Makers had other products in addition to Mr. Enzyme, that the FDA had taken samples of Mr. Enzyme but omitted to disclose that Home Makers was a party to a lawsuit with the United States Government. He also failed to disclose the financial and operating condition of Home Makers, the economic impact of the embargo the limited work-out market in the stock and the fact that the customer might be unable to sell his stock. Later in October and November 1963 Fisher advised the customer to sell his Home Makers to buy Hot Cup as the FDA had Home Makers tied up. In October 1964

when the customer began to build a house he asked Fisher to sell the stocks he owned, but Fisher was unable to sell such stocks including Hot Cup, Fieldbrook and Wyoming and the customer liquidated the mutual fund which he bought prior to dealing with Fisher.

Fisher engaged in ten purchases of over-the-counter stocks on behalf of the customer, five of which involved switching transactions. The customer did not understand the difference between a principal and an agency transaction and Fisher never disclosed his earnings to the customer.

Another Fisher customer was a single woman employed as a secretary for U.S. Steel Corporation who had been supporting her 73 year old mother for about 20 years. Prior to doing business with C.A. Benson & Co., Inc. she had never had any securities transactions other than a purchase of approximately 100 shares of U.S. Steel through a company payroll plan. In 1961 she called Fisher who was a stranger to her but had been recommended by a friend to purchase ten shares of Brush Beryllium. Thereafter Fisher whom she has never met called her about every two weeks to once a month to persuade her to buy stocks. She told Fisher to handle her account as he wished and she reposed complete trust and confidence in him. Fisher never made any inquiry concerning her financial needs or investment objectives, but thereafter he bought, sold and switched her in and out of the basic stocks including Copter, Fieldbrook, Home Makers, Hot Cup and Wyoming. The customer's sole source of income was her salary of approximately \$5,000 a year.

On September 11, 1964 he sold 260 shares of Fieldbrook to buy 260 shares of Home Makers for the customer without calling her before hand. On Fisher's recommendation she sold on July 23, 1963 over 1,000 shares of Wyoming to buy 245 shares of Home Makers.

Fisher falsely represented to her that Home Makers was a good company. Approximately six months later, i.e. on January 27, 1964 she sold the 245 Home Makers at about half of what she had paid for it to buy 90 shares of Hot Cup. Fisher bought for the customer on September 11, 1964 260 shares of Home Makers and at the same time sold 260 shares of Fieldbrook, each transaction involving approximately \$300. Between January 1961 when the customer opened her account through September 1964 the customer had an average monthly investment of approximately \$1,000. Relying on Fisher she made 24 purchases of stock for approximately \$7,000 and her average monthly investment was turned over 6.8 times or once every seven months. During this period there were 17 sales all involving switching transactions. The customer sustained a net realized loss of almost \$650 while Fisher earned commissions of almost \$500. In addition C.A. Benson & Co., Inc. received the same amount in commissions, plus \$786.25 in trading profits in reselling the stocks bought from her.

The customer was unaware of the difference between a principal and an agency transaction, was not informed of the earnings of Fisher or C.A. Benson & Co., Inc., and she was never informed of the financial or operating condition of Home Makers or of the FDA seizure or of the lack of marketability of Home Makers' stock.

Fisher became acquainted in 1959 or 1960 with a retired machinist who became one of his customers. At that time, Fisher was working for another broker-dealer. This customer was 76 years

of age and had purchased his first security in 1940 and had been actively buying and selling stocks since 1958. He had retired in 1960 after working for Armco about 46 years and he had an income consisting of a pension of approximately \$120 a month, social security payments of approximately \$120 a month, and an annual dividend of about \$1,400 a year from his holdings in Gillette Company. The customer also owned some United States Government Bonds. He dealt with several brokers while dealing with Fisher but did not consult the other brokers concerning Fisher's recommendations. The witness, however, had difficulty at times in recalling his transactions with Fisher. The witness had difficulty recalling the brokers to whom he sent checks to cover securities purchases. He did recall, however, purchasing 1,300 shares of Home Makers between May 15, and July 23, 1963. These purchases were made in four separate transactions. Fisher told the customer there was a chance of it going up and making some money on it. Fisher sold the customer, among other securities, Home Makers, Copter, Wyoming and Hot Cup, and he recommended that he buy, sell, and switch in and out of these basic stocks. Fisher earned over \$400 from eleven purchases of over-the-counter stocks confirmed on a principal basis involving an investment by the customer of approximately \$6,600 and five of these transactions involved switching transactions. Fisher did not disclose his earnings to the customer.

Fisher did not inform the customer of the financial and operating condition of Home Makers' stock, the FDA embargo, its



economic impact, or that he might be locked into his purchase.

The customer followed Fisher's recommendations and reposed trust and confidence in the respondent.

Conklin

Four investors testified concerning their transactions with Conklin.

Beginning in July 1962 a widow who was the sole support of her grandchild and earned about \$50 a week as a machine operator in a ceramics factory began dealing with Conklin. In 1963 Conklin called her on the telephone and referred to the fact that her son-in-law's father had recommended him. She informed Conklin she had no money, that she was a widow and that she owned some listed securities. She also informed Conklin that she was buying stock so that she could buy a family homestead which had been in her family for over 100 years. In this connection she told him that she was borrowing money to buy the stocks he recommended. Between August 1963 through May 1964 Conklin recommended she buy Home Makers falsely representing to her that the stock was a good investment and would go up in price. She made nine separate purchases of Home Makers between August 23, 1963 and May 8, 1964 amounting to 3,550 shares of stock for almost \$5,400. Conklin never told the customer anything about the operating and financial condition of Home Makers, or the impact of the seizure or about the limited work-out market or that she might be locked into her purchases. In addition she purchased 250 shares of Hot Cup at \$2 a share on

Conklin's recommendation on March 20, 1963 with the proceeds from the sale of 100 shares of Keystone S-4. On Conklin's recommendation she sold 106 shares of Emerson Radio in September 1963 to purchase 650 shares of Home Makers. On Conklin's recommendation she also sold on October 10, 1963, 100 shares of Sperry Rand to buy 700 shares of Home Makers. On February 14, 1964 she sold 100 shares of Callahan Mining to buy Home Makers.

On Conklin's recommendation this widow sold seasoned securities to buy the basic stocks. During 1963 and 1964 Conklin earned approximately \$850 from 22 purchases of over-the-counter stocks for this customer confirmed on a principal basis, an investment involving over \$7,500. Ten of these twenty-two purchases involving switching transactions. The customer reposed complete trust and confidence in Conklin who never disclosed his earnings to her.

A second investor who testified concerning his transactions with Conklin was a 53 year old electrician, married, and earning about \$6,200 a year. He had completed the eighth grade. Prior to dealing with C.A. Benson & Co., Inc. his only stock transaction was a \$600 purchase of shares in a mutual fund.

The investor answered a newspaper advertisement inserted by C.A. Benson & Co., Inc. in 1960. Thereafter Conklin began telephoning him about every two weeks to interest him in purchasing stock. During the period between 1960 and 1964 the investor followed Conklin's recommendation to buy or sell Copter, Fieldbrook, Home Makers, Hot Cup, Wyoming and other securities. The investor told Conklin that he was purchasing stocks for early retirement and that he trusted and relied on Conklin. In accordance with Conklin's recommendations he

cashed in at least \$2,000 in United States Savings Bonds to buy the basic stocks. Conklin told him that the stocks would appreciate faster than United States Savings Bonds.

Between May 14, 1963 and April 30, 1964 on Conklin's recommendation he made several purchases of Home Makers because Conklin told him that it would be a good idea to round out his number of Home Makers' shares to 1,000. Conklin falsely represented that Home Makers was a good stock, that the investor would make money on the stock, that the company was making Mr. Enzyme and was going to make a deal with Norwich Pharmaceutical. Conklin told the investor that the FDA had filed a lawsuit against Home Makers, but falsely represented to him that everything was going to be all right and that the lawsuit was "just a matter of routine". Conklin failed to inform the investor of Home Makers' operating and financial condition and the impact of the FDA lawsuit and of the limited work-out market in Home Makers' stock and that the investor might be locked into his purchase. Thereafter, Conklin sought to persuade the investor to make additional purchases of Home Makers, but the investor told him that he couldn't afford to buy any more. Conklin always assured the investor that the stock "was doing good". In September 1964 on Conklin's recommendation, Conklin sold for the investor 500 shares of Fieldbrook for approximately \$625 and bought 200 Hot Cup shares for approximately \$650 without calling the investor beforehand. However, the investor

did not protest the transaction. The investor told Conklin that if he thought it was all right, it was all right with the investor. The investor reposed complete trust and confidence in Conklin.

The investor had no knowledge of the difference between a principal and an agency transaction although C.A. Benson & Co., Inc. acted as a principal.

In 1963 and 1964 in addition to the profits made by C.A. Benson & Co., Inc. Conklin earned approximately \$520 from 24 purchases of over-the-counter stocks confirmed on a principal basis and involving investments by the customer of approximately \$6,300. He was uninformed of the profits being made by Conklin or C.A. Benson & Co., Inc.

A third customer was a 56 year old printer, married and the father of two minor children whom he supported. Prior to dealing with C.A. Benson & Co., Inc. he had bought four listed securities for about \$900. Conklin had been recommended to this investor by a mutual friend and had telephoned the printer to recommend the purchase of Home Makers at about December 1962. The investor had never met Conklin, but Conklin called him about once a month to every six weeks between December 1962 and April 1964 to sell him Fieldbrook, Home Makers, Hot Cup, and Wyoming. Conklin never inquired concerning the investor's financial needs or investment objectives, but he recommended and the investor purchased the basic stocks except when he was short of funds.

Conklin never recommended any securities but the basic stocks.

The investor owned a business having a value of approximately \$50,000 subject to a \$20,000 mortgage and he owned a home for which he had paid \$7,200.

Between December 17, 1962 and January 17, 1964 the investor made 14 separate purchases of Home Makers amounting to 2,000 shares at various prices for a total investment of \$3,662.50. Throughout this period Conklin falsely represented to the investor that Mr. Enzyme was being tested on the West Coast and was good and that the price of Home Makers' stock was bound to go up and that the investor would make enough money on the stock so that he could afford to send his children to college.

At one time Conklin inform the investor that there was a lawsuit against the company but falsely represented to the investor that there was no doubt that Home Makers would win the lawsuit and that everything would be all right and at other times he fraudulently represented to the investor that the lawsuit would be over in 40 to 60 days.

At times Conklin pointed out to the investor that the price of Home Makers' stock was going up but failed to disclose that C.A. Benson & Co., Inc. arbitrarily fixed the price of the stock. Conklin also employed the standard omissions discussed hereinabove concerning Home Makers' operating and financial condition and the impact of the embargo on the company and the limited work-out market

and that the customer might be locked into his purchases. On Conklin's recommendation the investor sold 18 shares of Studebaker Fackard to buy 300 shares of Home Makers on June 18, 1963, i.e., shortly after the embargo.

In 1964 the investor needed cash to buy a printing press and mailed 500 shares of Home Makers to C.A. Benson & Co., Inc. and directed Conklin to sell them. Conklin then informed him there was no market for the stock and none of the shares were sold.

In 1963 and 1964 in addition to the profits earned by C.A. Benson & Co., Inc. Conklin earned over \$350 from 21 purchases of over-the-counter stocks confirmed on a principal basis and involving an investment of approximately \$3,500. The customer did not know the difference between a principal and an agency transaction. Conklin took advantage of the investor who reposed utmost trust and confidence in him.

One of Conklin's most important customers was a 45 year old engineer, employed at Westinghouse, whose sole source of income was his salary of about \$7,800 a year. He supported his elderly parents. Prior to dealing with Conklin he had purchased some railway stock in 1958 for \$200. In addition, he purchased Westinghouse stock under a company payroll plan and up to 1960 this stock had a value of about \$2,000.

About 1960 after responding to a newspaper advertisement, he received a telephone call from Conklin and thereafter Conklin called him approximately twice a week to sell him stock. The witness

occasionally visited Conklin at C.A. Benson & Co., Inc. The witness expressed to Conklin his faith and trust that Conklin would take care of his investments and informed Conklin that he could not afford to lose any money, and told Conklin that he would leave all the investment decisions up to him. Conklin represented falsely to the witness that he would make money for him and the witness followed all of Conklin's recommendations. Conklin never inquired concerning the witness' investment needs or objectives, although the witness was buying securities in the hope that he could retire at the age of 55.

Conklin moved the investor in and out of the basic stocks including Copter, Fieldbrook, Home Makers, and Wyoming throughout the period of 1960 to 1964.

Between May 14, 1963 and August 29, 1963 Conklin recommended and the witness purchased 5,245 shares of Home Makers in 12 separate transactions. Conklin falsely represented that Home Makers' stock had potential and that the company sold drugs other than Mr. Enzyme. During this period Conklin informed the witness that Home Makers was having a little difficulty with the FDA but assured him that he should not worry about it as Home Makers would straighten it out.

Between October 3, 1963 and November 8, 1963 the witness sold the 5,245 shares in six separate transactions and purchased Hot Cup with the proceeds. Conklin falsely represented to the

witness that Hot Cup had great potential and would increase in price.

Between January 15, 1964 and May 27, 1964, the witness purchased 4,400 shares of Home Makers in seven separate transactions on Conklin's recommendation. Conklin falsely represented that the FDA difficulty would be resolved in a short time.

On May 27, 1964 Conklin falsely represented to the witness that Home Makers would go up in price. Conklin following his usual practice never informed the witness of Home Makers' operating and financial condition; the economic impact of the seizure of Mr. Enzyme; the nature of the limited work-out market in Home Makers' stock and that the witness might be locked into his purchase of such stock.

The witness received Westinghouse stock through the company payroll plan generally in April and November of each year. Each time, Conklin recommended that the witness sell his Westinghouse stock and buy one of the basic stocks. Relying on Conklin's recommendations, the witness sold his Westinghouse stock on five separate occasions between October 22, 1962 and May 27, 1964 to buy Home Makers and Hot Cup stocks.

The witness opened his account at C.A. Benson & Co., Inc. on March 25, 1960. Between that date and December 11, 1964 the date Conklin left C.A. Benson & Co., Inc., the witness invested over \$35,000. The witness made 137 purchases totalling \$103,560.21, made cash withdrawals of \$2,867.58 and had an average monthly investment of \$27,771.92. His account was turned over 3.7 times or an average of once every sixteen months. During this period the witness made 88 sales totalling \$71,301.38. Of the 137 purchases



68 were held in the witness' account less than six months while seventeen were held less than two months. At the end of the period the witness had a net realized loss of over \$21,000 and was long securities purchased at a cost of over \$14,500 with a market value of approximately \$1,615. During this period Conklin and C.A. Benson & Co., Inc. each earned profits of \$8,603.32 from the sale of stocks to the witness. In addition, as a result of the 75 switching transactions in the witness' account, C.A. Benson & Co., Inc. earned a profit of \$9,799 from the resale of stocks sold to C.A. Benson & Co., Inc. by the witness. In 1961 Conklin earned \$4,262.61 or 21.8% of his income at C.A. Benson & Co., Inc. from the account of the witness. In 1962 Conklin earned \$1,520.25 or 10.2% of his income at C.A. Benson & Co., Inc. from the witness' account. In 1963 Conklin earned \$1,709.92 or 11.4% of his income at C.A. Benson & Co., Inc. from the witness' account. In 1964 Conklin earned \$578 or 6.8% of his income from the witness' account.

The witness was trusting and unsophisticated and reposed utmost trust and confidence in Conklin, was unaware of the difference between a principal and an agency transaction and neither C.A. Benson & Co., Inc. nor Conklin ever disclosed what they made from their transactions with the witness.

Conklin induced transactions in the witness' account which were excessive in size and frequency in the light of the nature of

the account and financial resources and investment needs and objectives of the witness. 22/

Conklin's conduct particularly in the handling of this witness' account was grossly fraudulent. Not only did he make false and misleading statements to the witness, but he betrayed the witness' trust and confidence in him to engage in churning transactions in violation of the anti-fraud provisions of the Securities Acts.

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The respondents have pointed to minor inconsistencies in the testimony of some of the witnesses, and have emphasized that some of the witnesses wanted to engage in speculation in the market in the hope of making capital gains quickly. The desire on the part of gullible investors willing to believe baseless representations of quick profits made by unscrupulous securities salesmen affords no license for making such misrepresentations. The minor inconsistencies are insufficient to discredit the investor witnesses.

The Hearing Examiner concludes that:

A. Cea, Conklin, Fisher, Kness, and Wayhart, singly and in concert, wilfully violated Section 17(a) of the Securities Act of 1933;

B. Cea, Conklin, Fisher, Kness, and Wayhart, singly and in concert, wilfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder;

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22/ It may also be pointed out that even where an account is not discretionary where the excessive trading is the result of advice given to the customer by the broker-dealer or the registered representative churning may be found. Matter of Samuel B. Franklin, Securities Exchange Act Release No. 7407 (1964), Reynolds & Co., 39 S.E.C. 902 (1960).

C. It is in the public interest to revoke the registration of Keystone State Investment Securities Company, Inc., pursuant to Section 15(b) of the Securities Exchange Act of 1934;

D. Within the meaning of Section 15(a) of the Securities Exchange Act of 1934, it is in the public interest to expel Keystone State Investment Securities Company, Inc. from membership in the National Association of Securities Dealers, Inc., and

E. It is in the public interest to bar Cea, Conklin, Fisher, Kness and Wayhart from being associated with a broker-dealer within the meaning of Section 15(b)7 of the Securities Exchange Act of 1934.

#### Public Interest

Respondents while denying the allegations of violations of the Securities Acts have correctly pointed out that no sanction may be imposed unless the imposition of such sanction is in the public interest. In this connection the respondents claimed, among other things, that the alleged violations took place three years before the institution of the current proceedings, that Kness and Wayhart left C.A. Benson & Co., Inc. and are now employed in "well-supervised firms" and that they were not experienced when employed at C.A. Benson & Co., Inc.

The respondents also complained of the delay in instituting these proceedings. The broker-dealer registration of C.A. Benson & Co., Inc. was revoked and the individual respondents obtained positions

as registered representatives with other broker-dealers. The respondents have not been prejudiced by such delay as has occurred. Cf. Russell L. Irish d/b/a Russell L. Irish Investments v. S.E.C., (C.A. 9, No. 20,472, October 19, 1966).

It should be pointed out that Kness had been employed as a registered representative for over a year prior to his employment with C.A. Benson & Co., Inc. and had been employed by C.A. Benson & Co., Inc. from February 1962 to December 20, 1963 and was experienced during the period June 1, 1963 through August 31, 1963 when 91% of his commissions were derived from the sale of basic stocks to customers.

Wayhart had been a registered representative longer than Kness and he earned 89% of his commissions between June 1, 1963 and August 31, 1963.

There appears to be no substance to the claim that their conduct was attributable to inexperience.

All of the individual respondents are now registered representatives for registered broker-dealers. Keystone currently employs seven registered representatives including Cea. Its principal officers violated the anti-fraud provisions as found hereinabove. Keystone almost from its inception maintained an inventory of Fieldbrook stock which had been sold by respondents by means of false and misleading statements when they were employed at C.A. Benson & Co., Inc. Keystone also sold Hot Cup as part of a selling group with C.A. Benson & Co., Inc. but subsequently withdrew from participation

in such selling group. Fisher claimed that Keystone refunded money received from some customers for Hot Cup and that other customers who had ordered Hot Cup bought other securities instead of Hot Cup.

All the respondents participated in a concerted high pressure sales campaign to defraud the investing public. The investing public should not be exposed to further risk of fraudulent conduct by those who have demonstrated their gross indifference to the basic duty of fair dealing required of persons in the securities business. 23/

The respondents used materially misleading written material in the form of prospectuses and offering circulars in selling the basic stocks. 24/ Furthermore the respondents were given other written material by the management of C.A. Benson & Co., Inc. which contained correct information concerning the basic stocks but nevertheless they made material misrepresentations to customers. In addition as the commission pointed out in Miller, et al., Securities Exchange Act Release No. 8012, December 28, 1966, "The protection from fraud to which investors are entitled cannot be dissipated by claims of naivete or gullibility on the part of those who hold themselves out as professionals with specialized knowledge and skill and undertake to furnish guidance but nevertheless participate in a high pressure

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23/ Kness not only made numerous false and misleading statements in the sale and purchase of the basic stocks, but as has been noted, turned over the monthly investment of one of his customers every six months or 3.76 times. Wayhart, among other things, took financial advantage of an elderly widow in modest circumstances as recounted hereinabove and also advised her to burn her confirmation slips.

24/ In Walker v. S.E.C., (C.A. 2, No. 30,628, October 3, 1967) the Court of Appeals held that "The Commission is justified in holding a securities salesman chargeable with knowledge of the contents of sales literature. He cannot avoid his duty to the public by blindly relying on his employer's brochures."

campaign to sell speculative securities". (footnotes omitted).

Each respondent persuaded customers to repose full trust and confidence in him and then betrayed that confidence by making false and misleading statements to these customers. The proof is clear that the respondents showed no consideration for their customers' interests, their sole purpose being to earn commissions. The respondents never disclosed to customers any of the profits earned by them in selling the basic stocks to the customers or in selling the customers' stocks. 25/

Contrary to views expressed by respondents in their briefs the provisions of Section 9(b) of the Administrative Procedure Act relating to the giving of a written warning and opportunity to cease the practices complained of prior to the institution of this proceeding are not applicable to this case. 26/

The conduct of these respondents requires a remedy which will protect the investing public from further exposure to their predatory conduct.

Accordingly, IT IS ORDERED that from the effective date of this order the respondents Richard N. Cea, James C. Conklin, Kenneth E. Fisher, Robert E. Kness, and Frank P. Wayhart be and they hereby are barred from being associated with a broker or dealer.

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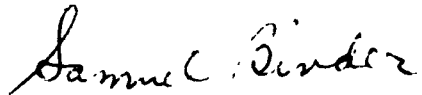
25/ Herbert R. May, 27 S.E.C. 814, 830 (1948); J. Logan & Co., 41 S.E.C. 88, 98, 99 (1963); Loss, Securities Regulation, Vol. III, pp. 1502, 1508, Where a registered representative develops a relationship of trust and confidence between himself and the customer, the registered representative must account for the customer for any profits taken on the transaction. Allender Co., Inc. 9 S.E.C. 1043, 1053.

26/ Sterling Securities Co., 37 S.E.C. 837, 839 (1957); Dlugash v. S.E.C., 373 F.2d 107, 110 (C.A. 2, 1967).

IT IS FURTHER ORDERED that from the effective date of this order the registration as a broker and dealer of Keystone State Investment Securities Company, Inc. be and it hereby is revoked and that Keystone State Investment Securities Company be and it hereby is expelled from the National Association of Securities Dealers. 27/

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

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within 15 days after service thereof on him. Pursuant to Rule 17(f) this initial decision shall become the final decision of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or 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 to review or the Commission takes action to review as to a party, this initial decision shall not become final as to that party.



Samuel Binder  
Hearing Examiner

Washington, D.C.  
March 11, 1968

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27/ To the extent that the proposed findings and conclusions submitted to the Hearing Examiner are in accord with the views set forth herein they are accepted, and to the extent they are inconsistent therewith they are expressly rejected.