ADMINISTRATIVE PROCEEDING
FILE NO. 3-6134

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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| In the Matter of | : |
| GLEN COPELAND | : |
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1984

# INITIAL DECISION

Washington, D.C.
April 12, 1984

Max O. Regensteiner
Administrative Law Judge

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APPEARANCES: Charles C. Harper, Nancy Van Sant, Roy M. Hartman and Natalie Zeitler, for the Commission's Division of Enforcement.

Glen Copeland, pro se.

BEFORE: Max O. Regensteiner, Administrative Law Judge

In these proceedings pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act"), the remaining issues are (1) whether Glen Copeland engaged in misconduct as alleged by the Division of Enforcement and (2) if so, what if any remedial action is appropriate in the public interest.

The alleged misconduct occurred in connection with a massive fraudulent scheme devised and masterminded by one Dennis Greenman. The allegations are limited to the period May 1980-April 1981 ("the relevant period") when both Greenman and Copeland were associated with Barclay Financial Corp. ("registrant"), although the scheme was launched and carried forward during Greenman's prior association with two other broker-dealers.[1/] The Division alleged that in connection with the scheme, Copeland willfully violated antifraud provisions of the securities laws and willfully aided and abetted registrant's violations of recordkeeping requirements.[2/]

Following hearings, Copeland moved for dismissal of the charges against him on the ground that he was not a "person associated with a broker or dealer" and therefore was not subject

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1/ The order for proceedings also named various other respondents, including Greenman, registrant, and registrant's two principal officers. The proceedings against those respondents were disposed of through a settlement offer accepted by the Commission and consent orders entered in a related injunctive action, respectively. Among provisions of the consent orders was one requiring registrant to withdraw its registration. It has done so. Greenman pled guilty to criminal charges and is serving a prison sentence. On Fifth Amendment grounds related to the Court's rejection of a plea agreement, Greenman has refused to testify in any proceeding.

2/ The order for proceedings included the additional allegation that Copeland willfully aided and abetted violations by registrant of net capital requirements. However, the Division withdrew that allegation during the hearings.

to the Commission's jurisdiction. I denied that motion, finding that during the relevant period he was controlled by Greenman and at least indirectly by registrant and as such was an "associated person." The Commission denied Copeland's application for interlocutory review of my ruling. Subsequently, the parties filed proposed findings and briefs on the merits of the allegations. The findings and conclusions herein are based on the preponderance of the evidence as determined from the record and upon observation of the witnesses. */

For the reasons stated below, I conclude that the record does not support adverse findings, and that the proceedings against Copeland should therefore be dismissed.

The Fraudulent Scheme in Outline

It is undisputed that, beginning in about 1977 and continuing to April 1981, Greenman carried out a massive fraudulent scheme in which he induced investors to part with millions of dollars on the representation that those sums would be invested in a substantially risk-free "special arbitrage" or "short-term trading" program which would yield extraordinary returns. In fact, investors' funds were employed in speculative options trading, and large losses were sustained from time to time. In addition, funds were routinely commingled, misapplied and misappropriated. Through elaborate deceptive means which are detailed below, and in some of which Copeland was a participant -- though by

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*/ The record as to Copeland does not include the following Division exhibits received only against Greenman, who did not settle until after the first few days of hearing: Nos. 8-10, 18, 29-33, 37-40, 48-61, 73,74,76.

his account an unwitting one -- investors were lulled into believing that their investments were as represented by Greenman and that their account balances were steadily increasing. Based on this belief, they poured additional amounts into the accounts. The investments were made largely through various limited partnerships which Greenman caused to be organized. Greenman's contacts were mainly with the general partners who in turn brought in others as limited partners. One of the selling points was that one H.P. Demery, apparently a wealthy businessman who was himself swindled by Greenman, had undertaken to indemnify other investors against losses from their participation in the "program," in return for a share of any profits. The actual scope of Demery's commitment is not clear from the record. Since investors were led to believe their accounts were constantly going up in value, there was no occasion to invoke the Demery "guarantee."

Respondent Copeland: Background and Relationship with Greenman

Copeland, who is 52 years old, has a college degree in business administration with a major in accounting. Following two years of army service, he spent some 16 years in progressively more responsible positions with large business enterprises. In about 1970, he started his own business, a tape duplicating operation, in Jacksonville, Florida.

Copeland first met Greenman in 1977, when he opened an account with the Jacksonville office of Merrill Lynch Pierce Fenner & Smith, where Greenman was a salesman. Copeland began to trade in stock options recommended by Greenman.

His initial trading resulted in substantial losses. In 1978, Greenman transferred to Paine Webber Jackson & Curtis, in its Miami office. It appears that subsequently he became an officer of the firm. 3/ After moving to Paine Webber, Greenman told Copeland, who had no more funds for trading, that he could trade in the account of Greenman's father-in-law, provided he reimbursed that account for any losses and shared any profits. Copeland accepted Greenman's word for this arrangement; he never met or spoke to the father-in-law and received no written authorization. At least according to what Greenman told him, Copeland lost further substantial amounts from trading in that account, which he was unable to cover from his own resources. Greenman thereupon told him that he could arrange for a loan from Demery to cover the losses. As with the father-in-law, Copeland had no contact with Demery. Copeland pledged a building he owned as collateral. Apparently Greenman took money from Demery's account; at any rate, Demery was unaware of the loan. 4/ Subsequently, Copeland

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3/ The Schedule D for Greenman included in registrant's Form BD lists Greenman's title at Paine Webber as "account executive." But one of the customers who had extensive dealings with Greenman indicated in his testimony that Greenman had been promoted to senior vice-president. Another customer testified that Greenman's title was vice-president.

4/ In an April 1979 Paine Webber intra-office memorandum, in which concerns were expressed about Greenman's "option trading system" and the manner in which he solicited new accounts, concern was also expressed about the role of Demery, whom Greenman had represented to a Paine Webber official as being a wealthy customer so pleased with the results of Greenman's program that he was willing to guarantee other clients against loss.

transferred the building to Greenman in liquidation of the purported loan. Greenman apparently told Copeland that this was what Demery wanted.

Shortly after he transferred to Paine Webber, Greenman asked Copeland to accept at the latter's business address correspondence from Paine Webber addressed to three or four Paine Webber customers. According to Copeland, Greenman said he wanted to check "them" before they were forwarded, but did not say why he did not have the items sent to his own address. (Div. Ex. 84, p. 205) Copeland agreed to Greenman's request and received these items for two to three months. He turned them over to Greenman, unopened, without contacting the addressees. It appears that among the items were the customers' monthly account statements which Greenman was thus diverting to himself. This aspect of the scheme, which also involved the sending of phony statements to customers in place of the true ones, is further discussed below. There is no indication in the record that Copeland was aware of what was inside the envelopes.

In early 1979, Greenman encouraged Copeland to sell his business and to devote his full time to business matters related to Greenman. Copeland's first assignment was to move to a city of his choice, which proved to be Tulsa, Oklahoma, for the purpose of locating potential investors who would open joint accounts with Demery in the "program." Those joint accounts were later to be converted to a limited partnership, with Copeland as the general partner. According to Greenman, Demery would agree to indemnify investors against

any losses. Greenman told Copeland that in return for finding potential investors and providing bookkeeping services to keep track of the accounts, Copeland could earn about $100,000 a year. In Tulsa, Copeland contacted an individual associated with the Chamber of Commerce with a view to getting the latter's assistance in locating potential investors. He described Greenman's "program" in glowing terms. Word of this contact reached Paine Webber. A few days later, Greenman told Copeland to stop his activities and to "just wait" (Tr. 1648), and that Greenman and Demery would work something out for him. Copeland remained in Tulsa until November 1979, with Demery purportedly (according to Greenman) paying his expenses of about $12,000. Copeland received no other compensation during this period. He did not speak to or receive any correspondence from Demery, but dealt solely with Greenman. In connection with his setting up a corporation purportedly at Demery's request, however, he received papers containing Demery's purported signature. The corporation he established was designated as the address for Paine Webber mail for several of Greenman's customers. As before, Copeland transmitted the items received to Greenman, unopened. Copeland testified that Greenman told him these were the accounts of persons who were to be investors in the partnership to be formed in Oklahoma. While in Tulsa, Copeland also did some market research, submitting his recommendations to Greenman.

In late 1979, at Greenman's request, Copeland returned to Miami to perform market research and statistical analysis for Greenman relating to stocks underlying

listed options. For this, he was paid about $30,000 a year by Greenman, who was partially reimbursed by Paine Webber. At first, Copeland did his computations manually, but at the end of 1979, at his request, Greenman bought a mini-computer for his use. His first computer program, developed at Greenman's behest, was one which produced purported daily balances in customers' accounts reflecting constant appreciation. This program and printout were integral parts of Greenman's scheme -- assertedly unbeknownst to Copeland -- and are discussed in detail below.

In May 1980, Greenman moved from Paine Webber to registrant, bringing with him his accounts, Copeland and the computer. At the time, registrant was a single-office discount brokerage firm. Greenman was given the title of senior vice-president and placed in charge of a newly opened branch office whose exclusive function was to "serve" Greenman's customers. Copeland's principal function, as before, was to provide Greenman (and registrant) with technical market analysis. Pursuant to an agreement between registrant and Greenman, registrant was to pay certain of his expenses, including $30,000 per year for Copeland's services. In September 1980, Copeland's compensation was increased to about $52,000 per year. Copeland claimed that he served in the capacity of a consultant to Greenman and not as an employee or other "associated person" of registrant. As previously indicated,

I concluded that Copeland, though not an employee, was nevertheless an associated person of registrant.

During the course of his association with registrant, Copeland obtained another purported loan from Demery, of about $100,000, to enable him to trade in options. Demery was not aware of this or any other loan to Copeland until April 1981, after the fraud had come to light. Copeland repaid the loan, plus $60,000 representing interest and a portion of profits realized, within about two months. In August 1980, Copeland requested Greenman to purchase certain stock options ("the Tandy calls") for Copeland's account. Instead of placing an order for Copeland, Greenman had the calls removed from another customer's account as of an earlier date and placed in Copeland's account. Because the market price of the calls had gone up, Copeland had an instant unrealized gain. Copeland ultimately realized a profit of over $400,000 on these calls. Greenman had lent Copeland $100,000, without interest, to enable him to effect the purchase. The loan was repaid within a month. According to Copeland, Greenman offered the loan because he knew Copeland was unhappy with his compensation.

Later, Copeland received a $400,000 loan from Greenman, also interest free. This one was also promptly repaid. In addition, Greenman agreed to let Copeland receive a percentage of the commissions, which were sizeable, generated in Copeland's own account and the accounts of

a corporation owned by Copeland, an associate and a relative over which Copeland had discretionary authority. And, purportedly with Demery's approval, Greenman agreed to let Copeland trade up to $1 million in Demery's account and to pay Copeland 20 percent of the commissions generated in that account.

The Fraudulent Scheme and Copeland's Role in It

Beginning during his Merrill Lynch tenure and continuing through the relevant period, Greenman solicited investments in a "special arbitrage" or "short-term trading" program which he described to prospective investors in substance as follows: The program, nationwide in scope and based on the concept of arbitrage, capitalized on the price differential of securities and commodities in the different markets where they were traded. The persons operating the program, among whom was Greenman, were very successful with it because of effective use of a computer. The funds of individual investors were pooled, and profits were allocated to their accounts on a daily or weekly basis. At day's end, any long positions were converted into cash and/or United States Treasury Bills. As a result, the risk of overnight declines in the value of holdings was removed. The program had experienced an annual rate of return of about 75 percent. And it was virtually risk free.

The above represents only a brief summary of a very elaborate story told by Greenman, who was obviously a highly persuasive "con man." Since reports to customers showed the rate of return to be as high as or even higher than represented by Greenman, potential investors practically clamored to be permitted to participate and existing investors not only poured in additional funds of their own, but brought in those of family and friends. As noted, Greenman's story was a complete fabrication. While the options trading he did was successful at times, at other times heavy losses were sustained. At all times, apparently, the value of the accounts was far below that represented to customers.

To keep a scheme such as this going as long as Greenman did obviously required an elaborate deception. And that is where Copeland played a role after he returned to Miami to work with Greenman. Apparently beginning already during his Merrill Lynch tenure and continuing through his associations with Paine Webber and registrant, Greenman put false addresses on customers' account applications. 5/ As a result, the monthly statements for these accounts, reflecting the options transactions which Greenman

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5/ Because the allegations cover only the period when Greenman and Copeland were associated with registrant, the evidence presented by the Division regarding the deceptive practices focused on that period. Copeland, on the other hand, has stressed that the scheme was already in full flower when he became involved.

was effecting, did not reach the customers. As noted, Greenman used Copeland's address for several customers. In place of the true account statements, customers received fictitious monthly statements for the much larger number of accounts that they thought they had. These statements, which Greenman caused to be prepared, but which purportedly emanated from A.G. Becker Incorporated, registrant's clearing broker (and before that from Merrill Lynch and Paine Webber), reflected a state of affairs consistent with his misrepresentations. They showed only cash and/or Treasury Bill positions and reflected constant increases in the value of the accounts. As of the end of February 1981, the aggregate net equity of the customers' accounts according to these statements was about $99.8 million, whereas the actual net equity of those accounts according to registrant's books and records was only about $38.6 million. During the relevant period, the fictitious statements were prepared by computer away from registrant's premises; there is no indication that Copeland ever saw any of them until after the fraud came to light.[6/] The data from which they were run off was written on "fortran coding forms" prepared by clerical personnel in the branch

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6/ During the Paine Webber period, Copeland, as a limited partner in one of the partnerships, for a time received copies of phony statements. This aspect of the case is further discussed at page 21, note 12, infra.

office, using daily computer runs generated by Copeland as described more fully below. While Copeland was aware of the preparation of the fortran forms, he testified that Greenman told him they were used to prepare a monthly report for consideration at monthly meetings among Greenman, Demery and the various general partners.

The deception went far beyond the monthly statements, however. Beginning at least during the time Greenman was with Paine Webber and possibly before, the general partners were given their purported account balances every single business day. At a prescribed time of day they called Greenman or were called by him and were given the figures. During the latter part of the Paine Webber period and continuing thereafter, Copeland substituted for Greenman on occasions when the latter was away from the office. In some instances during the relevant period, the office manager of the branch office performed this function. In the daily phone calls, the customers also reported additions to their accounts which they were sending in and amounts that they wished to withdraw.

It appears that initially Greenman made the calculations by which the daily balances were derived on a manual basis. After Copeland had become somewhat proficient in use of the computer, he formulated a program, at Greenman's behest, that generated a printout showing, for each of the more

than 100 accounts the customers thought they had, an opening balance, the deposits or withdrawals reflecting directions given in the daily telephone calls, an "accumulated weekly profit" and a closing balance. The program involved taking the previous day's closing balance, adjusting for deposits or withdrawals and multiplying the resulting figure by one of four arbitrary factors to obtain the new balance. The factors, which Greenman supplied to Copeland every day, varied from day to day, but were always in the range from about 1.002 to 1.004. Putting aside deposits and withdrawals, application of the factors of course caused the purported account balances to increase constantly. A printout as described was produced on a daily basis from March 1980 to March 1981, either by Copeland or by a computer programmer hired by Greenman in late 1980.

Copeland denied any knowledge of Greenman's fraudulent scheme. He testified that he never saw any of the phony monthly statements and that it was always his understanding that the accounts were in fact investing in stock options and that the investors knew this. With respect to his computer program and the daily printout, the following reflects his testimony substantially verbatim (Tr. 1659-65): At the time Greenman asked him to devise the program, he told Copeland that the partnerships associated with Demery were

involved in many business activities in addition to the brokerage accounts, including a $700 million loan "from Arabia" that Demery was involved in and from which he had income that was being made available to the partnerships. Greenman further represented that he (Greenman) had proved to be the best "estimator" as to the total partnership assets; that the factors were the means of obtaining the daily "estimates"; and that there was a monthly meeting among Demery, Greenman and the general partners, at which the estimates were reviewed and an evaluation made of their accuracy, and Demery reimbursed the accounts that had losses and redistributed the income so that every investor would be on a "more or less level basis." According to Copeland, it made sense to him that the general partners would need a daily estimated valuation so as to enable them to place a valuation on each partnership unit. The use of the factors, he considered, was a normal accounting method to arrive at an estimate.

The Division, in turn, argues that Copeland's explanation strains credulity and that at best he recklessly chose to ignore a multitude of "red flags."

Parties' Contentions Regarding Copeland's Alleged Violations of Antifraud Provisions

The Division contends that Copeland violated the

antifraud provisions in at least two respects. 7/ First, it urges, he made material misrepresentations to registrant's customers to whom he spoke when Greenman was away, by giving them ostensibly accurate account balances which in fact had no relationship to the actual balances. It further points out that in these conversations he failed to disclose that activity in the accounts actually consisted of the trading of speculative options, and that the accounts had sustained large trading losses. In that connection, the record shows that, shortly after they joined registrant, Copeland learned from Greenman that during the Paine Webber period Greenman's accounts -- the accounts he had brought to registrant -- had lost about $7 million. He was also admittedly aware of sizeable losses in the last quarter of 1980 and in January 1981. The Division contends that Copeland's misrepresentations and omissions had the effect of lulling customers into a false sense of security and inducing them to make

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7/ The provisions which Copeland allegedly violated are Sections 17(a)(1), (2) and (3) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

further investments. 8/

The Division further contends that on a daily basis during his association with registrant, Copeland participated in a scheme to defraud customers and engaged in acts, practices and a course of conduct which operated as a fraud on them. The particular conduct cited by the Division is Copeland's creation and operation of the computer program which fabricated the account balances furnished to customers every day. It contends that the resulting misrepresentations to customers caused them to believe they were achieving substantial returns on their investments, induced them to make further investments and were instrumental in avoiding detection of the truth. The Division urges that Copeland's computer program was critical to the success and longevity of Greenman's scheme and pivotal in avoiding its

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8/ The Division makes the additional argument that Copeland, as an associated person of registrant, owed fiduciary obligations to registrant's customers, including the duty to disclose the above material facts. The argument rests on the faulty premise that a broker-dealer and every associated person of a broker-dealer per se occupy a fiduciary relationship to the firm's customers. That is simply not the law. In any event, the imposition on Copeland of a fiduciary's obligations would add nothing to whatever duty to disclose he already had under the antifraud provisions in order to make his statements to customers not misleading.

Actually, the non-disclosure arguments presented by the Division are beside the point. If Copeland knew or should have known that the daily "figures" were in fact fabricated account balances, then the essence of his fraud was his assistance to Greenman in creating them and conveying them to customers. No amount of disclosure could have cured that fundamental fraud. On the other hand, if he did not know, and was not reckless or even negligent in not knowing, it would have made no sense for him, a mere assistant to Greenman, to disclose matters which the customers presumably knew in any event.

detection, in that such program made possible the reporting of fictitious balances for a large number of accounts; assured that deposits and withdrawals were accurately recorded, thereby preventing bookkeeping errors which could have caused customer alarm; made possible the storage and retrieval of large amounts of data for over 100 purported accounts; and formed the basis for the fictitious monthly statements. The effect of all this, the Division asserts, was to cause the customers to believe their investments were safe and secure and had been made in accordance with Greenman's representations and thereby to delay detection of the scheme.

The Division further points out that despite frequent conversations with one of registrant's principals, who was its compliance officer, Copeland failed to disclose information, such as the use of the arbitrary factors and the daily computer runs, which if disclosed might have triggered inquiry and discovery of the fraud. 9/

Finally, the Division contends that the record shows that Copeland acted knowingly or at least recklessly and therefore with the scienter which is requisite to a finding of violation of certain of the antifraud provisions. It also contends that

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9/ The Division asserts that Copeland also violated the antifraud provisions by exercising discretion over and trading in part of Demery's account in early 1981 without being authorized to do so by Demery. This alleged violation, however, is not encompassed within the allegations in the order for proceedings and is therefore not before me for consideration.

his violations were "willful," within the meaning of Section 15(b)(6) of the Exchange Act.

Copeland, on the other hand, contends that the Division has failed to prove that he engaged in fraudulent conduct. As noted, he asserts that he did not know of Greenman's fraudulent scheme.[10/] He further claims that no showing has been made that his conduct was reckless or even that he was negligent. Copeland also maintains that the computer program he developed was not material to the fraud, serving merely to save Greenman a little time.

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10/ Copeland asserts that his own testimony to that effect is corroborated by statements in an affidavit executed by Greenman in November 1981, to the effect that in his (Greenman's) opinion, Copeland had no "knowledge or appreciation of the possible illegality" of the Greenman "program." (Div. Ex. 39) While the affidavit was received as a Division exhibit against Greenman when the latter was still contesting the allegations, on the theory that it contained admissions, I rejected Copeland's offer of the same document because the Division had had no opportunity to cross-examine Greenman. (Tr. 1685-89) Copeland asks that I reverse that ruling and receive the affidavit in evidence. For its admissibility he relies on Federal Rule of Evidence 804(b)(3), as interpreted in U.S. v. Brainard, 690 F.2d 1117 (4th Cir. 1982), which he claims is on all fours with the situation here. The Division, on the other hand, urges that Brainard is distinguishable.

There is no need to resolve this somewhat thorny evidentiary question, because, even if Copeland is correct, Greenman's statements are entitled to no weight, given his history of deceit. Moreover, they shed no light on what I deem to be the critical issue: whether or not Copeland acted recklessly or negligently.

Discussion of Antifraud Charges

Notwithstanding Copeland's protestations regarding the materiality of his contributions to Greenman's fraud, I agree with the Division that the functions he performed, including preparation of the daily printout and the occasional telephone contacts with customers, were of a sufficient order of importance in the scheme to make Copeland a participant. While the calculations which the computer performed could have been performed on a non-automated basis (as indeed they had been originally), there is no doubt that automation both expedited and facilitated the procedure. And regardless of what Copeland may have thought they represented, the figures he provided to Greenman to pass on to customers or which he himself gave to customers in fact materially misrepresented what the customers thought they were hearing, to wit, their account balances. However, Copeland cannot be found to be a violator of the designated antifraud provisions unless the record warrants a finding that his participation in the scheme was knowing or reckless, or, with reference only to Sections 17(a)(2) and (3) of the Securities Act, which do not require a showing of scienter, that he failed to exercise reasonable care. 11/

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11/ The Division concedes that at least some fault, in the form of negligence, is requisite to a finding of violation of Sections 17(a)(2) and (3). Moreover, it would appear that, to find any such violation "willful," at least a lack of due care must be shown. Cf. International Shareholders Services Corporation, 46 S.E.C. 378, 381-3 (1976).

On the record before me, I credit Copeland's testimony that he was himself deceived by Greenman and did not have actual knowledge of the scheme. Thus, the critical issue is whether his conduct was reckless or at least negligent. Looking at the matter with the benefit of hindsight, there is much force to the Division's position that the scene was littered with "red flags" which must or at least should have alerted Copeland to the ongoing scheme. For example, Copeland knew that the factors used to obtain the daily "closing balances" were arbitrary. And the balances, which he was told were "estimates," were reported to the investors in exact dollars and cents terms. Moreover, despite the occasional large trading losses, the factors were always positive, and the balances never declined (except as a result of withdrawals). And whereas those balances purportedly represented total partnership assets rather than only funds invested in Greenman's trading program, the sums to be credited or withdrawn represented only changes in the trading accounts. Additionally, various practices or transactions involving Copeland, all pursuant to Greenman's directions or instructions, were of an irregular nature. These included the sending of some customers' mail to Copeland's addresses; Greenman's authorization to Copeland to manage funds in the accounts of Demery and Greenman's father-in-law without Copeland himself having any written authorization from or even contact with those customers; the purported loans from Demery, also without any direct contact; and the transaction in Tandy calls, involving the transfer of those securities to Copeland's

account out of the account of another customer. 12/ Greenman's explanations to Copeland regarding the daily "estimates" and the other unusual procedures in large part do not withstand critical analysis. And Copeland's claimed acceptance of those explanations at face value strains credulity.

The case takes on a different coloration, however, when consideration is given to the environment in which Copeland operated during the time he was associated with Greenman and to his very limited functions in connection with the fraud. While Copeland , as stressed by the Division, had a college degree and had substantial business experience by the time he joined up with Greenman, he had had no experience in the brokerage business. Even after he became associated with Greenman at Paine Webber, and through the relevant period, he had no role in day-to-day customer-related activities.

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12/ The Division also points to the fact that for a few months in 1979, while Copeland was in Oklahoma, he was a limited partner in one of the partnerships "served" by Greenman and as such received not only the general partner's monthly summaries of the earnings of each partnership interest, but also copies of Greenman's phony Paine Webber monthly statements for the partnership. Those statements, unlike statements which Copeland had earlier received when he individually was a Merrill Lynch customer, did not reflect securities transactions or positions, but only purported weekly profits denoted as "capital distributions." Copeland testified that in reviewing the material received from the general partner, he was mainly "just looking at [his] balance" and paid little attention to the "back-up data." (Tr. 1860) In any event, to expect him to have discerned that the Paine Webber statements were phony and that there were similarities between them and the printouts which he generated months later, and to draw certain conclusions from such a comparison, is simply asking too much.

His basic function throughout was to do market research for Greenman, and he devoted almost his entire working time to it. The running of the infamous computer program took only a few minutes of his day. And in the latter part of the relevant period, that function was performed principally by Greenman's computer programmer.

A further significant factor is that Greenman was a highly accomplished confidence man and liar. When Copeland was duped by Greenman, he was in good company. By way of example, of the four investors who testified, two were attorneys, and one was a certified public accountant. All four were sophisticated in business matters. Yet each of them was deceived on a mammoth scale over a period of several years. Of course, as the Division points out, Copeland, by virtue of his particular relationship with Greenman, had access to much information that was not available to those investors. Nevertheless, in assessing the reasonableness of Copeland's acceptance of explanations proffered by Greenman, the persuasiveness of the deceiver is a pertinent consideration.

Possibly of greatest significance is the fact that when Copeland assumed his role as Greenman's consultant during the Paine Webber period, the scheme, including the daily computations and phone calls, was already in full swing. On the occasions prior to creation of the computer program when Copeland was pressed into service to answer the

investors' calls and give them the day's figures, the investors simply asked for their "numbers"; they did not engage in conversation with Copeland beyond that. 13/ Thus, even when Copeland developed his computer program, it was not unreasonable for him to believe that he was merely facilitating a procedure with which the investors were already fully familiar and by all indications satisfied. Moreover, Greenman's business was being conducted under the umbrella of a large and respected securities firm, which from all indications valued Greenman's services highly. 14/ Thus, the operation had about it an aura of respectability and regularity which would have tended to allay suspicion. The very audacity of the scheme in itself also could well have tended to put any suspicion to rest. Even to have an inkling of what was going on would have required an assumption that investors were not receiving statements reflecting the actual transactions in their accounts. On this record, I cannot find that Copeland

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13/ One investor testified that Greenman told him that in his absence the investor could get "the figures" from Copeland, but that Copeland "wouldn't know anything about the program itself." (Tr. 880). Thereby Greenman discouraged the investor from discussing the "program" with Copeland.

14/ There is of course no issue before me concerning Paine Webber's possible responsibility for Greenman's fraud, although Copeland has sought to inject that issue. The textual comments which carry this note pertain only to impressions which Copeland could reasonably have gotten.

should have known that that was in fact the case.[15/]

Alleged Recordkeeping Violations

As noted, Copeland is also charged with aiding and abetting recordkeeping violations by registrant.[16/] That charge, however, rests essentially on the fact that because of the fraudulent scheme and its ramifications, registrant's books and records, to the extent they pertained to the branch office's customers, were wholly false. In view of my findings absolving Copeland of culpability in connection with the fraud, it follows that he can also not be held responsible for the record-keeping violations.

ORDER

On the basis of the above findings and conclusions,[17/] IT IS ORDERED that the proceedings with respect to Glen Copeland are hereby dismissed.

This order shall become effective in accordance with

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15/ It is true that Copeland had an opportunity to discover the truth by contacting the customers whose statements were sent to his addresses. Arguably, the use of his addresses for this purpose in and of itself should have made him suspicious and caused him to make further inquiry. Because of the totality of the context described above, I have not made such a finding.

16/ The provisions allegedly violated are Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder.

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

and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice.

Pursuant to that rule, this initial decision shall become the final decision of the Commission as to each party which has not filed a petition for review pursuant to Rule 17(b) within fifteen days after service of the initial decision upon such party, unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to such party. 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.

Max O. Regensteiner
Administrative Law Judge

Washington, D.C.
April 12, 1984