ADMINISTRATIVE PROCEEDING
FILE NO. 3-3167

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
JOHN R. BRICK & COMPANY (801-5796)	:	(Private Proceedings)
JOHN R. BRICK	:	
JOSEPH C. MAURER	:	
WILLIAM J. CAHO	:	
CLARENCE J. LIATAUD	:	
	:	

INITIAL DECISION

Washington, D.C.
February 1, 1973

Warren E. Blair
Chief Administrative Law Judge

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APPEARANCES: Joseph L. Grant, Edward I. Harmelin, and Barry D. Goldman, of the Chicago Regional Office of the Commission, for the Division of Enforcement.

Anthony M. Anzalone, for John R. Brick & Company and John R. Brick

Jay Erens and Howard A. Tullman, of Levy and Erens, for Joseph C. Maurer.

Joseph O. Kostner and Charles A. Brady of Ettelson, O'Hagan, Ehrlich & Frankel, for William J. Caho.

David P. Schippers, for Clarence J. Liataud.

BEFORE: Warren E. Blair, Chief Administrative Law Judge

These private proceedings were instituted by an order of the Commission dated August 3, 1971 ("Order") pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203 of the Investment Advisers Act of 1940 ("Advisers Act") to determine whether respondents or certain of them named in the Order had, as alleged by the now Division of Enforcement ("Division"), wilfully violated and wilfully aided and abetted violations of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206 of the Advisers Act, and whether remedial action is appropriate.

In substance, the Division's allegations are that during the period from about October 1, 1969 through October 30, 1970, each of the respondents, singly and in concert, wilfully violated and wilfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act in the offer and sale of unregistered stock of Thorne United, Inc., ("Thorne"). The Division further alleges that respondents Joseph C. Maurer and William J. Caho, singly and in concert,wilfully violated and wilfully aided and abetted violations of the anti-fraud provisions of the Securities Act and Exchange Act by certain conduct and by making false and misleading statements concerning the investment quality of Thorne stock and the operations of that company. The Division also alleges that John R. Brick & Company ("registrant") and John R. Brick ("Brick") similarly wilfully violated and wilfully aided and abetted violations of the anti-fraud provisions of the Securities Act and Exchange Act and that by such conduct and by acts

and practices related to registrant's business as an investment adviser, additionally wilfully violated and wilfully aided and abetted violations of the anti-fraud and certain other restrictive provisions of the Advisers Act.

Answers filed by respondents deny the alleged violations. At the hearing, all respondents appeared and participated through counsel. As part of the post-hearing procedures, successive filings of proposed findings, conclusions and supporting briefs were specified. Timely filings thereof were made by the parties to these proceedings.

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

Respondents

Registrant is a sole proprietorship located in Madison, Wisconsin and has been registered as an investment adviser under the Advisers Act since July 9, 1969. Brick is, and during the period in question was, the sole proprietor of registrant.

Maurer, presently a real estate salesman, was a securities salesman and an underwriting syndicate manager during the period in question in the Chicago branch office of Reynolds & Co. ("Reynolds"), a registered broker-dealer which had employed him since 1961.

Caho was also a salesman in the Chicago office of Reynolds

during the period in question. He left Reynolds in April, 1971 and began working in the same capacity with another registered broker-dealer.

Liataud was also employed as a securities salesman in the Reynold's Chicago office during 1969. Since leaving Reynolds in October, 1970, he has worked as a securities salesman with another securities firm in Chicago.

Thorne United, Inc.

Thorne, a Delaware corporation with principal offices in Addison, Illinois, was formed in February, 1969 for the purpose of engaging in the business of producing thermoformed plastic products.

George A. Holmes, who conceived the plan for forming Thorne, was Thorne's president until the latter part of 1970. Thomas J. Lopina was financial vice-president and treasurer from October, 1969 until May, 1970. Maurer served as Thorne's treasurer prior to Lopina's appointment; he became a Thorne director upon the company's formation and continued to act in that capacity during the period in question. Brick was made a Thorne director in January, 1970 and resigned from that position in November, 1970.

Initially, Thorne's authorized capital was 5,000 shares of common stock without par value. In October, 1969 the authorized common stock was increased to 5,000,000 shares and each outstanding share of the old stock was converted to 1,300 shares. As of December 31, 1969 Thorne had 1,326,000 shares of common stock

outstanding and the same amount outstanding as of April 30, 1970.

Thorne's capital structure was further changed in October, 1969 to add 200,000 shares of authorized convertible preferred stock with a stated value of $10 per share. As of December 31, 1969 there were 36,600 shares of the preferred stock issued and outstanding which increased to 133,100 shares outstanding by April 30, 1970. From its inception, Thorne's operations were carried on at a loss. For the period from February 19, 1969, the date of its incorporation, to December 31, 1969, Thorne's net loss amounted to $77,517 and by April 30, 1970 the accumulated net loss from operations had risen to $389,390. Increasing financial difficulties during ensuing months resulted in Thorne's board of directors deciding on November 13, 1970 to authorize and direct an assignment of Thorne's remaining assets for the benefit of its creditors.

Violations of Section 5 of the Securities Act

In 1968 Holmes approached Maurer, his brother-in-law, with the idea for organizing a company that would produce thermoformed plastic products. Apparently intrigued by Holmes' plan, in which Thorne had its genesis, Maurer became one of Thorne's incorporators and, upon its incorporation, become the company's treasurer and one of three directors. In consideration of his services, including financial advice, Maurer received 10% of Thorne's common stock.

Early in 1969 Maurer inquired of Reynolds' corporate finance officer regarding possible interest Reynolds might have in financing

Thorne, but received a negative response. Consideration of means by which to obtain capital turned to an offering of Thorne securities, and in October, 1969 Thorne management decided to seek $2,000,000 through an offering of 200,000 shares of convertible preferred stock in units priced at $20, consisting of two shares of preferred stock and a warrant to purchase one share of common stock. Thorne began the offering in question about November 1, 1969 without a registration statement having been filed under the Securities Act with respect to those securities. In the course of the offer and sale of the Thorne stock, use was made of the mails and of means and instruments of transportation and communication in interstate commerce.

In October or November, 1969 Brick had a meeting with Holmes, Maurer, and other members of Thorne management, at which time Brick stated that he thought he could place a large amount of the offering with registrant's clients in Wisconsin. In keeping with that representation, Brick raised at least $500,000 from the sale of Thorne preferred stock to five or more persons during the period in question, and received 2,429 shares of Thorne common stock as his commission on those sales. 1/

1/ These shares of common stock were later returned to Thorne upon its request, and the certificate voided.

Additional offers and sales of Thorne preferred stock were made by Maurer between November, 1969 and February, 1970 to at least ten individuals who were his customers at Reynolds, and approximately $230,000 was raised by him from persons he acquainted with Thorne. Maurer also enlisted the help of Liataud in the selling effort in late November, 1969, and in January, 1970 interested Caho in the Thorne offering. Between December, 1969 and February, 1970 Liataud offered the Thorne preferred stock to five of his customers, four of whom made purchases totaling $175,000, and Caho's efforts resulted in five of his customers joining with him in February, 1970 to form a partnership which invested $100,000 in Thorne preferred stock.[2/]

In the aggregate, over $1,300,000 was invested by approximately 30 individuals in Thorne preferred stock during the period in question. The record further reflects that the offering was not restricted to those purchasers, that the Thorne preferred stock was offered to other prospective investors who did not purchase, and that meetings were held under the auspices of Thorne management for the purpose of informing attending prospective investors about the company.

It is concluded that respondents, singly and in concert, wilfully violated and wilfully aided and abetted violations of

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2/ Partnerships or joint ventures with a participant being named trustee were entered into by most of the investors on the theory that sales to such entities would not count against the number of transactions permitted by the Illinois Blue Sky Law without registration of the Thorne offering pursuant to that law.

Sections 5(a) and 5(c) of the Securities Act in the offer and sale of the unregistered preferred stock of Thorne during the alleged period. The record is clear that no exemption from the registration requirements of the Securities Act was available for the offers and sales of Thorne stock made by respondents. It is equally clear that the public distribution of Thorne preferred stock was accomplished by a concert of action in which all respondents participated. While it is true that each of the respondents may not have known of the activities or intent of every other respondent to offer and sell Thorne stock, each respondent knew that Thorne was attempting to raise $2,000,000 through sale of its preferred stock and each respondent knew he was assisting Thorne to carry out that plan. Under the circumstances, each respondent became a participant in Thorne's over-all scheme to raise funds from the public and may be held accountable for aiding and abetting violations arising out of the conduct of other respondent participants.[3/]

Respondents' contention that the Thorne offering was exempt from the registration requirements of the Securities Act by reason of the "private offering" exemption under Section 4(2) of that Act cannot be accepted. The burden of establishing the availability of the claimed exemption rests upon the respondents.[4/] Quite the

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3/ Cf. Haight & Co., Inc., Securities Exchange Act Release No. 9082, at 14 (1970); Sidney Tager, Securities Exchange Act Release No. 7368 (1964), affm'd 344 F.2d 5 (2nd Cir. 1965).

4/ S.E.C. v. Ralston Purina Co., 346 U.S. 119 (1953).

opposite of their carrying that burden, the record clearly reflects that a public offering of the Thorne stock was effected by Thorne and respondents.

Support for respondents' claim is based upon their assertions that the offering was made to persons able to fend for themselves and with knowledge about Thorne or access to information that would have to be disclosed in a registration statement. As pointed out by the Division, the short answer is that the respondents have not shown, as they must, that all offerees possessed the degree of sophistication and had access to information about Thorne and its operations requisite to establish the availability of a Section 4(2) exemption. 5/ But beyond that, there is affirmative evidence that many of the individuals who were induced by respondents to invest in Thorne had neither the sophistication suggested by respondents nor a privileged relationship with Thorne that gave them access to information about the company which would have been denied to any other member of the public.

The common characteristic shared by the Thorne investors who testified or were identified as having been introduced to Thorne by respondents was the existence of a business relationship with one or another of the respondents. None had previous association with Thorne or its operations from which they could have derived

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5/ S.E.C. v. Continental Tobacco Co., 463 F.2d 137 (5th Cir. 1972); Repass v. Rees, 174 F. Supp. 898 (D. Colo. 1959).

information that a registration statement would have revealed. While these individuals had purchased other securities before buying Thorne stock, each of them relied heavily upon one of the respondents in making an investment in Thorne and had business backgrounds indicating a need for the protection of the Securities Act disclosure requirements. In the latter respect, investors in Thorne stock included a hairdresser, an assistant football coach looking for a means to supplement his prospective retirement income, a food and liquor store operator, and a real estate broker. These were not persons constituting a class to which a private offering could likely be made but rather a diverse and unrelated group normally found in connection with a public offering.[6/]

Nor can respondents find comfort in the fact that Thorne prepared and made available a confidential offering circular to prospective investors and that investors were encouraged to ask and did ask questions of Thorne management. As noted hereafter, the offering circular was false and misleading in material respects, and respondents had good reason to believe that prospective investors would not receive honest answers from Thorne management, particularly if they made inquiry of Holmes.

Respondent Caho's further argument that the Division has failed to establish that he used the mails or other jurisdictional means in connection with his offering and selling of Thorne stock

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6/ Cf. S.E.C. v. Continental Tobacco, supra, at 159.

is contradicted by the record. Not only is it beyond dispute that the mails were used as part of respondents' concerted action in offering and selling Thorne stock, but the evidence is sufficient to establish that Caho personally used the mails in offering Thorne stock to one of his customers, Joseph Bonner. Although Caho views the testimony in a different light, Bonner's testimony is unequivocal with respect to receiving a subscription agreement from Caho by mail. 7/ That testimony is considered worthy of belief, and the doubts that Caho attempts to cast upon its credibility are rejected as speculative.

False and Misleading Offering Circular

In preparation for the offering of $2,000,000 of preferred stock, Thorne had an offering circular prepared by a firm of communications consultants, and made it available for use by the respondents. That offering circular which set forth Thorne's history, financial position as of October, 1969, and its business prospects was false and misleading in material respects.

In introducing Thorne to the reader, the circular represents that Thorne has "carefully assembled the human and technical capabilities" to supply an existing market demand for thermoformed components, and that in two years Thorne "intends to be the biggest producer of large thermoformed components in the world and a major

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7/ Tr. 843, 878-80.

supplier of a full line of thermoforming equipment." No disclosure was made concerning the experimental nature of the machine that Thorne depended upon to produce its major product nor of the problems experienced in attempting to put that machine into operation.

The circular also represents that Thorne was "currently serving its marketsfrom its two Addison, Illinois thermoforming plants," when in fact machinery was in place in only one of Thorne's Addision plants as of March, 1970. It is further asserted in the circular that Thorne would have a machine with the capacity to form pieces with a size of 40 x 12 feet in production in December, 1969. Again no reference is made to the fact that the machine was of new design nor was the circular ever amended to reflect that the machine could not be assembled until February, 1970.

An entirely erroneous impression of Thorne's financial stability is conveyed by the circular's statement that Thorne had maintained a sound financial policy by means of "maintaining adequate cash balances." Absent is any indication of the financial difficulties that Thorne encountered by reason of curtailment of its line of bank credit in November and December, 1969 and early 1970 Another area related to Thorne's ability to finance its operations was the backlog of "Orders on Hand" which the circular represents as of October 31, 1969 to be $200,000 for shipment in 1969 and $7,275,000 in 1970. Omitted are disclosures that in 1969 Thorne's sales amounted to $11,729 and that the conversion

of the $200,000 of orders on hand for 1969 to sales was dependent upon production of the still unassembled experimental machine and upon the company being able to raise sufficient funds to finance production in 1969 and 1970.

Additionally, the circular presents an analysis of the market available to Thorne for its products and projects a sizeable percentage of that market for Thorne. No discussion of the problems relating to plant, equipment, and financial needs which had to be overcome before those projections could be realized was set out nor mention made of the competition that Thorne faced in capturing the projected market.

It is manifest that the offering circular was false and misleading in the foregoing respects. Use of it in connection with offers and sales of Thorne preferred stock without further disclosures fully and completely apprising prospective investors of Thorne's actual operations, difficulties, and prospects would therefore operate as a fraud upon those persons.

Fraud Violations

John R. Brick & Company
John R. Brick

In offering and selling Thorne preferred stock, registrant and Brick made the Thorne offering circular available to prospective investors. By that means and by Brick's false and misleading statements concerning Thorne and the prospects of its stock, registrant

and Brick persuaded registrant's advisory clients and potential clients to purchase Thorne preferred stock.

Three investor witnesses who purchased Thorne stock through registrant and Brick testified concerning the manner in which they were induced to make their investments. The uncontradicted and credible testimony of these witnesses evidences the fraudulent conduct of these two respondents in the offer and sale of Thorne preferred stock during the period in question.

One of the investors, LaVern Van Dyke, an assistant football coach at the University of Wisconsin, went to Brick's office on December 9, 1969 in search of an investment adviser who would take an interest in his securities portfolio amounting to about $50,000. At that time Van Dyke stated his background and informed Brick that he was seeking to supplement his expected pension and social security benefits with an investment for capital appreciation. In response, Brick suggested Thorne preferred stock as an investment opportunity, describing the company as having a great future in the plastics business and stating that the type of machinery Thorne was building would be leased internationally in addition to being used for the company's own production, and that Thorne had a backlog of $10 to $12 million in orders for 1970. Brick also gave his assurance that the company would be able to fill those orders and that an investment of $25,000 would appreciate to about $250,000 when a contemplated public offering of Thorne stock took place in

the latter part of 1970 or early 1971. Van Dyke did not receive a Thorne financial statement during that first meeting, nor did Brick furnish one in response to Van Dyke's several requests prior to the latter's investment in Thorne.

After reading the Thorne offering circular and, at Brick's suggestion, visiting the Thorne plant, Van Dyke told Brick on January 3, 1970 that he would invest $25,000. Later that month Van Dyke had a conversation with Brick in which Brick stated he was mailing a "very, very strong letter," but that Van Dyke shouldn't worry about it, that the upside possibilities were much higher than the downside risks, and that he needed a response to the letter for his own protection. Brick did not acquaint Van Dyke with the nature of any particular problem besetting Thorne. Following that conversation, registrant mailed a letter dated January 24, 1970 to Van Dyke in which the risks involved in a new company such as Thorne were referred to in general terms, and a request was made for a written statement that Van Dyke was aware of the risks and the adverse effects of a loss on his financial status, that he understood that Brick was receiving a "finder's fee" from Thorne, and that he was consenting to Brick's acting on his behalf after completion of the Thorne transaction. On January 30, 1970 Van Dyke mailed the requested statement to Brick.

Van Dyke made his payment for Thorne stock by check dated February 2, 1970 in the sum of $25,000. This sum was raised by Van Dyke by sale of $23,500 In United States Treasury bills and by taking

$1,500 from his savings, Van Dyke having decided not to follow Brick's recommendation to liquidate his mutual fund holdings.

Similar representations were used by registrant and Brick to persuade Glenn Wills, a beauty salon operator, to invest $25,000 in Thorne. Although Wills places the date earlier in 1969, it appears from his other testimony that sometime in the fall of 1969 Brick called Wills' attention to Thorne, giving him the Thorne offering circular to read and representing to him that Thorne had the largest thermoforming machine in the United States and would capture 6% to 10% of the market for thermoform plastics. Brick further stated that Thorne had a backlog of orders amounting to $12,000,000 and that he hoped a public offering of Thorne stock would be made about January, 1971. In a later telephone conversation, Brick told Wills that "when the stock went public it could very easily go to $60 per share."

Arrangements were made by Brick for Wills to visit the Thorne plant in November, 1970. After visiting the plant, he and Brick attended a meeting for prospective investors that Thorne was holding in a nearby motel. After that meeting, at which Thorne's president estimated that annual sales would reach $400,000,000, Wills asked Brick about that figure. Brick replied that he had confidence in Thorne's management. Wills asked Brick for financial statements of Thorne prior to making an investment in Thorne, but did not receive such statements from him until several months after making his initial investment in the company.

On November 26, 1969 Wills signed a joint venture agreement in which he and two other investors, Thomas Spowart and Merle Kalish, agreed that the trustee for the joint venture, Kalish, would purchase Thorne stock. Wills gave Kalish a check for $25,000 on November 28, 1970 to pay for his share of the $125,000 that was being invested in Thorne preferred stock by the joint venture.

As was the case with Van Dyke, a letter referring to the risk of an investment in Thorne was sent to Wills by registrant and Brick prior to Wills making his investments Before receiving that letter Wills had a conversation with Brick in which Brick stated that he felt that the up-side possibilities were so much greater than the down-side that Thorne was not a bad risk. Wills acknowledged in a letter to registrant dated November 26, 1969 that he was aware of the risks involved in an investment in Thorne and wished to have Brick act as his investment counsellor following completion of the Thorne transaction.

The third investor witness, Thomas Spowart, a hairdresser, had become registrant's advisory client in late 1968. Brick received discretionary authority from Spowart to effect securities transactions in the latter's brokerage account and pursuant to that authority Brick bought and sold securities for that account without consulting Spowart. The average value of Spowart's portfolio while it was under Brick's management averaged between $25,000 and $50,000, and Spowart's net worth in November, 1969 when he invested $50,000 in Thorne was $115,000.

In the fall of 1969 Brick departed from his usual practice of not consulting Spowart regarding securities purchases for his account and telephoned Spowart for the purpose of calling his attention to Thorne as an investment opportunity. Brick informed Spowart that Thorne was a young company and a going concern that he believed had "a brilliant future." Brick went on to say that Thorne had approximately $12,000,000 in back orders which would probably produce 15 to 20 per cent net profit, and concluded with the thought that although Thorne was speculative, it was a company in which he thought Spowart would like to invest.

After some days of consideration but prior to November 26, 1969, Spowart telephoned Brick and said that he would invest $50,000 and would do so by liquidating his existing securities portfolio of about $40,000 and by borrowing the necessary additional $10,000 from a bank. In response, Brick told Spowart that the decision was a wise one, and that Spowart would probably make a million dollars from that investment. On November 26, 1969 at a meeting in Spowart's home which was also attended by Brick, Kalish, and Wills, Spowart signed the joint venture agreement committing himself to an investment of $50,000 in Thorne. At that meeting, Brick gave Spowart a letter similar to those directed by Van Dyke and Wills referring to the risks of an investment in Thorne, and asked Spowart for a letter acknowledging receipt thereof. When asked by Spowart why such acknowledgement was necessary, Brick responded that while Thorne was a going business, it could possibly have shipping strikes or possibly

machinery breakdowns. The requested acknowledgement, following in substance a rough draft prepared by Brick, was sent by Spowart to Brick a few days later.

At the November 26, 1969 meeting, Spowart gave his check for $50,000 to Kalish, as Trustee, and about a week later Spowart, Wills, and Kalish traveled to the Thorne plant where they turned over a cashier's check for $125,000 to Thorne's president. At no time before Spowart made his investment did he receive a Thorne financial statement, and the only information Brick gave on the results of Thorne's operations was to the effect that the company was running in the red but that he expected it to operate at a profit in 1970.

With the financial condition of Thorne continuing to deteriorate, Brick held meetings at his home during the summer of 1970 at which Van Dyke, Wills, and Spowart were advised of Thorne's financial difficulties and that it needed additional money to continue operations. As a result Wills invested another $5,000 in Thorne stock in September, 1970 and Spowart did likewise.

The noted representations used by registrant and Brick in the offer and sale of Thorne preferred stock were false, fraudulent, and misleading. Expressions of opinion to the effect that an investment in Thorne stock would appreciate tenfold in a period of a year, or in any period of time, were entirely unjustified, and were inherently fraudulent.[8/] Equally misleading and without basis were the

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8/ Haight & Co., Inc., supra, at 17; Kennedy, Cabot & Co., Inc., Securities Exchange Act Release No. 8817, at 6 (1970).

representations that Thorne could expect to net a profit of 15 to 20 per cent on its orders on hand and would have a profitable operation in 1970 or 1971. At the time of these highly optimistic projections registrant and Brick knew or should have known that the profitability of Thorne was entirely dependent upon an experimental machine becoming operational and necessary working capital obtained. Without further information disclosing the facts and problems foreseeable and being encountered, prospective investors could not reach an informed judgment regarding the risks involved in their investments. The general reference to the high degree of risk that Brick set forth in his letters cannot be accepted as a substitute for disclosure of facts, particularly in view of Brick's lulling statements that the investors need not worry about the warning nature of the letter and his assurances as to the up-side potential of Thorne. Further, the failure to furnish investors with available financial statements and the use of the Thorne offering circular, which was itself false and misleading, constituted fraudulent conduct under the circumstances.

The conclusion follows that registrant and Brick engaged in fraudulent practices and obtained money by means of false and misleading statements in the offer and sale of Thorne preferred stock during the period in question, and thereby violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act,

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

It also appears that registrant and Brick committed violations of the anti-fraud provisions of the Securities Act, Exchange Act, and Advisers Act in connection with their inducing Van Dyke, Wills, and Spowart to repose trust and confidence in them as an investment adviser. In doing so, registrant and Brick assumed the obligation of fiduciaries [9/] and were required to act in the best interests of those individuals. Obviously, registrant and Brick did not honor that obligation, preferring instead to earn commissions on sales of Thorne stock, which was unsuitable for the objectives and needs of the purchasers. In addition, registrant and Brick perpetrated a fraud upon Van Dyke and Wills by billing them and obtaining payment for purported investment advisory services which were never rendered and for which no agreement for such services existed.

The record does not support the protestations of registrant and Brick that a high degree of care was exercised to insure that adequate representations were made to clients. The limited amount of information set forth in the confidential circular and that otherwise came to Brick's attention was entirely insufficient to justify either his reliance upon it or the representations he made to his clients. [10/]

9/ Arleen W. Hughes, 27 S.E.C. 629 (1948).

10/ Cf. Hanly v. S.E.C. 415 F.2d 589 (2d Cir. 1969).

Brick's further contention that no commissions were received for the sales of Thorne stock to his clients is wholly devoid of merit. The record is uncontradicted that 2,429 shares of Thorne common stock "in full payment of brokers fees" [11/] were issued to Brick and received by him in May, 1970. The fact that Brick surrendered those shares to Thorne a month or so later upon demand of the then Thorne management does not alter the fact that Brick's sales of Thorne stock to his clients were in contemplation of receiving substantial commissions for his efforts in that regard. There is therefore clear evidence that Brick placed himself in a position where self-interest came into conflict with that owing to his clients, and that evidence considered in the light of the remainder of the record bearing upon Brick's participation in the sales of Thorne stock establishes that breach of fiduciary obligations which registrant and Brick assumed as an investment adviser.

Joseph C. Maurer
William J. Caho

Although Maurer was not active in the day-to-day operations of Thorne, he did participate in the directors' meetings and other meetings held by Thorne management for purposes of raising capital for the company and was one of the key individuals responsible for offering and selling the Thorne preferred stock. In October, 1969 he was present at preliminary discussions with Thorne's legal counsel

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11/ Div. Ex. 22E.

concerning the applicability of federal and state securities laws to Thorne's contemplated financing and in the decisions that led to the offering in question.

Maurer was present on November 7, 1969 at the Thorne meeting attended by prospective investors, at which time Holmes, Thorne's president, estimated that the company's annual sales would reach $400,000,000. He attended a similar meeting on January 31, 1970 when Holmes informed the assembled group that Thorne would have sales of $250,000,000 at the end of 1971, would operate at a 40% profit margin, and if things went well would make a public offering of its securities at $40 per share, adding that those present were "sitting at the first Ford meeting, that Ford had just been born that day." None of the problems Thorne was then experiencing in getting into production and financing its operations were discussed. At least two individuals made substantial investments in Thorne after attending the second meeting, and Maurer told one of them in February, 1970 that Thorne was operating in accordance with the projections made in the January 31, 1970 meeting, and another that the company would make its public offering of stock sometime in the third quarter of 1971.

As noted before, Maurer recruited Liataud's assistance in the selling of Thorne's stock and also accepted Caho's help in disposing of that stock. Maurer gave copies of Thorne's misleading

offering circular to Liataud, who then passed them on to his customers, several of whom later purchased Thorne stock. Maurer also advised Caho that it was all right for him to sell Thorne stock to his customers.

Maurer launched his personal campaign to offer and sell Thorne preferred stock to his Reynolds customers in October or the first week of November, 1969. By February, 1970 he had sold at least $185,000 of that stock to nine of his customers, three of whom were relatives of his.

Prior to making their purchases of Thorne stock, each of these investors received a copy of the misleading offering circular in person or by mail from Maurer or from Thorne. None of them, however, was told prior to this investment about the amount of loss Thorne was experiencing in its operations. Instead, Maurer confined his statements concerning the results of Thorne's operations to generalities along the lines that the company was operating in the red but would be in the black early in 1970. Some of his customers were also informed that no market existed for Thorne stock but that he hoped Thorne would have a public offering in at least two years.

After receiving Maurer's encouragement, Caho spoke to several of his Reynolds customers regarding Thorne, advising them that Thorne could very well compete with fiberglass and "looked like it could be a very good opportunity." As a result of Caho's efforts, five individuals, one of whom had not been Caho's customer earlier, invested

$95,000 in Thorne; they and Caho, who invested $5,000 in the venture, formed a partnership, Certified Investment, to hold their Thorne stock.

One of those customers, James Lundy, had given Caho instructions to let him know if Caho learned of anything that he throught would be of interest to him. When Caho heard about Thorne, he called Lundy immediately and together they went out to the January 31 meeting being held by Thorne. At that meeting Lundy met Maurer and heard Holmes make the extravagant statements about Thorne's future which have been earlier noted herein. During the following week Lundy spoke with Caho several times about Thorne and told Caho of his intention to visit the plant of a Thorne subsidiary in Detroit. Upon returning from Detroit, Lundy informed Caho of his interest in investing in Thorne and was told by Caho that if he would put up $50,000, others would also be interested. The group, which formed Certified Investment, subscribed to Thorne preferred stock about mid-February, 1970, by which time Lundy had decided to invest $70,000. Lundy then sold, through Caho, holdings of another stock to raise the $70,000 which he, in the company of Caho, paid over to Holmes at the Thorne plant.

Another investor in Caho's group, Joseph Bonner, had been a customer of Caho's at Reynolds for about six years. In February, 1970 Caho called Bonner pursuant to Bonner's earlier request to be told "if something good came along." Caho told Bonner that a group of six investors was being formed to invest in Thorne, explaining

that Thorne was a plastics company and that Maurer, his co-worker at Reynolds, was related to Thorne's president. Several days later, and having by then received a Thorne subscription agreement in the mail, they had another conversation in which Caho stated that holding Thorne stock in a partnership name was necessary because the number of Thorne investors had to be limited, and a partnership entity was counted as only one investor. In another conversation with Bonner in early February, Caho stated that he anticipated Thorne stock would be worth $40 per share in two years. About a week later Caho arranged to have Bonner visit the Thorne plant, at which time Bonner received an offering circular from Lopina and met others whose interest in Thorne had been sparked by Caho.

Enthusiastic about Thorne's potential as presented in the offering circular and relying heavily upon his previous relationship with Caho, Bonner subscribed for $5,000 of Thorne preferred stock. Bonner made payment of the subscription on February 26, 1970 by a check for $5,000 made payable at Caho's instruction to Thorne, and delivered that check to Caho at Reynolds.

At the times that Caho acquainted his customers with Thorne and recommended that company to them as a very good investment opportunity, Caho had no information concerning the company's profitability. No financial statements were given to the investors by Caho, nor did Caho ever discuss Thorne's financial condition with them.

No reasonable basis existed for Maurer's representation to his customers that Thorne operations would be profitable in 1970.

Being a director, he knew or should have known of the problems that Thorne was experiencing in getting into production. Moreover, use of the misleading Thorne offering circular operated as a fraud upon those customers, as did his failure to provide financial information about Thorne to them. Without that financial information, Maurer's customers were not in a position to judge for themselves the inherent risks of an investment in Thorne or the validity of the statements in the offering circular. Further, the omission of that financial information had the effect of making false and misleading the statements which he made to his customers concerning the risks presented by Thorne as a new company.[12/] Nor was there any basis for Maurer's statement that the market for Thorne stock would become available or a public offering made by Thorne in two or a few years. No plans had been formulated for such an offering, and at best the possibility of its ever being made was no more than hope or conjecture, a sharp contrast with the promise held out by Maurer.

Caho's representations to his customers were equally false and fraudulent by reason of his failure to provide financial information about Thorne at a time when he was advising his customers that Thorne represented a very good investment opportunity. Additionally, his prediction that Thorne stock would be worth $40 per share in two years was without justification and inherently fraudulent.[13/]

12/ Cf. Kennedy, Cabot & Co., Inc., supra; Century Securities Company, Securities Exchange Act Release No. 8123, at 4 (1967).

13/ Haight & Co., Inc., supra; Kennedy, Cabot & Co., Inc. supra.

Both Maurer and Caho are also accountable for the false, misleading and flamboyant statements of Holmes upon which their customers relied. Maurer and Caho had assumed an obligation toward their customers through past relationships to act fairly and in the latters' best interests.[14/] Arranging for their customers to attend the Thorne meeting, exposing them to Holmes' baseless extravagant predictions, and encouraging them to invest in Thorne without calling attention to the counterbalancing risks of such an investment constituted a serious breach by Maurer and Caho of the duty that they owed to their customers.

It is apparent from the record that Caho joined with Maurer in a scheme to offer and sell Thorne preferred stock to their respective customers and acted in concert in carrying out that scheme. Each of them used similar misrepresentations and fraudulent selling techniques to persuade investments in Thorne, and utilized an investment group device to further Thorne's financing plan. Moreover, Caho's role as a participant with Maurer is clearly shown by the fact that after subscribing for Thorne stock, Caho's customer, Lundy looked to Maurer for information and assurance concerning Thorne's progress. "In the absence of proof of actual knowledge, participation in a scheme may be shown from the surrounding circumstances if they should have alerted the persons to the existence of such scheme."[15/]

14/ Cf. Richard N. Cea, Securities Exchange Act Release No. 8662 (1969).

15/ Billings Associates, Inc., Securities Exchange Act Release No. 8217, at 5 (1967).

It is concluded therefore that during the period in question Maurer and Caho, singly and in concert, wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in the offer and sale of Thorne securities. 16/

The arguments of these respondents that they acted properly is belied by the record. They cannot divorce themselves from responsibility for representations of Holmes at the meetings attended by their customers at their suggestion nor can they be found to have discharged their duty toward those customers by relaying without questioning the false and misleading information given to them by Holmes or assembled in the offering circular.

It is evident that customers relied primarily upon Maurer and Caho for access to investment opportunities and that despite the limited independent investigation that was undertaken, the customers looked to these respondents for advice and guidance regarding Thorne and its stock. It is not enough under the circumstances for these respondents to suggest to customers that they investigate and determine for themselves whether to invest. By acts constituting an offering of Thorne stock to their customers, respondents assumed a burden of making a full and fair disclosure of the material facts. It was the obligation of Maurer and Caho, not that of their customers,

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16/ Contrary to Caho's contention, specific intent to defraud need not be proved in order to establish in these proceedings the commission of the alleged violations. Hanly v. S.E.C., supra, at 596.

to determine whether the offering circular and statements made at the meetings were complete and accurate, and their further obligation to correct for their customers any misstatements in those presentations. These obligations were not met.

Respondent Maurer's contention that the offering circular was not misleading is wholly unacceptable. For the reasons earlier stated, it was misleading at the time of its initial publication and became more so with the failure to amend it to disclose the operational and financial problems besetting Thorne. Nor can Maurer find comfort in the fact that the offering circular had been prepared by the officers of Thorne and reviewed by Thorne's counsel. Due diligence required more than blind reliance upon the self-serving statements of the operating officers of Thorne.[17/] In his position as a director and adviser of Thorne, Maurer had ready access to corporate books and records and could have and should have obtained the true picture regarding Thorne for his customers. As to the review of the circular by Thorne's counsel, it is obvious from the record that the review was not made to determine the accuracy or completeness of the circular's presentation. Moreover, reliance upon advice of counsel cannot excuse failure to comply with the federal securities laws.[18/]

17/ Cf. Richard Bruce & Co., Inc., Securities Exchange Act Release No. 8303 (1968); A.T. Brod & Company, Securities Exchange Act Release No. 8060 (1967).

18/ Cf. Dow Theory Forecasts, Inc., Investment Advisers Act Release No. 223, at 10 (1968); Telescript - CSP Inc., 41 S.E.C. 664, 668 (1963).

Maurer also contends that he did not receive actual 1969 sales figures and financial statements concerning Thorne's 1970 operations until after he had offered and sold Thorne stock and that therefore the statements made by him to customers in those respects were not inaccurate. But assuming that Maurer did not actually see such statements until after his sales were effected cannot change the finding that his customers were misled regarding Thorne's financial condition. As admitted by Maurer, he told his customers that Thorne was operating in the red and would be operating in the black by Spring, 1970. If in fact financial statements were neither received nor reviewed prior to that advice to his customers, he should not have expressed those opinions. To do so with only the unverified assurances of other Thorne officers underlying his representations was unjustified and misleading. What has been said about the lack of justification for Maurer's opinion regarding Thorne's financial condition and prospects is also applicable to the failure to disclose operational problems that had come to his attention. Assurances from Holmes and other operations personnel about the early resolution of Thorne's difficulties could be accepted by Maurer without independent verification only at his peril. Where, as here, Maurer lacked essential information, he should have disclosed that fact and the risks that arose from his lack of information. 19/

19/ Hanly v. S.E.C., supra at 597.

Respondent Caho's position that the evidence against him must be limited to testimony of witnesses called by the Division is without validity. The fact that the Division did not make a motion to connect up the testimony of the other witnesses with Caho is immaterial. A motion of that nature would have been at best surplusage in view of the fact that the testimony of all witnesses, except where specifically limited, was admitted subject to the Division establishing concert of action as alleged in the Order. Inasmuch as the record affirms that the alleged concert of action by Maurer and Caho existed with respect to the fraudulent conduct adopted by them in the offer and sale of Thorne stock, evidence admissible against Maurer on the issue of his alleged fraud became admissible with respect to the alleged fraud perpetrated by Caho. Moreover, had the Division failed to prove the alleged concert of action in this regard, the record nonetheless suffices to establish Caho's individual misconduct. 20/

Caho's further protest that the Division has failed to prove its allegations as set forth in paragraph 2 of the "Division's More Definite Statement," dated October 15, 1971, is also without

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20/ Respondent Caho again argues as he did at the hearing that admissions made by him during the course of the Division's investigation that preceded the institution of these proceedings are not admissible because he was not accorded rights to which he was entitled as a matter of due process, including the right to counsel. Upon consideration of the present arguments, it does not appear that the ruling heretofore made overruling Caho's objections to acceptance of the admissions in evidence should be disturbed.

merit.[21/] As has been noted, Caho is personally accountable for the false and misleading statements involving unwarranted predictions of a price rise in Thorne stock and the soundness of an investment in that stock, and is by reason of his concert of action with Maurer vicariously responsible for the latter's fraudulent statements and conduct.

Public Interest

Respondents' wilful violations of the Securities Act and Exchange Act require consideration of whether remedial action is necessary in the public interest. In that connection, the various mitigating factors submitted by respondents, their backgrounds, and their records in the financial community have been carefully weighed.

Respondents strongly urge that their asserted reliance upon advice of counsel evidences their good faith and their concern for the law and the interests of their customers. But the record does not reflect that counsel had been fully apprised of all of

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21/ Paragraph 2 of the "Division's More Definite Statement" recites:

> 2) The Division intends to prove that respondent Caho personally made the false and misleading statements of material facts and omitted to state the material facts alleged in subparagraph 1(a) through (e) and committed the acts alleged in subparagraph 2 through 4 of paragraph C, Section II of the Order. The Division also intends to prove that respondent Caho indirectly caused to be made the misleading statements and omissions alleged in subparagraph 1(f) through (i), paragraph C, Section II of the Order.

the material facts relating to Thorne and its operations at the time that he reviewed the Thorne circular and furnished a limited comment thereon. Nor was counsel's advice solicited or given with respect to the fraudulent representations made to investors at the Thorne meetings nor relied upon by respondents when they misrepresented the risks involved and the likely profitability of an investment in Thorne. Moreover, as the Division points out, the record does not establish that respondents Brick, Caho, or Liataud received advice from counsel. What was received was information that Maurer gave to them concerning such advice, statements which in view of Maurer's personal interest in Thorne should not have been relied upon by them without verification from independent counsel.

The record is clear that respondents recognized the highly speculative nature of an investment in Thorne, and it is equally clear that they callously ignored and attempted to evade their responsibility to furnish complete and accurate information about a company which they had determined to recommend as an investment opportunity. The indifference displayed by respondents toward the best interests of their customers is inexcusable and cannot be condoned by reason of inexperience in the area of private offerings, absence of deliberate intention to defraud, or for any other reason offered by respondents.

In the light of the foregoing and of the extensive and serious nature of the violations committed by respondents, it is concluded that the public interest requires that the registration

of John R. Brick & Company as an investment adviser should be revoked, [22/] and that Brick, Maurer, and Caho should be barred and Liataud suspended for three months from association with any broker-dealer. However, because it appears that the public interest would not be endangered if Caho were permitted to return to the securities business under adequate supervision, it is appropriate to provide also that Caho may after one year apply for permission to re-enter the securities business under proper supervision.[23/]

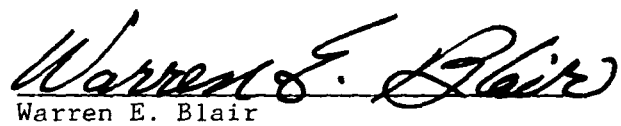
Accordingly, IT IS ORDERED that the registration of John R. Brick & Company, as an investment adviser is revoked; that John R. Brick, Joseph C. Maurer, and William J. Caho are each barred from association with a broker-dealer, except that William J. Caho after a period of one year from the effective date of this order may become associated with a registered broker-dealer in a non-supervisory capacity upon an appropriate showing to the staff of the Commission that he will be adequately supervised; and that Clarence J. Liataud is suspended from association with a broker-dealer for a period of three (3) months from the effective date of this order.

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

22/ On June 5, 1972 John R. Brick & Company filed a Notice of Withdrawal From Registration As Investment Adviser pursuant to Rule 203-2 under the Advisers Act. It would not be in the public interest for the notice of withdrawal to become effective.

23/ All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.



Warren E. Blair
Chief Administrative Law Judge

Washington, D.C.
February 1, 1973