ADMINISTRATIVE PROCEEDING
FILE NO. 3-2621

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

GILBERT F. TUFFLI, JR.
STANLEY RADLER
STEPHEN A. CAHEN
STANLEY J. STEWART
CHARLES S. GOLDY
EUGENE F. LEMOINE
CALVIN YUDIN
SIDNEY GELBER
ROBERT FORMAN
GEORGE WASSON

INITIAL DECISION
(Private Proceedings)

Sidney Ullman
Administrative Law Judge

August 6, 1973
Washington, D. C.

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APPEARANCES: William J. Klein, of the Denver Regional Office, and Michael K. Wolinsky, of the Miami Branch Office, for the Division of Enforcement (formerly Division of Trading and Markets); and Joseph F. Krys, Assistant Administrator of the Denver Regional Office, on the Brief.

Joseph S. Paglino, S. J. Gair, and Marvin Rosengarten, of Gaer and Rosengarten, for Respondents Stanley Radler, Stephen A. Cahen, Stanley J. Stewart, Charles S. Goldy, Eugene F. Lemoine, Calvin Yudin and Sidney Gelber.

Donald I. Bierman, P. A.; Pearson & Josephsberg, P. A., for Respondent Gilbert F. Tuffli, Jr.

Robert Forman, pro se.

George Wasson, pro se.

BEFORE: Sidney Ullman, Administrative Law Judge

The Proceedings: As Originally Instituted, and After Settlements and Discontinuances.

On September 16, 1970, the Commission issued an order for private proceedings (Order) pursuant to Sections15(b), 15A and 19(a) of the Securities Exchange Act of 1934 (Exchange Act) against 28 respondents, including eight broker-dealer firms and 20 of their officers and employees.

A subsequent Commission order added another broker-dealer firm as a respondent after it had become, in effect, successor to a respondent firm, Robert L. Ferman & Co. (Ferman & Co.), which "is now apparently in a dormant state." [1/] The several broker-dealer firms or their involved offices and the individual respondents were situated in Minneapolis, Denver, New York City, and in Grand Junction, Colorado and Miami, Florida.

Respondents were charged with violations of securities laws in connection with activity in one or more of three securities issues, (1) United Australian Oil, Inc., (2) J. B. & T. Co., formerly Junction Bit & Tool Co. (Junction), and S & M Industries, Inc., formerly S & M Supply Co. (S & M). The proceedings were brought to determine whether the respondents had committed the violations charged and the remedial action, if any, that might be appropriate in the public interest.

During the course of the proceedings one of the broker-dealer respondents, Blair & Co., of New York City, was put into involuntary

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1/ Commission order of January 5, 1972, adding Cambridge Securities, Inc. as a respondent by adding paragraphs Q, R, and S to Part I and paragraph J to Part II of the Order.

bankruptcy, and one of the individual respondents who had served as resident manager of that firm's Miami Beach office died.[2] The proceedings are herewith dismissed against Blair & Co., against whom the Division of Enforcement (Division) produced no evidence and is no longer pressing charges in its proposed findings and conclusions, and also against the deceased respondent. On January 19, 1971, the Commission discontinued the proceedings as moot against a firm whose registration as a broker and dealer had been revoked in another administrative proceeding.[3] Also, with the exception of nine individual respondents in Miami and one in Minneapolis, with respect to whom this initial decision is written, settlement offers as indicated in the margin were accepted by the Commission (in some cases prior to the hearing and in others subsequent thereto) from all respondents.[4]

2/ Copy, Certificate of Death of Edmund Farrell, dated March 16, 1973, issued by Florida Division of Health and submitted by Richard R. Paige, attorney.

3/ Commission order of January 19, 1971, discontinuing proceedings as against Ling & Co., Inc., and Securities Exchange Act Release No. 9052 (December 30, 1970).

4/ William Edward Wyllie, d/b/a Wyllie Investment Co., and Wyllie Investment Co., Inc., Securities Exchange Act Release No. 9172 (May 11, 1971); Walston & Co., Inc. and George Cabell, Securities Exchange Act Release No. 9362 (October 7, 1971); Boettcher & Co., James Cox, James A. Hill and E. Warren Willard, Securities Exchange Act Release No. 9390, (November 19, 1971); Olin D. Lancaster, Securities Exchange Act Release No. 9471 (January 27, 1972); Bishop and Mahoney, Incorporated (formerly M. H. Bishop & Co., Inc.), Securities Exchange Act Release No. 9509 (February 29, 1972); William B. Strange, Jr., Securities Exchange Act Release No. 9595 (May 9, 1972); Herbert J. Biersach, Securities Exchange Act Release No. 9787 (September 27, 1972); Robert L. Ferman & Co., Inc., Cambridge Securities, Inc. and Robert L. Ferman, Securities Exchange Act Release No. 10069 (March 29, 1973).

Because of the nature of the charges and the alleged activities of the respondents who remain such and are named in the caption, and because of their association as employees or otherwise with former respondents, this initial decision will necessarily include discussion of charges against and activities of some of those former respondents.

Prior to the commencement of the hearing an order was issued, in view of the diverse geographical locations of the several respondents, limiting or segmenting introduction of the Division's evidence to the charges relating to respondents located in any particular area. The hearing commenced in Miami on February 14, 1972 and continued through March 3, 1972, during which period evidence was received with regard to the charges against 13 respondents then in that area. Thereafter, it was resumed in St. Paul, Minnesota, on April 11, 1972, on charges against respondents in the Minneapolis area, and it was continued to April 25, 1972 at Fort Worth, Texas, on the charges against a respondent in Dallas. However, on April 21, 1972, following the Commission's acceptance of an offer of settlement from the latter respondent, the hearing was closed and post-hearing procedures were established. At the conclusion of the Miami phase of the proceedings, counsel for the Division had requested an initial decision by the undersigned. (Tr. 2085).

Soon after the commencement of the hearing at Miami, the Order was amended pursuant to motion of the Division made one month earlier, by adding paragraph II K, alleging the issuance of an order of

permanent injunction by the United States District Court for the District of Colorado against respondent Robert Forman in connection with the sale of the securities of Junction and S & M. The injunction was entered on March 19, 1971, on consent, with Forman neither admitting nor denying the allegations of the complaint.

All parties excepting respondents Robert Forman(at Miami) a former employee of the Miami Beach office of Blair & Co. and George Wasson (Wasson) (at St. Paul) a former employee of the Minneapolis office of Walston & Co., were represented by counsel at the hearing. The latter two appeared pro se. Proposed findings, conclusions and briefs were filed by the Division and by counsel representing the respective parties. None were filed by the respondents appearing pro se.

In the proposed findings, conclusions and brief filed on behalf of Miami respondent Gilbert F. Tuffli, Jr. (Tuffli), and thereafter by separate motion filed on October 10, 1972, request was made to reopen the Miami phase of the hearing "on a limited basis". 5/ Tuffli had exercised his rights under the 5th Amendment when called by the Division as a witness, and he did not testify in his own behalf. Some of the evidence suggested that his ownership of Junction stock (in his wife's name) was not known to Robert L. Ferman (Ferman), president of

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5/ Similar efforts (but for different purposes) were made by counsel representing respondents Robert L. Ferman & Co., Cambridge Securities, Inc. and Robert L. Ferman. Inasmuch as the proceedings have been settled as against these respondents, their counsel's efforts are no longer relevant and are not discussed except to note that the efforts were not successful and the motion was not granted.

Ferman & Co., the broker-dealer firm of which Tuffli was vice-president; other evidence indicated that Tuffli had some responsibility for supervising the selling activity of the seven respondent salesmen of that firm. Tuffli sought to reopen the hearing to refute such evidence, objecting, he said, to positions urged in the Division's post-hearing filings. 6/

The motion to reopen (and the many offers in Tuffli's post-hearing documents) to refute such evidence, as well as other evidence on which the Division relies, by producing testimonial and documentary evidence at a reopened hearing were opposed by the Division on several grounds. By order dated November 2, 1972, I denied the motion to reopen for the reason, among others, that

> "the issues presented by the motion and the opposition thereto can be fully and properly evaluated only in the light of the voluminous record in this proceeding. . . ."

6/ The memorandum filed in support of Tuffli's motion includes the statement that

> "The Division in its initial Brief spent great amounts of time on the fact that Tuffli's stock ownership was secret."

The Division's opposition includes the statement

> "The Division denies that it spent any time in its initial brief discussing Tuffli's secret stock ownership of J. B. & T. [Junction]. Neither its proposed findings nor supporting brief make any such reference. Apparently Respondent Tuffli has confused statements made on page 8 and 34 of Respondents Robert L. Ferman & Co., Cambridge Securities, Inc. and Robert L. Ferman's brief of July 24, 1972 as being made by the Division. The Division strongly opposes the reopening of the hearing to take testimony regarding an obvious controversy between the respondents".

and that study of that record could not then be made. The order also stated:

> "Only in the event that it appears from a study of the entire record that the hearing should be reopened for the receipt of further evidence as proffered in the moving papers. . . will such action be ordered."

After review of the record, the conclusion is reached that the proffered evidence should not be received at a reopened hearing, and the motion is hereby denied as further indicated in the margin at page 19.

The findings and conclusions herein are based on a preponderance of the evidence in the record, on my observation of the witnesses and their demeanor and on my evaluation of their testimony and the exhibits.

As to Tuffli and the salesmen, the record includes extensive sworn pre-trial testimony taken by the Division staff to the extent that such testimony involves admissions against interest. 7/

The Respondents

With the exception of Robert Forman and Wasson, the remaining respondents were associated with the former respondent firm, Ferman & Co., of Miami. Ferman & Co. was owned by Surinam Timber Corporation, which, in turn was owned by Robert L. Ferman. (Tr. 934). Tuffli was vice president of Ferman & Co. from July 1961 until August 30, 1970, but owned no stock in the company. He was the firm's trader and research analyst, and in the absence of its president, Robert L. Ferman, Tuffli was in charge of the office. Ferman & Co. was registered with the Commission as a broker-dealer in June 1957, and was a member of the NASD. Each of the other Miami respondents other than Robert Forman was a salesman at Ferman & Co. They are:

7/ The Division's post-hearing documents include citations to exhibits to the investigative testimony. However, these exhibits were not included in the record of the proceedings received by the undersigned, could not be located, and have not been relied upon or referred to herein.

Stanley Radler (Radler), Stephen A. Cahen (Cahen), Stanley J. Stewart (Stewart), Charles S. Goldy (Goldy), Eugene F. Lemoine (Lemoine), Calvin Yudin (Yudin), and Sidney Gelber (Gelber).

Robert Forman, as indicated above, was employed as a registered representative at the Miami Beach office of Blair & Co., and Wasson was employed in the same capacity by Walston & Co. in its Minneapolis office.

Selling Practices at Ferman & Co.

Ferman & Co., Tuffli, and the respondent salesmen engaged in many of the tactics common to a boiler room in selling speculative over-the-counter stocks. A boiler room atmosphere was created and nurtured by Ferman and Tuffli, as indicated infra. [8/] The salesmen were untrained and some were completely lacking in knowledge of the proper function and responsibility of a registered representative. Others had little or no concern for the duties of a registered representative toward his clients. The evaluation of the "house stocks" they were expected to sell was not based on estimated worth of the shares or potential of the issuer. These factors were hardly considered. The relevant period of the anti-fraud charges in these proceedings, as they relate to the Miami respondents, November 1968 to September 16,

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8/ The same atmosphere was generated by Ferman at Cambridge Securities when it succeeded to the business of Ferman & Co. See, for example, testimony of an employee of Cambridge, at Tr. 2080.

1970, encompassed or overlapped a portion of the volatile "hot issue" period of 1968-1969, and the acquisition of hot issue stocks by many broker-dealer firms, including Ferman & Co., was the primary goal in their efforts to make big money, to satisfy the hunger of their salesmen for high commissions, and to feed the public appetite in Miami and elsewhere for speculative securities. Merit and intrinsic value were of little consequence, and apart from Tuffli's personal reasons for pushing Junction and S&M shares because he owned them in large quantities, as discussed infra, price rise potential, as Tuffli evaluated it, was the real determinant for selection of the house stocks. This, then, became the determinant for the respondent salesmen, several of whom were inexperienced and all of whom were under the control of Tuffli, as discussed later. He had made money for some of the salesmen during the hot issue period and was regarded by them as a capable analyst. Irving Romm (Romm) was sales manager, but the salesmen and selling were controlled and supervised by Tuffli, vice-president, analyst, and experienced trader and registered representative. Junction and S&M were two of the several selections made by Tuffli and sold in large amounts by Ferman & Co. during the period from approximately October 1, 1968 to on or about July 1, 1969.

The Issuers

Much of the information concerning the issuers, Junction and S&M, comes from a "Form 10" annual report filed by Junction with the Commission

on August 18, 1969, pursuant to Section 12(g) of the Exchange Act.[9/] Official notice was taken of this document, consisting of 212 pages. A copy of the Form 10, without exhibits included in the filing, was also received as Respondents' Exhibit 17 during the testimony of respondent Cahen, together with a copy of a letter dated September 2, 1969 with which it was transmitted by the president of the company to Tuffli.

Junction was incorporated as Junction Bit & Tool Company in Colorado in 1951, and its name was changed to JB&T Co. in 1969. In 1955 the company filed a Regulation A offering with the Commission, and thereafter it reported that 33,745 shares had been sold under that offering. No registration statement has ever been filed with the Commission for the issuance of securities by either Junction or S&M.[10/]

Respondents' Exhibit No. 12, a photostat of page 2783 from a Standard & Poor's manual reporting earnings of over-the-counter issuers, reflects Junction's substantial deficits in operating revenues for the years 1966, 1967 and 1968. Also, the Form 10 discloses the company's

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9/ Registration requirements pursuant to Section 12(g) of the Exchange Act are entirely distinct from the registration requirements for issuance or public sale of securities under Section 5 of the Securities Act.

10/ Official notice was taken of an order of permanent injunction issued on March 19, 1971, against respondent Robert Forman by the United States District Court for the District of Colorado, enjoining the violation of Sections 5(a) and 5(c) of the Securities Act with respect to the sale of Junction or S&M common stocks.

Official notice also was taken of the fact that a complaint was filed in a class action suit in the United States District Court for the District of Florida on October 27, 1969, against Ferman & Co. This suit is discussed in connection with purchases by investor-witnesses in the instant proceedings.

Official notice also was taken that no registration statements had been filed.

lack of financially successful or productive operations. It reflects that after 1951, the company, operating from Grand Junction, produced and sold drilling and mining machinery, equipment and supplies, for the most part to the uranium mining industry. In 1960 it acquired S&M, a "mining and contractor supplier", as a subsidiary. As a result of reduced activity in the uranium mining industry in subsequent years, business activity of both parent and subsidiary declined severely, and in 1965 both firms discontinued business and sold most of their respective inventories at auction. Sale of inventory continued through March 1968, albeit on a very limited basis, with proceeds being applied to the reduction of outstanding indebtedness. Commercial real estate owned by each company in Grand Junction developed rental revenues of inconsequential amounts. Both Junction and S&M were in effect dormant from 1965 through early 1968. (Tr. 1198).

In March 1968, Junction acquired from a Bahamian corporation, Lisbon Holding and Investment Company, Ltd. (Lisbon Holding), the Village Apartments, located in Indian Harbour Beach, Florida, in exchange for 300,000 shares of its common stock. The apartment complex, located near Cape Kennedy, was experiencing a high vacancy rate, partly because it was located in a depressed area and partly because a substantial number of its units were in a state of total disrepair and were uninhabitable. (Tr. 1182-1184). The complex was operated at a loss, but a turn-around was hoped for after contemplated renovation at a projected cost of approximately $100,000. Testimony disclosed that on

a cost basis the project was "holding their own" only because the mortgagee had given a moratorium on payment of principal and interest. (Tr. 1184-5). In August 1969, 17 months after the acquisition, it was stated that "Negotiations are now underway by management to borrow funds estimated to be sufficient for [repair]." The repairs never were made.

Lisbon Holding, the grantor, was controlled by David Pedley (Pedley), one of the main characters in these proceedings. Just prior to Junction's issuance of 300,000 shares for the Village Apartments, it appears that only 176,000 shares of its common stock were outstanding. Substantial amounts were issued thereafter, and Pedley's acquisition, and his disposition of Junction shares through Ferman & Co. and other broker-dealers are at the root of the instant proceedings. In addition, Junction spun off shares of its subsidiary, S&M, to the Junction shareholders as of October 30, 1968, on a share-for-share basis. At that time, 1,900,000 shares of Junction were outstanding. (Tr. 1305). Pedley thus acquired, and through Ferman & Co. and other broker-dealers, including former respondents Blair & Co. and the Wyllie firms, thereafter disposed of, substantial amounts of unregistered S&M shares. 11/

On September 1, 1968, Junction issued 200,000 shares of common stock to State Fire & Casualty Company (State Fire), a Florida insurance

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11/ Lisbon Holding owned approximately 24 per cent of Junction's outstanding voting securities as of July 18, 1969, but Pedley's holdings became substantially greater than those of Lisbon Holding, which he controlled.

It appears that Pedley, through Lisbon Holding, may have received the S&M shares on June 4, 1968. (Form 10, p. 28).

company. Junction was to receive 140,000 shares of State Fire as consideration, but on January 7, 1969, Junction rescinded the agreement, cancelled its 200,000 shares, and sought their return. State Fire went into receivership, and as of August 18, 1969, the shares had not been returned. Conversely, contrary to the limitations in State Fire's investment letter to Junction, it had pledged 32,000 shares as security and had otherwise disposed of 10,000 shares. Through his ownership interest in State Fire and as a result of the spin-off, Pedley received S&M shares as a consequence of the aborted transaction. (Tr. 1220).

Three additional acquisitions were made by Junction, as a package, on January 2, 1969 for the issuance of shares. Basic Chemical Corporation (Basic) was a producer of limestone and the owner of a quarry in Colorado; Powered Products Corporation (Powered) was a Colorado snowmobile manufacturer; Scott Chemical Corporation (Scott) was a chemical compounder in Salt Lake City which purchased chemicals and compounded products ranging from cologne and perfume to paint removers and detergents.

The State Fire transaction, as indicated above, was a fiasco for Junction, and the package acquisition was of little or no value. Basic was a marginal operation and was liquidated by Junction in 1971 (Tr. 1190, 1192); Powered was held a few months and sold as an unprofitable operation after substantial losses, having produced no snowmobiles for the market (Tr. 1190, 1191); and Scott proved to be no better than Basic as an investment. (Tr. 1192; Resp. Ex. 4). Junction's

investment in S&M and S&M itself require more detailed discussion, inasmuch as the trading of S&M shares following the spin-off is the basis for charges of violation of both the Securities Act and the Exchange Act.

S&M was wholly-owned by Junction at the time of the spin-off record date, October 30, 1968. It held some real estate in Colorado and cash in the amount of $4.19. Its officers and management in Colorado originally were substantially the same as Junction's: Raymond Sullivan (Sullivan), D.G. Son (Son) and John J. Bonella (Bonella). Bonella performed the bookkeeping and stock transfer work for S&M until control was taken over by a group in Florida in March 1969, as discussed below. In April of that year the books and records of S&M were sent to Miami. (Tr. 1177). They remained in Miami during several months of unsuccessful ventures by that group, and were returned to Colorado when the Miami group relinquished control of the company in August 1969. (Tr. 1121; 1267-1269). Bonella testified that prior to the spin-off of S&M shares by Junction, the assets of S&M, with the exception of the $4.19 in cash, were transferred to Junction. (Tr. 1194, 1195). Thus, when S&M was spun off to Junction shareholders it was a shell with a bank account of $4.19.

In October 1968, S&M acquired the 50 issued shares of St. Johns' River Development Corporation (St. Johns), a Florida corporation, for 500,000 shares of its common stock. (Tr. 1294).[12/] St. Johns owned,

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12/ These shares of S&M were received by two corporations, one controlled by Clare Skatfield, and one controlled by J.D. Patterson.

subject to mortgage, 1,600 acres of land north of Orlando, in Volusia County, Florida. The land was to be developed and sold in small plots. (Resp. Ex. 6). However, St. Johns needed cash, and this transaction was entered into by its owners because S&M management represented that cash was available for the projected land sales operation. The connection between St. Johns and S&M originated when Alan Roth, of Miami, as president of First National Holding Corporation, advertised in the Miami Herald the availability of $5,000,000 cash to invest in land tracts. The money was to be made available by Pedley. (Div. Ex. 53; Tr. 1281; 1308). Alan Roth and his son, Kenneth, as First National Holding Corporation (First National), had been sales agents for the St. Johns project for several months.

Pedley was introduced to the Roths by Nick Torelli, then president of the Miami broker-dealer firm, Prudential Investment Corporation. From that day and for several months thereafter Pedley promised to deliver large sums of money for projects which S&M would develop. Nothing came of the promises or the projects, but Pedley acquired additional shares of S&M which he disposed of from time to time. (Tr. 1114;1126; 1133). However, inasmuch as no money was forthcoming, the sales program was abandoned and the land was lost by foreclosure in the Spring of 1970. (Tr. 1288; 1310-12).

On March 3, 1969, S&M shareholders approved the acquisition, by merger, of Riverlands Development Corporation (Riverlands), a Florida corporation controlled by Alan Roth and Kenneth Roth, for 2,900,000 shares of S&M stock. Riverlands owned 3,725 acres of unimproved land near Chico, California. S&M proposed to sell the land in small parcels

under "an aggressive sales campaign". (Resp. Exs. 2, 6). At this time S&M was still engaged in efforts to obtain financing for its sales of the St. Johns River property. With the Riverlands transaction, the Roths assumed control of S&M and of its Board of Directors. (Resp. Ex. 6). Soon thereafter, by letter dated June 30, 1969, S&M shareholders were advised by its Secretary, now Kenneth Roth, of the "contemplated sales of the properties in Volusia County, Florida to Intervest, Inc.", and of the sale of 690 acres to a Trustee for Florida Power and Light Company. The letter was overly-enthusiastic, imprecise and cryptic with regard to "a payment of $1,100,000 in cash" by Intervest, Inc. for the land to be purchased by it. (Resp. Ex. 3). The sale of land to Florida Power and Light was at approximately $405 per acre, an amount substantially below its cost, and was consummated because of the company's dire need for cash. (Div. Ex. 50; Resp. Ex. 6). Other overly-enthusiastic reports were disseminated by word of mouth, by publication in local newspapers of alleged arrangements or contracts for land activity and sales, and by false representations, as discussed infra.

Respondents' Exhibit 6, a notice dated February 5, 1969, of a March 3, 1969 special meeting of S&M shareholders called to vote on the merger with Riverlands, contained a proxy statement and financial reports. The notice advised of the proposed aquisition of the acreage near Chico, California for 2,900,000 shares to

be issued to Alan Roth and Kenneth Roth. It stated, in part, with regard to the St. Johns property:

> "On October 1, 1968 S&M acquired St. Johns, a Florida corporation as a wholly owned subsidiary, which at this time is the only significant asset of S&M.
>
> .....
>
> The present and only properties of St. Johns are located in the central Florida area and consist of approximately 1,600 acres in Volusia County.
>
> .....
>
> The Florida Guarantee Land Company holds a mortgage of approximately $1,994,000.00 encumbering the property (see the accompanying financial statements). Florida Guarantee Land Company is obligated to pay two prior mortgages. All mortgages provide for release clauses.
>
> St. Johns has a wholly owned subsidiary, Burrard Development Ltd., a Bahamian company, which was acquired on January 2, 1968, and which corporation is inactive."

The notice included a statement of operations indicating that as of December 31, 1968, S&M had a deficit of $94,607.43. It reflected that prior to the Riverlands acquisition S&M had authority to issue 10,000,000 shares, that 2,025,000 shares were then outstanding, and that with the Riverlands acquisition outstanding shares would total 4,925,000.

The notice was offered in evidence by Miami respondents, apparently as justification for subsequent activity in S&M shares. In my view, however, it constituted a warning not only that a favorable financial status had not been achieved by the company but also that such status was extremely unlikely to result from the merger. The financial statements,

as well as the text, afford no basis for realistic appraisal either of success for the company or for appreciation in the price of its shares.

Three days after the merger, a letter dated March 6, 1969 was sent to S&M shareholders announcing the affirmative vote on the merger, and advising that Junction "is the largest single shareholder of S&M . . . holding approximately 10% of its outstanding shares of common stock." (Resp. Ex. 2). (This statement apparently was made without recognition of the prospective issuance of 2,900,000 shares to the Roths).

The Roth group was unable to obtain from Pedley the monies he'd promised for improvement and development of the real estate. On August 5, 1969, they resigned as officers and directors of S&M and returned 1,400,000 shares (about one-third of the outstanding shares) to the corporation's treasury, after having transferred to a corporation which they controlled 140 acres of S&M's land in California "in satisfaction of any claim for amounts advanced to the company." (Div. Ex. 51).[13/] As a result of foreclosure proceedings, S&M lost all land it had owned.

On July 1, 1969, Junction sent to shareholders a letter signed by its president, R.G. Sullivan. The letter detailed the several unsuccessful efforts to turn the company's loss situation into a profitable one, but despite efforts at conservatively optimistic phrasing, the letter was negative in tone and could not be the basis for a favorable outlook by a broker-dealer or its salesmen. (Resp. Ex. 4). Tuffli and some of the respondent salesmen still owned Junction shares at that time, and Tuffli had become a substantial shareholder of S&M shares as well.

13/ Prior to their resignation, in April 1969 a plan to sell 30,000 unregistered shares owned by Kenneth Roth involved Minneapolis respondents in these proceedings, as discussed infra.

Thus, the affairs of Junction and its one-time subsidiary were intertwined at an early date, and neither company was ever successful. With the spin-off of S&M, the shares of both companies were sold by the respondent salesmen at Ferman & Co. in large amounts. The selling was accomplished despite the poor records of both companies and the many "red flags", some known and others readily recognizable by Tuffli and the respondent salesmen.

The transactions in the shares of both companies by all respondents in these proceedings involved the use of the mails and means of transportation and communication in interstate commerce.

Following is a discussion of the charges in the following order: those asserted against the "Ferman & Co. respondents", i.e., Tuffli and the seven salesmen, with consideration, initially, of the charges against Tuffli for violation of Section 5 of the Securities Act; thereafter the charges of anti-fraud violations asserted against the salesmen, and then against Tuffli; followed by the charge of failure of supervision asserted against Tuffli.

Thereafter, are treated the charges of Section 5 violations by Robert Forman, formerly assistant manager of the Blair & Co. office in Miami Beach, and finally the charges asserted against Wasson for violation of Section 5 while employed at the Minneapolis office of Walston & Co.

Section 5 Violation - Tuffli

Section 5 of the Securities Act makes it unlawful for any person to use the mails or means of interstate commerce to offer for sale, sell, or deliver a security unless a registration statement has been filed with the Commission and is in effect. In his offering, purchasing, selling and delivering unregistered Junction and S&M shares as trader and as investor, Tuffli used interstate means of transportation and communication as well as the mails, and he violated Sections 5(a) and 5(c) of the Securities Act. The burden of proving an exemption from the registration requirements is on the person who would rely on an exemption.[14/] That burden has not been met. Moreover, it is clear that the violations were willful, as charged in the Order.[15/]

But an appreciation of the nature and extent of the violation requires a discussion of the evidence relating to the transactions engaged in by Tuffli as trader and as investor.

Tuffli did not testify, either for the Division when called as a witness, or in his own behalf, but asserted his Fifth Amendment right to remain silent. However, he had testified under oath during the investigation of this matter, and Division's Exhibit 5A consists of 264 pages of his testimony given between April 25, 1969 and October 31, 1969.[16/]

14/ S.E.C. v. Ralston Purina Co., 346 U.S. 119 (1953); S.E.C. v. Culpepper, 270 F. 2d 241, 246 (2d Cir. 1959).

15/ A finding of willfulness requires merely a finding of an intent to do the act which constitutes the violation. Tager v. S.E.C., 344 F. 2d 5, 8 (2nd Cir. 1965); Arleen W. Hughes, 27 SEC 629 (1948), aff'd sub nom. Hughes v. S.E.C., 174 F. 2d 969 (C.A.D.C., 1949).

16/ Tuffli's motions to reopen the hearing to receive evidence on several matters have been carefully considered. The plethora of credible evidence on all charges asserted against Tuffli, coming from many witnesses and documents in the record, together with the content and nature of Tuffli's testimony during the investigation, have been evaluated, particularly in light of his belated request to reopen. I am of the firm

(cont'd on next page)

During and for several years prior to that period he was a vice president and director of Ferman & Co. He had earned a college degree in banking and finance, and prior to joining Ferman & Co. in early 1960 he had extensive experience in the securities industry. As noted above, during the relevant period he was the firm's trader, as well as its research analyst, and a registered representative.

Tuffli became a substantial shareholder of both Junction and S&M. In the Fall of 1964, Tuffli had owned Junction shares for over a year, and he travelled to Grand Junction, where he met Sullivan, Son, and Bonella, who were managing Junction. At that time he owned in excess of 1000 shares, and thereafter, he bought, in his wife's name from various brokers, sometimes for a few cents per share, many thousands of shares.[17/] (Div. Exs. 35 and 5A). Prior to February 1968, he owned approximately 22,000 shares. Earlier, he had been invited to become a director of the company but refused when he was advised that his travel expenses to Grand Junction could not be reimbursed by the company.

(footnote continued)

view that reopening the hearing for receipt of the evidence as requested would effect no change in the conclusions or result reached herein with respect to the substantive issues or the sanctions. Included within this evaluation are the "proffered" testimony of Feinberg and Tuffli concerning Feinberg's "advice" that S&M shares were exempt from registration as a valid spin-off, and the "contingent recommendation" which Tuffli's "Offer in Settlement. . . was expected to receive" as asserted at page 4 of his proposed findings. I assume, but do not state, that Feinberg, an attorney, would testify as Tuffli suggests.

The contention that Tuffli's testimony in the investigative proceeding should not be considered and the arguments in support thereof have been rejected as inapplicable to this administrative proceeding.

17/ Tuffli testified during the investigation that the shares were purchased in the name of his wife to avoid estate taxes. There is no credible evidence to the contrary.

In early 1968, Sullivan conferred with Tuffli about reactivating Junction, and asked him to give to Pedley an option to buy 8,195 shares at $2.00 per share. He also sought Tuffli's advice concerning the acquisition of the Village Apartments, then controlled by Pedley's corporation, Lisbon Holding. Tuffli gave, and Pedley thereafter executed the option.[18/] Apart from the option, between April 2, 1968 and January 14, 1969 Tuffli sold from his wife's account 4,431 unregistered Junction shares for proceeds of $19,062.74. (Div. Ex. 35).

At the effective date of the S&M spin-off he held 10,300 shares of Junction. He received that number of S&M shares, and between October 31, 1968 and January 14, 1969, he sold these 10,300 unregistered shares of S&M through Ferman & Co. for proceeds of $37,950.25. (Div. Exs. 5A, 35).

As noted above, Pedley also acquired shares of Junction as a result of the aborted transaction with State Fire, which, despite cancellation of the agreement, received 200,000 shares of Junction which were never returned. Prior to August 16, 1969, he also received 17,143 shares for his retirement of debts of Junction. (Resp. Ex. 17). Pedley's acquisitions of newly-issued Junction shares were in sufficiently large amounts and under circumstances[19/] which made him a controlling person. Not only the number of voting shares but perhaps more significantly the influence he exerted on the activities of these companies makes it clear that he had the power to direct or cause the direction of the management and

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18/ In his investigation testimony Tuffli stated that the option was executed by his wife in blank at the request of Sullivan, who wanted to interest a man to "put money in Junction". Tuffli did not know Pedley at that time.

19/ As stated above, Lisbon Holding received 300,000 shares for the Village Apartments, and was owned by Pedley. Pedley's control of Junction gave him control of S&M while it was a subsidiary. (Tr. 1082-3).

policies of the companies.[20] In one of their early meetings, Tuffli expressed his gratitude to Pedley for having reactivated Junction by virtue of the Village Apartments acquisition, and Tuffli relied on Pedley for information on Junction activities over an extended period of time. They met on several occasions and spoke on the telephone many times. Tuffli testified that their conversations were general, that they related to possible acquisitions, or that Pedley would advise that things were "coming along fine". On one occasion Pedley advised him about pending acquisitions by Junction, but Tuffli said that

> "...he wouldn't elaborate and I didn't feel at the time that it was right really for me to ask him so I just didn't ask him about any of the details." (Div. Ex. 5A, 59).

However, with the spin-off, Tuffli became very active in the purchase by Ferman & Co. of S&M shares. Pedley's control and status with respect to S&M is of special significance because of the large volume of trading of S&M shares by Tuffli. Between October 24, 1968 and February 28, 1969, Wyllie Investment Company (Wyllie Investment) sold to Ferman & Co. 201,940 shares of S&M, frequently in blocks of 5,000, 10,000, 17,000 and larger share amounts.[21] When Tuffli was offered a block of perhaps 30,000 shares in October 1968, he expressed concern about the size. He was told by William E. Wyllie (Wyllie) that he had an opinion letter from counsel indicating that the shares could be legally sold. He made the purchase, after having requested a copy of the letter. But the letter never was sent and Tuffli "thought no more about it." (Div. Ex. 5A, 235-6). He had

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[20] Rule 405 of the Rules and Regulations promulgated by the Commission under the Securities Act defines "control" as follows:

> "The term 'control'...means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."

[21] On at least one occasion Wyllie Investment sent shares to S&M for transfer to Ferman & Co. before payment had been made for them, an unusual procedure in the industry if payment were not conditioned on transfer. No evidence of such conditional payment is in the record.

received from broker-dealers expressions of interest in S&M, and had assurances from Howard Roth, a registered representative at H. Hentz & Co. and a brother of Kenneth Roth, of interest in purchasing S&M shares;[22/] and he had received from Wyllie assurances of a large supply of S&M shares. And of course he held a substantial amount of S&M shares. So he injected himself into the trading action with little or no inquiry regarding the source of the stock and he became a willing participant in the distribution of many thousands of shares of Pedley's stock to other broker-dealer firms and to the public.[23/] The first purchases were made on a "when-issued" basis.

Pedley was not only a control person, as stated above, but he was also an underwriter. That term is defined in Section 2(11) of the Securities Act to include "any person who has purchased from an issuer with a view to. . .the distribution of any security." Pedley purchased the newly-issued Junction and the S&M shares (for real estate transferred to S&M) with the intent, which he carried out, to begin immediately to resell them to the public. Cf. Quinn & Co., Inc., Securities Exchange Act Release No. 9062 at 4 (January 25, 1971); S.E.C. v. Culpepper, 270 F. 2d 241 (2nd Cir. 1959). In Quinn, at page 6, the Commission said that the exemptive provisions of Section 4 of the Securities Act "are intended to exempt trading transactions with respect to securities already issued to the public and that they cannot be used to exempt distributions by issuers or underwriters or the acts of other persons who engage in steps necessary to such distributions."

The pattern followed by Pedley, and so completely over-looked or disregarded by Tuffli, was one which had been fraudulently practiced for

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22/ The H. Hentz firm bought 31,600 shares of S&M from Tuffli on October 24 and 25, 1968. (Div. Ex. 5A, 124).

23/ That the shares were Pedley's is amply demonstrated in the record. See, for example, the Division Exhibit 48 series.

many years and was the subject of court decisions and Commission warnings to broker-dealer firms concerning illegal distributions of "substantial blocks of unregistered securities." In Securities Act Release No. 4445, of February 2, 1962,the Commission referred to prior decisions and warnings and discussed steps to be taken by the broker-dealer "to make sure he is not participating in an illegal distribution in violation of Section 5 of the Securities Act of 1933". (The Release also discussed the investigation he should make concerning the issuer in order to avoid violations of the anti-fraud provisions in the course of a distribution, a matter which is discussed infra in connection with the anti-fraud charges).

Early in the Release, reference was made to the use of the mails and facilities of interstate commerce, and to the burden on a person claiming an exemption from the registration requirements to prove such exemption. And after explaining the non-availability of an exemption to a dealer participating directly or indirectly in any distribution, the Release warned that "distributions by issuers or control persons or acts of other individuals who engage in steps necessary to such distributions" are not exempted from Section 5 requirements. Further at page 2, the Commission stated:

> "Consequently, a dealer who offers to sell, or is asked to sell a substantial amount of securities must take whatever steps are necessary to be sure that this is a transaction not involving an issuer, person in a control relationship with an issuer or an underwriter. For this purpose, it is not sufficient for him merely to accept 'self-serving statements of his sellers and their counsel without reasonably exploring the possibility of contrary facts.'" (citing S.E.C. v. Culpepper and S.E.C. v. Mono-Kearsage Consolidated Mining Company, et al. 167 F. Supp. 248 (D. Utah, 1958)).

Tuffli recalled that he had seen this Commission Release. (Div. Ex. 5A).[24/]

24/ Of course, he is chargeable with the violation whether or not he had seen the Release.

During the period of the activity in S&M shares, the Commission also issued, on July 2, 1969, Release No. 4982 under the Securities Act.[25/] The caption reads:

> "APPLICATION OF THE SECURITIES ACT OF 1933 AND THE SECURITIES EXCHANGE ACT OF 1934 TO SPIN OFFS OF SECURITIES AND TRADING IN THE SECURITIES OF INACTIVE OR SHELL CORPORATIONS."

The text described some of the patterns used by fraudulent companies and persons to effect distributions of unregistered securities by spin-offs and subsequent fraudulently-created trading markets, warning of acquisitions by the transfer of assets of dubious value to "shell corporations" in exchange for substantial amounts of newly-issued shares. The Release warned that the success of the fraud generally depended on the efforts of brokers and dealers, and cautioned that

> "where a broker or dealer receives an order to sell securities of a little-known, inactive issuer, or one with respect to which there is no current information available except possibly unfounded rumors, care must be taken to obtain sufficient information about the issuer and the person desirous of effecting the trade in order to be reasonably assured that the proposed transaction complies with the applicable requirements. Moreover, before a broker or dealer induces or solicits a transaction he should make diligent inquiry concerning the issuer, in order to form a reasonable basis for his recommendation, and fully inform his customers of the information so obtained, or in the absence of any information, of that fact."

The Release is pertinent to the charges of Section 5 violations as well as the anti-fraud violations asserted against Tuffli and the other respondents.

Tuffli's asserted reliance on Wyllie's representation that he had a letter from counsel to the effect that one of the blocks of stock could be sold was ill-advised, at best, and flies in the face of the many warnings

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25/ The Release was also issued under the Exchange Act as No. 8638.

which he knew or should have known. As noted above, Ferman & Co. sales of S&M shares continued long after the last-mentioned Release on spin-offs dated July 2, 1969.

The record amply supports a finding that, at best, Tuffli made inadequate effort to ascertain the source and status of the shares he acquired for Ferman & Co. His failure to make an independent effort to learn whether the shares could lawfully be traded as registered and "free" stock supports the finding that the transactions in violation of Sections 5(a) and 5(c) of the Securities Act were accomplished with total disregard for the warnings issued by the Commission and in flagrant violation of the decisions by courts and Commission. He probably knew -- certainly he should have known -- that he was a significant link in the distribution to the public of a large volume of unregistered shares of a shell corporation. As such, he himself fell within the definition of the term "underwriter", which the courts have construed broadly, in view of the primary purpose of the Securities Act to protect investors through registration provisions.[26/]

With respect to these massive purchases and sales of the spun-off S&M shares, Tuffli urges consideration of S.E.C. v. Harwyn Industries Corp., 326 F. Supp. 943 (1971), in which a preliminary injunction sought by the Commission was denied for reasons, among others, that transactions violative of the securities laws were accomplished on advice of competent

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26/ Quinn & Co., Inc. supra, at 4; S.E.C. v. Culpepper, supra.

counsel that they were proper. As stated previously, Tuffli has asked that the hearing be reopened to permit him to prove that Feinberg advised that the S&M transaction was proper and, presumably, that his transactions were legal.

Assuming the validity of the suggestion that the argument of advice of counsel is not a relatively recently conceived idea of Tuffli, based on a relatively recent reading of Harwyn, there are, nevertheless, significant differences in the suggested applicability of the concept here. There is here no evidence of advice of counsel at this stage, although Ferman testified at length and was not asked whether, as the head of Ferman & Co. he had received advice from Feinberg regarding the activity in S&M shares as suggested by Tuffli. Feinberg was available in Miami and might have been called during the hearing and asked about his advice, subject to cross-examination if deemed advisable. In addition, the court in Harwyn found that counsel not only had given advice to his clients, but had called the New York and Washington offices of the Commission for advice on its position regarding spin-offs, but received no answer to his inquiry. Lastly, counsel had assured the court that a preliminary injunction was not necessary, notwithstanding the violations of law found, because no further distributions of the unregistered shares would be made, and the court, in the equity proceeding involving issues not relevant here, relied on such assurances in denying the injunction.

Of course, even a bona fide but mistaken belief is no defense to a violation of the securities laws. S.E.C. v. W. J. Howey Co.,

328 U.S. 293, 300 (1964). While such belief might serve to mitigate and have an effect under appropriate circumstances, the offenses of Tuffli are so gross in the several areas charged, including the anti-fraud violations, that the mitigation suggested in the unlikely event it were appropriate, would not change the sanction deemed appropriate in the public interest.

The sale of the S&M and Junction shares to the public and Tuffli's part in that activity are discussed below in connection with the anti-fraud charges against the Ferman & Co. salesmen and Tuffli.

Anti-fraud Violations

The Ferman Salesmen-Respondents

The Order charges that each of the seven salesmen respondents at Ferman & Co. engaged in the violations of the anti-fraud provisions.[27/]

27/ Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The composite effect of these provisions, as applicable here, is to make unlawful the use of the mails or interstate facilities in connection with the offer or sale of any security by means of a device or scheme to defraud or untrue or misleading statements of a material fact, or any act, practice, or course of conduct which operates or would operate as a fraud or deceit upon a customer or by means of any other manipulative or fraudulent device.

Most of the witnesses who testified with respect to the purchase of shares from the salesmen of Ferman & Co. had received from the law firm, Cunningham & Weinstein, a notice dated on or about December 11, 1969, of a class action instituted against Ferman & Co. in the United States District Court for the Southern District of Florida on behalf of customers who had purchased S&M stock. Some of the witnesses believed that by filling out and returning to Cunningham & Weinstein an enclosed questionnaire they became members of the plaintiff class: others who completed and returned the questionnaire had no such thought or intention. In any event, to the extent that their testimony as to transactions with salesmen of Ferman & Co. is related here, it is credited, whether or not the witnesses became, or thought they had become, members of the class who might have some recovery if the law suit should be successful. To the extent their testimony is not related here, it is because it is not evaluated as accurate, credible, and material. Generally, their "participation" in the class action is not viewed as having diminished the credibility of their testimony, despite arguments to the contrary.

Following is a discussion of the testimony of the investor-witnesses who testified as to transactions with each of the respondent salesmen, of the testimony of the respective salesmen, of my evaluation of significant conflicts on material issues, and sanctions deemed appropriate.

Radler

TBS, a branch manager for the Burroughs Corporation, testified that on December 13, 1968, soon after he had moved to Miami he telephoned

Ferman & Co. and spoke with Radler. Ferman & Co. had recently purchased some equipment from Burroughs, and TBS, wanting to purchase stock, decided to deal with a firm which was a customer of Burroughs.

Radler advised that he was buying S&M shares quite heavily and described S&M as a fine opportunity and "a $20 stock", which was developing land in Florida and California. The witness bought 100 shares at 4-3/4.

In another telephone conversation on May 9, 1969, Radler advised that the price of S&M was down 50%, that he was still buying it, and he suggested that TBS average down the cost. TBS bought 200 shares at 2-3/8. In November 1969, Radler called and advised that S&M had not done as well as expected, and suggested that a 300 share purchase would provide a tax advantage if TBS sold the 300 shares previously purchased and replaced them with the recommended purchase. TBS bought the 300 shares.[28/]

Mrs. MT, a housewife, testified that on December 27, 1968 she and a friend, EC, visited Ferman & Co. and discussed S&M with Radler. He represented it as a good company and advised purchase of its shares, which he said would go to $10 within a few months. EC and MT both bought shares at that time. MT's purchase was 100 shares at 4-1/2.

28/ No comment is made regarding the soundness of Radler's tax advice. The testimony indicated that he gave similar advice to many customers with a glibness which seemed to suggest that it was advantageous to buy a stock which might decline in price because a tax advantage would thus be assured.

During the same visit, EC also made telephone calls from Radler's office to friends who made purchases of S&M from Radler. In one of Radler's telephone conversations with an EC friend, Radler stated that he had bought S&M for his niece, that she had never lost money through securities transactions with him, and that he would not sell stock to his niece if he did not think it was good.

On May 20, 1969, MT called Radler and asked his advice with respect to an additional purchase, inasmuch as the price of S&M had declined substantially. He recommended the purchase and MT bought 200 shares at 2 3/8 per share.

JH, a mechanic for Eastern Airlines, had been Radler's customer for several years and had made substantial profits in over-the-counter securities recommended by Radler. On or about December 12, 1968, JH called Radler in order to sell his shares of Welch Paneling for proceeds of over $2,000, so that he might contribute $600 to his church. Radler suggested investing the $600 in S&M in order that JH might be able to give the church a sizeable sum of money. He also suggested that the Eastern Airlines stock owned by JH be sold and that the proceeds be used to purchase S&M, advising that the Airlines stock could always be repurchased for the same price at which it would be sold. Radler reminded the witness that he had put him into other stocks which made money, stating that S&M also would make money and that it "was really going places". The witness bought 300 shares of S&M at 4-3/4. S&M was described to the witness by Radler as an established

company in the West and Mid-west and he stated that a recent purchase of land in Florida was an advancement of the company and an indication of its growth.

RGS, Jr., an engineer, had dealt with Radler for some period of time prior to his first purchase of S&M. The customer had done well in speculative securities recommended to him by Radler and on or about April 7, 1969 he telephoned Radler asking for another recommendation. Radler recommended S&M as a good investment, advising that Ferman & Co. was making a market in the stock. He described S&M as a company which was diversifying into land-holding in Florida and said the stock was under-priced. The witness bought 200 shares of S&M on April 7, 1969 at 3-3/8. Again on April 16, 1969, when the price had gone down to 2-3/4, the witness bought another 100 shares of S&M. When the price went to 1-3/8, the customer called Radler and was told that State Fire had defaulted on a large purchase, had gone into bankruptcy, and that the S&M shares were returned. He advised that the price of the stock would go back up because of the interest in S&M.

When the price of the stock dropped to 7/8, the customer called and was reassured that Radler held quite a bit of the stock and that this was a good chance to average down and improve his chances of recovering: also; that even if S&M became bankrupt, the shares would be worth about $4. On that date, November 24, 1969, the customer bought 500 shares at 7/8.

WCG, a fireman for the City of Miami Beach and a salesman for an auto supply house, called Ferman & Co. and spoke with Radler. During the 13 month period of November 7, 1968, the time of his first purchase, to December 16, 1969, the date of his last purchase, this witness had a total of 23 purchase transactions of Junction and S&M shares through Radler. Six of these were purchases of Junction at prices ranging from a high of 5-3/4 in an earlier purchase to a low of 2-3/4 at the time of the last purchase of Junction on May 15, 1969. 5,500 shares of Junction were purchased in these six transactions.

The witness made 17 purchases of S&M through Radler during the period November 7, 1968 to the date of the last purchase of S&M on December 16, 1969. The prices ranged from a high of 4-9/16 when he purchased 1,400 shares on February 14, 1969 to a low of 7/16 when he purchased 2,500 shares on December 16, 1969.

Frequently, in telephone conversations initiated either by the witness or by Radler, the latter would advise that "he had [X] number of shares that could be bought below the asking price," and on some of these occasions he suggested that the customer could average down his cost. Similarly, during some of their face-to-face discussions Radler would suggest the possibility of a purchase at less than the asking price and would leave the witness in order to discuss the matter with "Mr. Gill", apparently Gilbert Tuffli, the trader. Thereafter, he would sometimes advise that the purchase could be made at something less than the "asking price", and on these occasions the purchase would be made. On other occasions he would advise that the purchase

could not be made below the asking price, and on some of these occasions the witness nevertheless would make a purchase.

The money for the purchases came from cash in bank accounts (over $30,000), from profits from other speculative issues sold by Radler when profits developed for the witness, and from a loan of approximately $10,000 from a credit union. In some of the telephone conversations the witness would express to Radler his concern about a drop in the price, and he testified that Radler once explained a drop by saying that someone in Miami Beach had made a purchase and was angry that the stock had not doubled in price in a short time.

When the witness received notice of the class action and an invitation to join as plaintiff he discussed the matter with Radler. He testified ". . . in my discussion with Stan, I decided not to get involved in a class action", and that Radler "felt that the litigation would be settled and that it would not affect the company, that I would come out either way -- I stood not to lose".

The customer was not told anything about the lack of registration of either of the securities until a period when Ferman & Co., according to Radler, "took a voluntary suspension" from its business. The testimony of the witness indicated that Radler related this to the sale of non-registered S&M stock, but said that it was the view of Ferman & Co. that the shares did not have to be registered.

Except for a sale of 2,000 shares of S&M stock made by the witness on or about January 30, 1969, which produced a profit of $8,000, the witness retained his S&M and Junction shares. On some

occasions the customer wanted to sell the stock at a profit, but Radler would talk about the potential of the issuer and of the shares. He testified, however, that at the time of the sale on January 30, 1969, Radler advised him to sell all of his S&M shares, but that he, himself, was greedy for greater profits and consented to a sale of only the 2,000 shares at the profit indicated. The witness also testified that at the time of his testimony on February 23, 1972 he was still doing business with Radler, now at another broker-dealer firm. His most recent purchases were two over-the-counter stocks, one of which he bought for 50¢ per share. The price of the other was not discussed.

Nothing was said by Radler to any of his customers about lack of registration, about the spin-off of S&M shares, about the poor financial condition of either issuer or their losses, or about the mortgages on the land of S&M.

Despite his many years in the industry[29/], Radler never received training which would educate him to the fact that a registered representative should not predicate his selling on the current activity being generated in speculative over-the-counter stocks. He was a very active salesman, with high earnings from commissions[30/]. While at Ferman & Co. he sold 98,150 shares of S&M and 32,650 shares of Junction. (Div. Ex. 6-A). His several predictions of price rises, and

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29/ Radler worked for Ferman & Co. on two occasions: from 1957 to 1962, and from August 1965 to November or December 1970. (Tr. 1795).

30/ Radler earned in commissions during 1969 approximately $50,000. (Tr. 1822).

his inability to understand that rumors can be groundless and should not be passed on to customers without verification and proper evaluation are among the most serious anti-fraud violations of the respondent salesmen.

I have noted, also, that the recommendation to the customer, WCG, was made on January 30, 1969. As discussed below, in findings regarding respondent Cahen, at that time Tuffli was seeking to obtain shares of S&M and had offered double commissions to salesmen who purchased shares from their customers.

Radler's refusal to recognize the risk involved in passing on to customers information derived from newspaper stories, his inability to recognize the danger in recommending shares of companies which showed only deficits for several years,[31/] and his disregard for the proper relationship of trust between registered representative and customer are among the many factors which compel the conclusion that it is in the public interest that he should not continue in the securities industry.

Stewart

Mrs. RB, a housewife, testified that at the suggestion of a friend she called Stewart at Ferman & Co. and opened an account for the purpose of making some fast money and to have fun. On May 2, 1969 she bought 100 shares of S&M at 2-1/2 when Stewart represented this as a good price with no brokerage fees involved. Nothing was said by Stewart about the financial condition of the company or about the lack or registration of the shares. The witness testified: "I didn't even know you were supposed to know that."

31/ As to Junction, see the Standard & Poor's sheet, Respondents' Exhibit 12 and Respondents' Exhibit 10B.
S&M, of course, never had a profitable year. Radler testified that he never knew the St. Johns land was mortgaged. (Tr. 1840).

Mrs. AS, a checker-cashier in a Miami Beach cafeteria, purchased 200 shares of Junction on December 3, 1968 at 5-1/2 through Stewart. She spoke frequently with him and made other purchases. On January 27, 1969, after recommendation of S&M by Stewart over an extended period of time during the course of which there were many telephone calls and personal visits by him, the witness bought 200 shares at 4-5/8. He represented that S&M was in the business of building homes, and recommended both S&M and Junction. The witness used proceeds from an insurance policy on the life of her husband, who had died on November 9, 1968, for the purchase of some of the S&M shares, but she testified that she never discussed with Stewart the source of the funds. When she received notice of the class action suit she spoke with Stewart, who advised her not to bother with it.

Stewart was a customer in a clothing shop owned by Mrs. DZ. She testified that he called persistently in efforts to sell S&M stock, advising that it was a land company that would do a great deal of home construction. These conversations began near the end of March 1969, and on April 28, 1969 the witness bought 500 shares of S&M at 2-1/2. Stewart spoke of construction at the Tamiami Trail, and advised that the company might be bought out by a larger construction company. Mrs. DZ also testified that Stewart represented that the company had great potential, that it would go to about $15 or $20 a share, and that "there was no telling what it could do." Stewart also said he had put his friends into S&M and had bought it himself. He said nothing about the fact that the shares were not registered, and did not mention

that they were the result of a spin-off. On cross examination the witness testified that Stewart represented that S&M would be building "a whole new community--houses and apartments".

Like some of the other respondents, when Stewart was employed by Ferman & Co. he was completely inexperienced, and whatever he learned was acquired in the unwholesome atmosphere of that firm and under the aegis of Ferman, Romm and Tuffli. (Tr. 1877; 1883). In his somewhat imprecise way, he tried to be accurate in giving his testimony. So too, with his customers, he believed their purchases had a reasonable chance of being profitable.[32/] Of course he was wrong.

It would not be in the public interest, even with proper supervision, for him to engage in the securities business at this time. I conclude that the public interest requires that he be barred from association with a broker or dealer, provided that after the expiration of three months he may apply to the Commission for permission to be associated with a broker or dealer upon a showing that he will be adequately supervised.

Goldy

Mr. BL, owner of a building supply house, was told by Goldy that S&M was a good buy, that the company owned land in Florida, and

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32/ For example, he testified that S&M had been trading very low and when he noticed the upward movement, he said to the customer, Mrs. AS, "Ann, if you buy some of this there is a possibility that we may make a dollar or two and get out."

that the value of the stock lay in the possibility that the land would appreciate in value. On April 24, 1969, BL bought 200 shares of S&M at 3. Nothing was said to the witness about the lack of registration of S&M shares, nor about S&M being a spin-off from Junction. Sometime thereafter, Goldy telephoned the customer and advised that the stock had gone down in price. He suggested another purchase in order to average down the cost, and advised that the potential for increase was still there.

CRR, an aircraft mechanic for 29 years, bought from Goldy on January 22, 1969, 200 shares of S&M at 4-3/8. Goldy described S&M as a spin-off from Junction, stated that the company had land in California and Florida which was valued at more than the company had anticipated, and that S&M "would be a great stock". Nothing was said about the land being encumbered by mortgage.

At the time of the hearing, Goldy was seventy-eight years of age and was suffering from deteriorated eyesight, as a result of which he was no longer employed. The only information he received on S&M was what he heard in the Ferman & Co. office from salesmen and from Tuffli, and his selling efforts were based on having heard that S&M was in great demand. Of course, he did not tell his customers about the lack of registration of S&M, or of its losses or bad financial condition. But he made every effort to be fair with his customers and to testify honestly. The public interest requires no sanction other than censure.

Lemoine

Near the end of 1969, after CRR had asked for a salesman other than Goldy, he received a call from Lemoine, and on May 8, 1969 he bought

100 shares of Junction at 3-1/2 and 500 shares of S&M at 2-3/8. In late 1969 Lemoine called and suggested the purchase of S&M and sale of the shares originally purchased, in order to take a tax loss. The customer did not accede to the suggestion. As with many of the other investor-witnesses, CRR never met his registered representatives of Ferman & Co., his transactions having been conducted by mail and by telephone.

Mrs. DD testified that a registered representative at Merrill Lynch suggested that she contact Ferman & Co. when she expressed interest in the low-priced over-the-counter shares of Control Metals. She telephoned the company, spoke with Lemoine and made a purchase. Several months later, on or about December 31, 1968, Lemoine telephoned and recommended S&M shares as having very good prospects. He stated that the company was developing land near Disney World and Orlando, and that he believed the witness could make a fast dollar by buying the stock, particularly because the market was down at that time. The witness bought 100 shares of S&M on January 31, 1969 at 4-1/2. On May 16, 1969 she purchased an additional 100 shares at 2-1/4 when Lemoine called and advised that he thought she would make fast money--that Disney's project was coming in at the Orlando area and that S&M's land was being developed.

When the witness received the Cunningham and Weinstein questionnaire she called Lemoine and was advised that there was no basis for the law suit and she should not be alarmed.

WT, circulation supervisor of a Miami newspaper, testified that Lemoine had worked for him before he became employed by Ferman & Co..

On an occasion when they met, Lemoine stated that Ferman & Co. was an over-the-counter brokerage house which dealt as principal in most of the stock it handled. WT made many purchases of low-priced speculative securities, including the following purchases, through Lemoine:

November 8, 1968	-	200 S&M at 2-3/8
February 3, 1969	-	200 Junction at 5-7/8
March 3, 1969	-	200 Junction at 5
April 15, 1969	-	200 S&M at 2-3/4
June 17, 1969	-	200 Junction at 2-5/8

He testified, with respect to the April 15, 1969 purchase of S&M, that Lemoine told him that S&M stock was in demand and he thought it would move. In connection with the March 3, 1969 purchase of Junction, the price had dropped, and Lemoine suggested the purchase so that the customer might average down.

WT testified, with respect to the purchase of Junction on June 17, that Lemoine advised that he thought that the stock was ready to move up but that none was available; that two or three days later Lemoine called and said: "Hey Bill, I spent some of your money.". He advised that Junction shares had become available and that he had bought some for WT. No discretionary authority had been given by WT. On cross examination by counsel for the salesman, however, it was brought out that in the earlier discussion there could have been an understanding by Lemoine that if more shares did become available at a specific price or within a specific price range, Lemoine was authorized to make the purchase for him. Additionally, the witness testified that he knew he did not have to take the stock when advised of the purchase. Lemoine's explanation of this transaction is in basic agreement with that of the customer, and

I find that it was understood that a purchase at the new lower price was within the understanding reached earlier. (Tr. 1732). WT spoke highly of Lemoine's integrity.

GDB testified to the effect that Lemoine represented, in selling him 200 shares of S&M on April 23, 1969, that the issuer would build five factories on the land to be acquired for the Greater Miami Industrial Park and that S&M would build parts for snomobiles. I believe the witness to have been confused concerning the snowmobiles, but credit his testimony concerning the factories.

I find Lemoine to have been an intelligent and honest witness who had kept accurate records as a salesman during the two years of his employment at Ferman & Co. He tried to do some research on securities, using, among other material, Standard and Poor's manual. Unfortunately, he was never properly trained at Ferman & Co. (his only employment in the industry); he was given erroneous information, particularly by Tuffli, 33/ some of which he transmitted to his customers; and he operated under the view (as did Ferman & Co. salesmen generally) that so long as he expressed as merely his opinion a representation that a stock would appreciate in price, he would not be in violation of the securities laws and rules. He was not a high-pressure salesman, earned relatively little in commissions, and was let go by Ferman in mid-year 1970. He testified that Ferman actually "was making my decision for me". At the time of the hearing he was employed as district circulation manager for a Miami

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33/ Respondents' Exhibit 13 consists of notes made by Lemoine following a meeting at which Tuffli gave a description of Junction and its operations. The substance of the description is basically false and projections of profitability are entirely unwarranted.

newspaper. Although he does not intend to return to the securities industry, I believe the public interest requires that he be barred from associating with a broker or dealer, provided that if he changes his mind he may apply to the Commission for permission to be so associated after six months, upon a satisfactory showing that he will be adequately supervised by his employer.

Gelber

JOH, a supervisor for General Development Corporation, a Florida land sales company, testified that Gelber's wife worked for General Development. In early January 1969 Gelber called JOH and advised that S&M had adequate cash and was going to develop shopping centers in Florida and Colorado. He said that the stock was then selling at about 6 and that it should go to 12 very shortly, i.e., within 6 months, because Ferman & Co. was making a market in it. On January 31, 1969, JOH bought 100 shares of S&M at 6.

In response to the customer's request for a financial statement, Gelber advised that it would be sent. He called several times subsequently in efforts to induce further purchases, but the witness refused to buy more shares without a financial statement.

The witness testified that he thought Gelber was not sophisticated and was not intentionally misleading or lying about S&M. It was his view that perhaps Gelber was "forced" to sell S&M because Ferman & Co. was making a market in the stock.

JF was a bailiff of one of the Circuit Court Divisions in Miami. Prior thereto he had been in the accounting department of

a New York broker-dealer firm and then a registered representative with that firm. He is Gelber's cousin and had suggested to him that he become a registered representative with a mutual fund or with a firm dealing in mutual funds, but Gelber became a registered representative with Ferman & Co.

JF called Gelber about S&M, having heard about it from a friend to whom JF had introduced Gelber. The friend bought 100 shares of S&M and JF decided that he also "would jump in." Gelber said he thought the shares would be good for a few points if JF held them for six to eight months, because a larger company was in the process of buying into S&M and the chances of a price rise would be very good. This witness bought 100 shares of S&M on January 28, 1969 at 4¼.

He testified that he did not believe Gelber would intentionally make untrue statements concerning S&M or would intentionally omit material facts in order to induce him to purchase the stock.

Mr. MI, a night auditor and hotel clerk, was a friend of the witness MF, whose testimony is discussed above. MI testified that Gelber telephoned shortly prior to January 30, 1969, and advised that S&M was a very good company owning Florida land, and would be absorbed by another company and that its stock would double or triple and go to 15. On January 30, 1969, the witness bought 100 shares of S&M at 5 1/8.

Although Gelber advised that S&M had land in Florida, he said nothing about mortgages on the land. This witness was not told that S & M was speculative, and he apparently did not know it as such. He was not sufficiently sophisticated to recognize the speculative nature of the stock. Nor was this witness told that S&M had approximately two million shares of stock outstanding at the time of the purchase. He testified that Gelber said Ferman & Co. was the only brokerage house dealing in S&M stock and that it could not be bought or sold elsewhere.

Gelber was employed by Ferman & Co. for approximately one year and this was his only experience in the industry. (Tr. 1785). He testified that he sold no Junction shares; and his sales of S&M were made largely in reliance on the newspaper articles relating to that company and on rumors he heard in the office. When asked whether he passed these rumors on to his customers, he responded: "Sometimes I may have passed them on and sometimes not, depending on the quality of the rumor."

Of course, he was inadequately trained and remained unsophisticated and incapable of properly advising investors. He left Ferman & Co. and the securities business and does not intend to return to it. However, the public interest requires that he be barred from association with a broker or dealer, except that after six months he may apply to the Commission for permission to return to the industry in an adequately supervised capacity, if he should change his mind.

Yudin

Mrs. RJ, a housewife, testified that in January 1969, Yudin came to her home and discussed S&M and Junction with her husband, who had dealt with Yudin prior to the latter's employment at Ferman & Co. Mr. J bought 500 shares of S&M at 4-3/8 on that day, January 24, 1969. On January 30, 1969, 500 shares of Junction were purchased at 5-3/4, and again on February 3, 1969, 500 shares of Junction were purchased at 5-7/8.

Yudin represented that he had personally investigated both issuers and recommended them highly, stating that if he had money he would buy shares of S&M. He made many telephone calls to the home in persistent efforts to effect additional sales and telephoned Mr. J at a hospital in which he was being treated following a heart attack.

I reject most of Yudin's testimony regarding the transactions, including his testimony that his representations by telephone to his customers were in effect the words of Tuffli, repeated by Yudin as an innocent and unsophisticated subordinate and conduit in the selling. (Tr. 1555; 1571-1573; 1658-1680).[34/]

34/ For example, compare the testimony at Tr. 1506-7: "Almost all the conversations with my customers, even though they were my friends, always were three way." With his responses to his counsel's questions at Tr. 1580:

Q. In other words you had one sales pitch for [Junction]; did you not?
A. Absolutely
Q. And it was uniform?
A. Yes.
Q. And you used it with all of your customers?
A. Yes sir.

See, also, the following colloquy:

Q. What representations did you make, if any, to [Mr. J]?
A. Only those representations that Mr. Tuffli made to me as I held [Mr. J] on the phone.
Q. What were those representations now?
A. That the company had a limestone quarry located in Colorado, that they had other subsidiaries that added to the wealth of the company, a snowmobile division, that they owned a number of shares of a land company called S&M, that they owned apartment houses, that there was some land in California that they owned and maybe would develop--I don't recall. It was a conduit kind of thing with all of my customers. (Tr. 1571-1572).

Mr. J, the husband, also testified. At the time of the hearing, he was approaching the age of 84. He testified that when he purchased the 500 shares of S&M, Yudin said he personally had investigated the company, which he described as "terrific", and told him he could triple his money in 30 days. He also testified that at the time of his second purchase of Junction, Yudin represented that the stock would go to $25 a share. I find the testimony of Mr. J to be credible.

EM called Yudin and inquired about Junction shares on December 2, 1968 at the recommendation of a friend. Yudin represented that Junction would more than double and said he would advise EM when to sell. He also represented that Junction's snowmobiles would be sold throughout the country and said he was putting much of his own money into the stock. (Tr. 1074). The witness bought 100 shares at 5-1/4 on that day.

Yudin acted primarily as a trader, and sometimes as an assistant trader to Tuffli. As indicated above, he testified that the conversations with his customers were merely transmissions, on his part, of what Tuffli was concomitantly telling him with regard to the issuers and their prospects: that he would hold the telephone close to Tuffli so that the conversations were in effect "three-way". I reject this testimony as an attempt to evade responsibility for unwarranted representations which I find Yudin made regarding S&M and Junction. His representations to customers may have been based in part on information from Tuffli, but there is no justification for the attempted distortion of the facts.

Yudin's testimony regarding the Form 10 of Junction and newspaper articles reporting alleged real estate projects of S&M relates to reports filed or published long after his transactions with the investor-witnesses J and EM, and they provide no support for these transactions. (Tr. 1542; 1607). By his own admission Yudin sold Junction to at least 20 or 30 customers, and he testified that he told them he believed that Junction was worth more than the market price, basing his opinion on that of Tuffli. (Tr. 1573; 1671-1672; Div. Ex. 5H, p. 14).

He is a bright young man, who was never trained as a registered representative by either of his two broker-dealer employers. He became a high-pressure salesman in the atmosphere and within the pattern created by Ferman & Co. and Tuffli for effective producers in selling speculative house stocks.

When Ferman & Co. was closed and Ferman commenced doing business as Cambridge Securities, Yudin was made vice-president of that firm and was employed by it while it continued in business.

I believe that the public interest requires that Yudin be barred from association with any broker or dealer, provided that after six months he may apply to the Commission for permission to become so associated upon a showing that he will be adequately supervised.

Cahen

FLW, a dispatcher clerk, had been dealing with Ferman & Co. since the middle of 1968. Sometime after he requested a different registered representative, Cahen telephoned as his new representative and recommended S&M as a good company whose stock had good potential, advising that it should go up to around 15 or 20. He also recommended Junction as a good purchase, said it was tied in with S&M and would rise in price with the increase in S&M's price.

The witness bought 50 shares of S&M at about 6, and 50 shares of Junction at about 5 on January 31, 1969, and he made subsequent purchases of S&M. On or about February 14, 1969 he bought 50 shares at 5, and on or about April 18, 1969 he bought 100 shares at 2-7/8. As the price of S&M had declined, Cahen advised FLW that it was a bargain and that the price would rise. He advised the witness to make the last purchase in order to average down his cost of S&M. Nothing was said about registration, or lack thereof, of either Junction or S&M.

Mrs. RM, a divorcee, had met Cahen prior to his employment by Ferman & Co., while he was employed by the former broker-dealer firm mentioned above, Prudential Investment Corporation, then owned by Nicholas Torelli. She testified that early in November 1968 she spoke with Cahen about Junction and S&M. During the course of their many discussions, Cahen described S&M as a spin-off from Junction, which, he said, had made all kinds of acquisitions, had very sound people behind it, and was in the snowmobile business, which he described as a very big and booming industry.

The witness invited Cahen to her home for Thanksgiving dinner in 1968. Her daughter and several other guests, most of whom were her neighbors, also attended. Cahen recommended purchase of shares of both Junction and S&M, described them as small and agressive companies with much potential, and said that S&M was selling at a very reasonable price and should do very well in the future. In response to a question from one guest, Cahen advised that in his view the prices of S&M and Junction would increase faster than the price of mutual funds and that within a year or so S&M stock would be approximately 15. He also stated that because Junction was the parent company, with the increase in the price of S&M, the shares of Junction also would appreciate in price.

Following is a list of purchases by Mrs. M at the inducement and recommendation of Cahen. Some of the purchases were made during meetings and others during telephone conversations:

November 26, 1968	-	100 shares of S&M at 2-3/4
December 2, 1968	-	200 shares of Junction at 5-1/2
December 12, 1968	-	200 shares of S&M at 3-3/4
January 13, 1969	-	1000 shares of S&M at 4-1/8
December 2, 1969	-	100 shares of Junction at 2-1/2

At the time of the purchase of the 1,000 shares of S&M on January 13, 1969, the witness had gone to Ferman & Co. to pick up a check. As a result of a conversation with Cahen, however, she bought the 1,000 shares when he stated: "I told you that the stock was going up and it is. You should get into it heavier." The purchase was made with proceeds of the check she picked up for the sale of other stocks.

One of the purchases was made during a discussion of the class action against Ferman & Co., during which Cahen stated that anyone can be sued, but that Ferman & Co. would win the law suit. His persistence with this customer, as with so many others, convinced her that another purchase should be made. As a result of such persistence, not only his customers but his relatives and friends lost substantial amounts of money. (Tr. 1962).

Mrs. M testified that Cahen represented Junction as "still a good buy" after it had gone down to 2-1/2, and that he said both he and his mother had bought more shares. The sale to her of 100 shares of Junction on December 2, 1969 long post-dated the "negative" letter of July 1, 1969 sent to Junction shareholders and discussed above at page 17.

Nothing was said to the witness regarding registration of S&M or Junction shares. Nor was anything said with regard to the mortgage indebtedness on the real estate. Mrs. M did sell 300 shares of S&M at Cahen's suggestion, but at that time Tuffli had offered double commission for purchases by the salesmen. He had tried to convince her to sell 1300 shares.

LEA, an employee of the Federal Aviation Administration for nine years, was an air carrier operations dispatcher for that Agency. At the suggestion of an employee of another brokerage firm he called Cahen at Ferman & Co. in January 1969 and Cahen recommended the purchase of S&M as a spin-off from Junction. He described Junction as a solid company with large assets and management that would back-up S&M, which, he said, was going into land development with its extensive land holdings.

He stated that their first project would be an industrial complex in Miami and that he anticipated that the stock "would quadruple in a very short time."

Cahen also said that Junction was manufacturing or marketing snowmobiles, that it had tremendous public appeal as a very solid company with large assets and with management ability which they would use in S&M.

LEA made the following purchases of S&M and Junction:

January 7, 1969	-	100 shares of S&M at 4-1/4
January 7, 1969	-	100 shares of Junction at 5-1/4
January 10, 1969	-	100 shares of S&M at 4-1/8
January 13, 1969	-	100 shares of S&M at 4-5/8
April 30, 1969	-	200 shares of S&M at 2-3/4

In connection with the last-mentioned purchase, Cahen recommended dollar averaging, because the price of the stock had gone down, stating that general market conditions rather than anything with respect to S&M itself were responsible for the price decline. With respect to the purchase of S&M on January 10, 1969 at 4-1/8, Cahen stated that although the price had gone up he could get it at a beneficial price before publicity of the increase. He also said that management was solid, that the company was established, and that it had bought the old FBI building on Biscayne Boulevard in Miami.

When the witness called Cahen with respect to the class action and suggested that S&M was not financially sound, Cahen responded that he did not expect any adverse action, was not concerned about the suit, and the stock was still a good buy. Thereafter, in June 1970, Cahen told the

customer that the market had turned around, that S&M was a tremendous buy at 3/8, and that he was sure that the customer could double this money in no time at all because the issue was so thin. Nothing was said by Cahen regarding the non-registration of the shares of either company.

On February 6, 1969, Mrs. PAR, a widow, went to Ferman & Co. with a friend, Mr. SA, with the intention of buying stock in John Blair Company. She met Cahen, who recommended Junction and S&M, stating that he "would not steer her wrong." Mrs. R advised that she had just bought a new car which would cost $4,000, and Cahen suggested that she put that money into Junction shares: that she would be able to double that money by the end of the year, and that she could borrow the money to pay for the car. The witness testified that she borrowed money and also took money out of her savings account. Instead of buying the John Blair stock she bought Junction. Cahen did agree, she said, to buy "a little of the John Blair stock" for her.

Cahen told the witness and Mr. SA that Junction was a very good stock, that Ferman & Co. had inside information and knew that it would go up, and that at the end of six months it would keep going up. The following purchases were made by the witness:

February 6, 1969 - 100 shares of Junction at 6
February 14, 1969 - 100 shares of S&M at 4-1/2
February 27, 1969 - 300 shares of S&M at 4-5/8

With respect to one of the purchases of S&M, the witness testified that Cahen telephoned and said that he had bought the shares for her. When she inquired of the reason, he stated that he had sold her John

Blair stock and was going to make money for her. The witness testified that this John Blair stock had been reluctantly purchased for her by Cahen about one week prior to the sale. Cahen had not been given the right to exercise discretionary authority over the customer's account.

One of Cahen's frequent pressure tactics was to remind the customer that stocks should be bought when they're low in price, and that when they go up the purchaser recovers. During one of the conversations Cahen advised Mrs. R to give to the gentleman who accompanied her, Mr. SA, $10,000 for the purchase of S&M while the price was going down. She testified that she responded negatively and refused to do so.

She also testified that Cahen called very frequently during the summer when she was contemplating the sale of her home, and that he was constantly insisting or recommending strongly that she make every effort to buy the two stocks, Junction and S&M. As late as Christmas-time 1969, he was still calling in efforts to have her make a purchase. Nothing was said to the customer concerning the non-registration of either stock, and she was not told of their other negative aspects.

Mr. SA,[35/] a mutual fund broker in New Jersey, visited Florida for long periods each winter. As indicated above, he accompanied Mrs. R to Ferman & Co. on or about February 6, 1969. His first trip to Ferman & Co. had been made a month earlier, and he was not then accompanied by Mrs. R. He testified that on this visit Cahen strongly recommended purchases of both S&M and Junction, said that Ferman & Co. was manipulating

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35/ The witness testified under his full name, the initials of which are XSA: his transactions were in the name with the initials XA, and he was referred to in testimony of Mrs. R as SA.

the S&M stock and that the witness would double his money in a short time. Cahen assured the witness that if he would put his trust in him, he would make more money for him than mutual funds would, and stated that a Mr. Roth was an inside contact with Junction. Cahen also said, when he learned that the witness was a mutual fund salesman, that if SA were to purchase the S&M or Junction stock on his own, Cahen would not give him any information concerning the stocks.

Following is a list of the purchases by SA through Cahen:

S&M		Net Amount
1/7/69	200 shares at 4-3/4	$ 850.00
1/13/69	300 shares at 4-1/8	1,237.50
2/10/69	50 shares at 5	250.00
2/14/69	1,500 shares at 4-5/8	6,750.00
2/27/69	500 shares at 4-5/8	2,312.50

Junction		Net Amount
1/7/69	200 shares at 5-1/4	$1,050.00
2/3/69	400 shares at 5-7/8	2,350.00
2/26/69	500 shares at 4-5/8	2,312.50
3/3/69	50 shares at $5	250.00
4/23/69	100 shares at 4-1/8	412.50

The witness apparently did put his trust in Cahen. Although he testified that he asked on his first visit for further information with respect to the companies recommended, he made these purchases despite the fact that he never received from Cahen any written information on either company.

SA testified that Cahen would call him approximately once a week advising of the price of one or both of the two stocks. When the price had dropped, SA would be urged to buy more stock. Nothing was said to

him by Cahen about the land of S&M being mortgaged, and nothing was said about S&M or Junction shares not being registered with the Commission.

LM, an attorney in the Miami area for approximately 20 years, had met Cahen around 1965 when Cahen was in the coin business, prior to his association with Ferman & Co., and had represented Cahen in certain legal matters.

In late 1968, Cahen visited with the witness at his offices and discussed the purchase of securities. When LM indicated his reluctance to buy over-the-counter securities, he was assured by Cahen that Ferman & Co. was making a market in S&M, and that he would be advised when to buy and when to sell. Cahen described the stock as a good buy which was going to "sky rocket". At various times during the course of LM's purchases of S&M and Junction, Cahen recommended one of the two stocks more strongly than the other. Following is a list of the purchases made by LM through Cahen:

January 2, 1969	-	300 S&M at 4-3/8
January 6, 1969	-	300 Junction at 5-1/4
January 13, 1969	-	300 S&M at 4-1/8
February 3, 1969	-	300 Junction at 6
February 14, 1969	-	100 S&M at 4-1/4
April 23, 1969	-	500 S&M at 2-1/2

The last purchase was made without the authorization of LM, who testified that he nevertheless agreed to accept the shares after directing Cahen never to do that again. However, as a matter in the public interest, evidence was received to the effect that on one occasion not within the scope of the charges against Cahen, i.e., on or about September 10, 1970 when Cahen was a registered representative for Cambridge Securities, the successor to Ferman & Co., Cahen sold to LM

1,000 shares of Caribbean Shoe, again without authorization. This time the shares were returned to the broker-dealer and the trade was cancelled.

The witness testified that Cahen had told him that Junction was in the snowmobile business, that the stock would go up and that he would make money. LM knew that he was buying speculative stocks through Cahen, and so testified.

Cahen began working for Cambridge Securities when it took over the business of Ferman & Co., and he was so employed at the time of the hearing. He became a registered representative in July 1968, and worked for Prudential Investment Corporation under Nicholas Torelli for a few weeks; then for Dalen Investments and Funds, Inc. (Dalen) for a similar period, and in October of that year he joined Ferman & Co. Apparently, he received no adequate training at any of these places of employment.[36/] As did his colleagues at Ferman & Co., Cahen apparently believed that a statement made by a salesman to a customer was proper, provided only that it was qualified as his personal opinion. He testified:

> Gill Tuffli used to say, "You can't say the sun will rise tomorrow, because maybe it will never rise. You can give your opinion as to what is going to happen." (Tr. 1934).

36/ An initial decision of Administrative Law Judge Tracy, issued on February 23, 1972, ordered that the registration of Prudential be revoked, that the firm be expelled from membership in the NASD, and that Torelli be barred from association with a broker-dealer. One of the bases of the order was the failure to supervise certain employees who were found to have violated the anti-fraud provisions of the securities laws. The initial decision became final with respect to said respondents. Securities Exchange Act Release 9547, March 27, 1972. Dalen apparently had a problem involving the SEC and may not have been operating while Cahen was there. (Tr. 1930-32).

It would appear, therefore, that Cahen was never properly trained or supervised.

Cahen heard of Junction while he was employed at Prudential. He testified that Prudential had more Junction shares than Torelli wanted, and that he had instructed his trader not to buy more. (Tr. 1937). After Cahen went to Dalen he continued his contacts with Prudential salesmen and learned that Junction shares were being bought by them for their own accounts and for their clients. The price rose two or three points in anticipation of the spin-off of S&M (which was, of course, merely a shell company). When he went to Ferman & Co. he saw both Junction and S&M on the blackboard. He expected to become knowledgeable in the stocks, inasmuch as Ferman & Co. was making a market in them, and he did receive much information on them from Tuffli. (Tr. 1938-9).

Early in November 1968, Cahen received a call from a Prudential salesman advising him that a meeting would be held on S&M. He attended the meeting at Prudential's offices and heard Allen Martin, who was introduced by Torelli as a successful businessman formerly with the Charles Antell Company and now a specialist in mergers and acquisitions. (Tr. 1941). Martin and one of the Roth(s) passed out literature on the recently acquired St. Johns development and on the spectacular growth of land values in Florida. Martin expressed the view that in three years S&M would be a fifty million dollar company, and stated that only 900,000 shares were publicly owned and tradeable, while 3,000,000 shares were inside stock and not tradeable. (Tr. 1947). He touted the sales ability and reputation of Allen Roth's "international" land selling company, First National Holding Company.

Martin also mentioned the S&M plan to acquire the land in Chico, California, which they expected to sell out entirely in less than a year at a profit of three million dollars; and he announced that they had

"closed a deal" by signing a letter of intent to acquire the Greater Miami Industrial Park on the Tamiami Trail. This land, he represented, would be obtained for 612,000 shares of tax free S&M stock, was appraised at $2.6 million, and would produce $6,000,000 in profits for S&M. He also said that factories would be built on the land. (Tr. 1948-51).

From time to time, Cahen related to other salesmen at Ferman & Co. some of the information he'd heard at this meeting, but he made no formal report. Nor did he discuss with Tuffli the information he received. Conversely, Tuffli gave him much information from time to time, including a copy of the Form 10 filed by Junction. Tuffli spoke of the "honesty of the management" of Junction, of the "fully owned" buildings which "were bringing in income continuously", of the acquired companies which were "making money", of the snowmobile company and its "great year", and of the apartments and their high market value as compared with the investment. (Tr. 1956). Cahen also received a copy of an independent accountant's report on Junction as of May 31, 1969, which included a statement of operations for each of the years 1966 through 1968 and for the eight months ended May 31, 1969. The substantial losses for each of these periods and the deficits in earnings are among the many danger signals that should have deterred Cahen from further activity in selling shares in this company.

But Cahen continued to sell S&M and Junction shares long after he recognized that information he'd received from Martin was not reliable and after he should have known that material received by Tuffli and other shareholders indicated that the companies were in serious financial

difficulty.[37/] Aside from the Form 10, he saw the unimpressive Plan and Agreement of Merger. (Div. Ex. 5D). Respondents' Exhibit 4 was clearly negative, as discussed above. Despite these and other unfavorable reflections on the issuers, Division's Exhibit 6G shows sales of Junction shares by Cahen throughout the year 1969 and continuing in the year 1970 while the price was declining. He continued to sell S&M shares in March, April and May 1970, and as late as August 24 of that year.

No justification appears for the extensive and continued selling, nor for the sales methods followed by Cahen, inexperienced, untrained, and credulous though he may have been at the time he attended the meeting at Prudential. His selling was heavy and financially remunerative. When asked by his counsel to estimate how much S&M and Junction he sold to the public Cahen made a "rough guess" of "around 10,000 S&M and 5000 [Junction]". The records of Ferman & Co. show that he sold 45,210 shares of S&M and 35,050 shares of Junction. (Div. Ex. 6G).

37/ In his testimony given on June 15, 1970 during the Commission investigation of the instant matter he testified: "There are an awful lot of skeletons coming out now, but, at the time, you know these things were factual enough to report it and the newspapers said this and the magazines this and then later on things changed apparently, so I don't know." (Div. Ex. 5D, p. 75). He testified that he then had reason to believe that Martin was not telling the truth. His "justification" for selling shares after he heard that the Roths had given up their stock and control was that the "good and honest[Junction] people...probably discovered something was wrong with the Roths and with the Florida deal so they went in there and cleaned up the company, so to speak...this is just what it looks like on its face." (Ibid., at 77, 80).

The selling was accomplished with little or no regard for the interests of his clients. This is clear not only from the testimony discussed above, but also from the nature and timing of many of his transactions. For example, he testified that on January 31, 1969 there was heavy demand for S&M shares, and Tuffli offered the Ferman & Co. salesmen twice the regular commission for any stock they could buy from their customers. (Tr. 2004).[38/] The record shows that on January 30, 1969 Cahen had called Mrs. RM and "had used all [his] persuasive powers to get her to sell her 1300 shares of S&M" because with respect to 1000 of the shares "she had said all she wanted was one point in profit." (Tr. 2053). His explanation that on the same day he took LM out of "only 100 of his 300 shares" is rejected as totally incredible support for his suggestion that he had concern for the interests of his clients.

I conclude that even as a relative neophyte in the securities industry, Cahen should have been suspicious of the excessive claims made by Martin at the Prudential meeting. He continued to call Martin about once a month to inquire about S&M's activities "to try to verify whether the things he told me at that meeting were happening or not", and he said, in response to another question, that he "was waiting to see concrete evidence more than words". (Tr. 2040-41). In the meantime, he continued to sell S&M shares in great volume, mouthing representations unjustifiably and falsely made by Martin, Tuffli and others, and making predictions which had no reasonable basis. He had recognized as soon

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38/ Cahen testified that such questionable procedures had been followed at Ferman & Co. on other occasions, and he did not consider it unusual. (Tr. 2005).

as he started working as a registered representative that the firm (probably Dalen at that time) was "like one great rumor mill...". (Div. Ex. 5D, p. 14). He should have recognized the same quality in Ferman & Co.

On April 8, 1969, Cahen sold 1000 shares of S&M for Martin at 2-7/8 by purchase for Ferman & Co. (Div. Ex. 39; Tr. 2041-44). He discussed with Tuffli the possible insider status of Martin, and Tuffli wrote a cautionary note on the order ticket not to pay Martin "Until we see letter from his attorney saying free trding stock!!! Purchased Sub. to being Free Trding Stock." The Division contends that Cahen knew that Martin was an insider, that Martin was in fact an underwriter of S&M shares, having received 50,000 shares for arranging the Riverlands transaction, and that Cahen therefore violated Sections 5(a) and 5(c) of the Securities Act. I agree with the Division, but I impose no sanction on Cahen for this sale. The Commission has said that a salesman is not relieved of responsibility for Section 5 violations by reliance on his employer or supervisor, but that the evidence can be relevant in deciding what sanctions are appropriate.[39/] I find none appropriate under these circumstances.

I have considered the character testimony offered on Cahen's behalf. I have also considered the fact that much of the information on which he predicted his selling came from Tuffli, and some of it reinforced what he had heard at Prudential. But I find that his aggressiveness and persistance, his unjustified and unsupported predictions of price rises and assurances of profits, and his utter disregard of his responsibility to his clients are flagrant and reprehensible. They compel the conclusion that the public interest requires that he be barred from further association with a broker or dealer.

39/ Mark E. O'Leary, et al., Securities Exchange Act Release No. 8361 (July 25, 1968).

The findings arrived at herein with regard to the several salesmen as well as those discussed below with regard to all other respondents involved consideration of the transactions in which they were personally involved, as testified to by the witnesses and respondents, with due regard for their demeanor on the stand. I have rejected the Division's contention in its reply brief that the selling of unregistered shares involved concerted action by the Ferman employee-respondents in a plan or scheme to defraud the public. I do not find that such concert of action existed. Nor is it alleged in the Order.[40/]

As with all other findings, and with all conclusions arrived at herein, they were based on the preponderance of the credible evidence and on an evaluation of the arguments made and positions taken in the post-hearing documents. Consideration has been given to the mitigating factors urged in behalf of all respondents and to their prior records in the industry, which disclose no adverse action.

Consideration also has been given to the evidence that much of the false information in the office of Ferman & Co. was the result of Tuffli's activity in sponsoring the shares of the two issuers, that several of the salesmen believed that he was a good analyst, and that they believed in his recommendations.[41/] But much of the information was unfounded rumor that should have been recognized as such by investigation

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40/ Motions made in the reply brief to amend the proposed findings and conclusions initially made by the Division are denied except to the extent they correct obvious or minor mistakes or typographical errors.

41/ There is much testimony relating to Tuffli's frequent "underplaying" the shares of the issuers in words, at the same time as he was slyly suggesting to the salesmen their potential increase in price. See, for example, Tr. 1524-26; 1532; 1753-4.

before recommendation to customers. Each respondent salesman was guilty of serious violations of his duty as a registered representative. The failure to evaluate the shares of both Junction and S&M on the basis of assets, earnings and cash position demonstrates their willingness to accept what they heard in the rumor factory that was Ferman & Co. The failure or refusal to ascertain and advise customers of the losses being sustained by Junction in each of the recent years and of the continuing inadequacy of its several operations, as mentioned above, to ascertain and advise of the nature of the S&M shell and the size of the debt on its mortgaged lands, the willingness to spread false rumors concerning the acquisition by S&M of the Greater Miami Industrial Park and the "old F.B.I. building" are among the host of false and material misrepresentations and omissions constituting violations of the anti-fraud provisions. As to the predictions of price rises, the Commission's language in Ross Securities, Inc., 41 S.E.C. 509 (1963) at 514, is appropriate.

> "The predictions of short-term increases . . . and other favorable representations . . . stand out as the central theme of respondents' sales efforts. These sales techniques served not to inform fairly but to lend to this highly speculative investment an unwarranted air of certainty as to future profits and to obscure the risks involved in such an investment."

I find that the high pressure tactics of the salesmen were sparked by rumors accepted and spread by Tuffli and the salesmen themselves. Some of the rumors probably were created by the large shareholders of the issuer companies, and some were published in local news media; others were fed more privately through various channels to persons contacted by the salesmen, among others. Stewart and other salesmen testified that

much of the information they gave to customers came from the other salesmen, and this was a part of the pattern by which false rumors were spread. The whetting of the appetite by undiluted assurances of success, sometimes supported by actual price rises which fed on themselves and gave apparent credence to those assurances during the bull market in speculative stocks, are part of the story of Ferman & Co. and of Tuffli and some of its salesmen.

That some of the investor-witnesses recognized their purchases as highly speculative may to some extent mitigate the seriousness of some violations,[42/] but neither such knowledge nor the intention to speculate would negate the violations of the anti-fraud provisions or absolve the salesmen from responsibility for the falsity or inadequacy of their representations and the impropriety of their selling practices. The Commission has repeatedly held that the fact that a customer is a sophisticated investor or usually deals in speculative securities cannot excuse fraudulent representations made to him.[43/] Similarly, that some of the customers may have profited from transactions does not excuse the violations. As the court held in Berko v. Securities and Exchange Commission, 316 F. 2d 137 (2d Cir., 1963),

> "[T]he fact that the salesman's clients were not misled and indeed may even have profited from his actions is legally irrelevant. Hughes v. S.E.C., 85 U.S. App. D.C. 56, 174 F. 2d 969, 974 (1949). The Commission's duty is to enforce the remedial and preventive terms of the statute in the public interest, and not merely to police those whose plain violations have already caused demonstrable loss or injury."

42/ Possibly to the contrary, however, see the discussion of Hanly v. S.E.C., 415 F. 2d 859 (2d Cir., 1969), infra, and language in the margin to the effect that speculative intent is irrelevant.

43/ Richard J. Buck, Securities Exc. Act. Rel. No. 8482, p. 8 (December 28, 1971); Abbett Sommer & Co., Sec. Exc. Act Rel. No. 8741, p. 31 (1969); Hamilton Waters & Co., Sec. Exc. Act. Rel. No. 7775, p. 6 (Oct. 18, 1965).

Several of the arguments of the respondents are effectively answered in a single excerpt from what has become a leading case. In Hanly v. S.E.C., 415 F. 2d 589 (2d Circ. 1969) cited in the margin of the previous page, the court said, at 595, quoting in part from Commission decisions as indicated in the margin below:

> "Brokers and salesmen are 'under a duty to investigate, and their violation of that duty brings them within the term 'willfull' in the Exchange Act."44/ Thus, a salesman cannot deliberately ignore that which he has a duty to know and recklessly state facts about matters of which he is ignorant. He must analyze sales literature and must not blindly accept recommendations made therein. (citation omitted) The fact that his customers may be sophisticated and knowledgeable does not warrant a less stringent standard. (citation omitted) Even where the purchaser follows the market activity of the stock and does not rely upon the salesman's statements, remedial sanctions may be imposed since reliance is not an element of fraudulent misrepresentation in this context. 45/

The predictions of price increases, the high pressure sales techniques and the misleading statements and omissions are among the factors which require the imposition of substantial sanctions on most of the salesmen-respondents of Ferman & Co.

44/ Citing, Dlugash v. S.E.C., 373 F. 2d 107, 109 (2d Cir. 1967). See also Tager v. S.E.C., 344 F. 2d 5, 8 (2d Cir. 1965)("'willfully'...means intentionally committing the act which constitutes the violation...[A]ctual knowledge is not necessary.")

45/ N. Sims Organ & Co., Inc. v. S.E.C., 293 F. 2d 78 (2d Cir. 1961)cert. denied, 368 U.S. 968 (1962). See also Commonwealth Securities Corporation, Securities Exchange Act Release No. 8360, p. 5 (July 23, 1968): "It is irrelevant that customers to whom fraudulent representations are made are aware of the speculative nature of the security they are induced to buy, or do not rely on such representations."

b. Tuffli

Tuffli's involvement and participation in the anti-fraud violations as charged in paragraph IIG of the Order has been demonstrated above. As trader, he made the selection of Junction and S&M as house stocks,[46/] acquired the inventory for sale by the respondent salesmen, adding his personally owned shares, and as demonstrated above he aided and abetted the violations by the salesmen and participated in the fraudulent public distribution of the shares without having made reasonable inquiry as to their true nature and worth. His conduct evidences a "course of business which would and did operate as a fraud and deceit upon certain persons" as charged in paragraph IIG Such course of conduct was engaged in after Tuffli had experienced approximately 20 years of activity in the securities industry, during which time he must have had his attention invited to a host of fraudulent practices and activities. He was not a naive or unsophisticated man, and was quite aware of what was going on.

I conclude that, as charged, Tuffli willfully violated and also aided and abetted the violations of the anti-fraud provisions of the securities laws by Ferman & Co. and its salesmen respondents.

Arguments made by Tuffli to support the valuation of the assets of Junction are rejected as entirely unsupported. For example, the limestone in Basic's quarry was valueless unless and until it could be profitably extracted and marketed, and there is no basis for reliance

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46/ That he obtained permission from Ferman to trade the stock does not, as suggested in Tuffli's argument, affect his liability.

(assuming reliance, as urged in the proposed findings) on an expectation or hope of profit of .01 cents per ton or of any other figure. (Proposed findings at 3). Moreover, Skatfield 47/ testified that Sullivan met with Tuffli in November or December 1969 to discuss S&M and Junction, that he told Tuffli that there was very little money in S&M (Tr. 1325), that Junction's "lime pit out west [was] not producing enough or of high enough quality. . . and he didn't know where the money was coming from" to get it back into production after having shut it down. Skatfield testified that from the conversation it appeared that "things were not too good for [Junction] either." (Tr. 1331). Many sales of both stocks followed that meeting.

The proposed finding at page 4 that "The Form 10 reveals that there were sales of One Million Dollars for the previous year in Snowmobiles" is meaningless for several reasons (again assuming reliance), including a failure to note the language on page 5 of the Form 10 to the effect that increasing competition and losses had dictated the sale of the Powered Products Division of Junction, which handled the snowmobile operation.

Moreover, the Form 10 was filed with the Commission on August 18, 1969. As stated above, at page 9, a copy of the Form was mailed to Tuffli by Junction's president by letter dated September 2, 1969. (Resp. Ex. 17). Any claim of reliance thereon is specious, and the transcript contains no evidence of such claim.

47/ As mentioned in the margin at p. 13, Skatfield was one of the two owners of St. Johns and the 1600 acres transferred to S&M. He thereafter became a director of S&M. His testimony is credited.

The Order charges that Tuffli, among other respondents, violated the anti-fraud provisions by employment of devices to defraud, among which was the placing of bid and ask quotations for S&M in the National Daily Quotation "pink sheets" at arbitrary and increasing prices, as a result of which other broker-dealers were induced to bid for, trade and quote said securities. In support of the charge, the Division introduced its Exhibit 15B, consisting of the pink sheet quotes by several broker-dealer firms during the period November 6, 1968 to October 28, 1970. The Division proposes a finding (Number 104) to the effect that because Ferman & Co. "led the bid prices of broker-dealers on six occasions". . . and "tied the high bid on 20 occasions", it was guilty of the charges asserted in the Order. My examination of the exhibit discloses seven occasions of high bid during the period selected by the Division, but I do not reach the conclusion that the high bid of that number (out of 56 days) and the tie bid of 20 during that period support the Division's suggestion of a market manipulated by Tuffli or of "arbitrary and increasing prices" inserted by him in the pink sheets.[48/] It follows, of course, that there were 29 or 30 bids by Ferman & Co. which were below the highs bid during the period, and examination of the exhibit does not suggest leadership or domination of the market or of the bidding. In my judgment there is no evidence supporting the argument that participation by Ferman & Co. in the market-making of S&M was a violation of the anti-fraud provisions because it induced "other broker-dealers to bid for, trade, and quote said securities," and I so conclude.

48/ Tuffli was in fact responsible for the insertion of the Ferman & Co. bids in the sheets. (Tr. 955).

Robert Forman

Robert Forman was assistant manager and a registered representative at the Miami Beach office of Blair & Co. (Blair) from October 1968 to June 1969. He was employed by that firm for two years. He is now, or was at the time of the hearing in Miami, co-manager of a broker-dealer firm's Miami Beach office since July 1970. He has been in the securities industry over 45 years and his experience includes both back-office and sales area activity. At the time of his involvement in the transactions under discussion he was supervised by former respondent (now deceased) Farrell.

Forman is among those charged with having willfully violated and having willfully aided and abetted violations of Section 5 of the Securities Act in selling and delivering shares of Junction and S&M during the period October 1, 1968 to July 1, 1969. He appeared at the hearing and testified when called by the Division. He was not represented by counsel and submitted no post-hearing documents in response to those filed against him by the Division.

While at Blair, Forman had as a customer an active trader named David Lutterman (Lutterman), for whom he would write letters and render assistance in other ways because of Lutterman's partial illiteracy. Around August 1968, Forman met Pedley at the Blair offices at about the same time as Lutterman met Pedley. Several weeks later, in the fall of 1968, a meeting at the Doral Hotel in Miami Beach was attended by Mr. & Mrs. Pedley, Allen Martin, Lutterman and Forman, the latter serving as adviser to Lutterman in a transaction in which Lutterman bought from Pedley over

5000 shares of Junction at either 3/8 or 1/2 point under the market price. Forman knew nothing about the source or status of Pedley's stock, but he assisted Lutterman in writing the check then delivered to Pedley, and he arranged with Pedley for future delivery of his stock certificates to Lutterman. Within a few months, Forman sold those Junction shares for Lutterman at the Blair office for a profit.

Forman became involved in substantial purchases of S&M shares owned by Pedley. He testified, with respect to all transactions, that he knew nothing about the source or status of the stock and made no inquiries, having relied completely on the prospective transfer of the shares by the transfer agent to himself or Lutterman or others as purchasers. He knew that both Junction and S&M acted as transfer agent for their respective shares.

Forman's first purchases of S&M stock appear to have been made in the fall of 1968,[49/] at which time he bought 1000 shares from Pedley. The shares were sold to Prudential Investment on December 31, 1968. Another block of 500 shares was subsequently bought by Pedley and sold to Prudential on March 27, 1969. These were among the many sales of Pedley stock which Forman made to or through other broker-dealers, and Forman testified that he sold none of the Junction or S&M stock to retail customers.

Forman attended a meeting of S&M shareholders at Grand Junction at Lutterman's invitation and expense. He testified that following the meeting

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49/ Forman's recollection was extremely vague, particularly with regard to the time of transactions on which he testified.

Pedley, Lutterman and he, Forman, went to the Wyllie Investment office in Grand Junction "to see his office, to see his operation." (Tr. 1403). He testified that either Pedley or Lutterman suggested they see the office, simply because they knew Wyllie, but that there was no discussion of business of which he was aware. Thereafter, he testified, Lutterman told him he had sold through Wyllie some 22,000 shares of S&M "after it was done", and he denied that he had telephoned or had any conversation with Wyllie concerning this transaction. (Tr. 1406).[50/]

On January 31, 1969, Pedley offered Lutterman 58,000 shares of S&M "at a fraction below the market". (Tr. 1375). Forman checked the pink sheets and confirmed that the offer was approximately a quarter of a point below the bid. Lutterman made the purchase, Forman testified, "... for himself, for his family, for his friends and for my son-in-law: the same package." Forman advanced the money for the shares bought for his son-in-law, Frederick A. Seaberg (Seaberg), whose account at Blair he controlled. The certificate delivered to Lutterman was in the name of a corporation, Brackin Holding, Ltd., but Forman knew that the shares were Pedley's. Forman eventually sold almost all of these shares for the transferees, who included Lutterman, Lutterman's daughter, Seaberg, and other customers of Forman and of another registered representative at Blair.

50/ A colloquy with Division counsel at 1412 of the transcript relates to Forman's testimony in the pre-hearing investigation and casts a shadow on Forman's memory or accuracy, but is not definitive as to a possible conversation with Wyllie.

On that date, January 31, 1969, Forman sold 1,000 of these S&M shares for Seaberg through Blair, and between that date and April 9, 1969, he sold 5,500 additional shares for this account. He also sold for Seaberg 500 shares of Junction on January 31, 1969.[51/] Forman disposed of the bulk of the 58,000 share purchase between January 31 and April 22, 1969. (Div. Exs. 43, 44). A relatively small number of the shares had been allocated to customers of another registered representative at Blair and were sold for him during that period.

In connection with problems which arose form the inability to effect transfer of some of these shares, Forman became suspicious of Pedley's honesty. Farrell was Forman's supervisor at Blair, and during at least a part of this period he was attending the office only a few times a week because of his health. Forman appears to have been virtually unsupervised. Under usual practice, the share certificates received from Pedley would have been sent to Blair's New York office to effect transfer to the purchasers. He testified, however, that here the New York office was not involved in the transfer, and when problems arose because the Roths had taken over and brought to Miami the management of S&M and refused to transfer some of the Pedley certificates, Forman and Lutterman became personally involved. Prudential, among other purchasers of Pedley's S&M shares from Forman and Blair, informed Lutterman of the non-transferability of Pedley

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51/ Forman testified that he controlled the account but it was in fact that of his son-in-law, from whom purchase monies were received and sale proceeds were paid. There is no evidence to the contrary.

shares. (Tr. 1413). Forman and Lutterman conferred and Lutterman obtained different certificates from Pedley by an exchange. Forman, at least on some occasions, performed the unusual function of bringing the exchanged certificates to Kenneth Roth at S&M offices, and he was able to effect the transfers. He testified that only then did he suspect Pedley of being dishonest, and that even these doubts seemed to evaporate after he heard, indirectly from Lutterman, that a personal feud existed between Pedley and Roth, and after the transfers were ultimately made to the purchasers.

As stated above with regard to the transactions of Ferman & Co., Pedley was a control person and underwriter in the distribution of shares of both Junction and of S&M, and it follows that Forman participated in the distribution of his shares and willfully violated and aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act.

Forman denied having seen a Blair procedures manual, part of which related to "Control Persons", but his supervisor, Farrell, testified that all registered representatives had read the manual. (Tr. 1038). Forman, of course, should have read the manual, and after having over 40 years of experience in various phases of the securities industry he should have known the Commission warnings, discussed above, which were issued with regard to offers of large amounts of little known securities.[52/] The Blair manual gave extended, explicit and detailed warnings to its registered

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52/ The S&M spin-off, as discussed above, occurred in October 1968. Although Forman testified that he thought his purchases of S&M were made as early as August or September 1968, it would seem clear that they were made very soon after the announcement of the spin-off and at a time when shares of S&M were a "little known security."

representatives to "be constantly on the alert for any unlawful sales of control or unregistered stock by [controlling stockholders]." Inquiry regarding the source of the stock being sold and the possibility of the existence of a control relationship was urged throughout the relevant pages of the manual. The concluding paragraphs warn, in part:

> "Before accepting any order from an officer, director or large stockholder or any other person who may be in control of the corporation whose stock is to be sold, KNOW YOUR CUSTOMER, the facts as to 'control', and the facts as to 'distribution'. If the order involves 'control stock' and a 'distribution', you must find out if it has been registered or if a letter of notification has been filed , or if it is to be privately placed.....
>
> .....
>
> .....if there is any possibility that a control problem exists, get the approval of the Compliance Officer before you accept the order."

Here, of course, Forman knowingly sold Pedley stock through purchases made by Lutterman and himself. The purchasers from Pedley purchased with the intent to distribute, as did Pedley, and the violations of Section 5 were willful, as charged. No denial or claim of exemption has been asserted.

Forman's reason for not having investigated the Pedley stock is inadequate except as a mitigating factor. That he did not sell directly to his customers is not of itself of great consequence except as it indicates an absence of misrepresentations and omissions of material facts to the investing public. His sales to or through Prudential[53/] and Wyllie were

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53/ With reference to the sale of his 1500 shares of S&M, Forman testified that he did not think he had an account at Blair and thought he had one at Prudential, and that, accordingly, he sold the shares through Prudential. (Tr, 1401).

distributions to the public through those broker-dealers and others such as Ferman & Co. and he was an essential element in Pedley's fraudulent activity. He sold several thousand shares of S&M to Ferman & Co. (Tr. 1444). These, we have seen reached the public.

Consideration has been given to Forman's unblemished record after over 40 years in the securities industry, many as a registered representative, and to his naivete in dealing with Pedley, who, he testified, ultimately swindled him out of $32,000, which he described as his life's savings. (Tr. 1447).[54/] However, under the analysis of the evidence most favorable to Forman, it is clear that he recognized the purchase of 58,000 shares as an unusual transaction and handled it in an unorthodox manner. Under such most favorable analysis his violations appear to have been chargeable to gross neglect and irresponsible activity rather than to fraudulent intent. His failure or refusal to ascertain or investigate the status of the Pedley stock was serious and reprehensible. Despite his many years in the industry it appears that his further activity as a registered representative should be subject to supervision and training which he apparently had not previously received. The nature and extent of his violations indicate that the public interest requires that he be barred from association with a broker or dealer, provided that after the expiration of six months he may apply to the Commission for permission to be so associated upon a showing that he will be properly supervised.

54/ The extent of Forman's profits in the Junction and S&M transactions is not disclosed.

Wasson

At the conclusion of the Miami portion of the hearing it was adjourned to St. Paul, Minnesota, for evidence with respect to the violations alleged against Wasson and Biersach. Thereafter, the proceedings against Biersach were settled, as indicated in the margin at page 2, supra.

Pedley was not the only person who accomplished a distribution of his unregistered S&M stock by devious involvement of broker-dealer firms. As indicated above, the Roths were owners of substantial amounts of such shares. Allen Martin, who sold 1000 of his shares to Ferman & Co. via Cahen's services, was involved in early 1969 with Kenneth Roth, then the president of S&M and the owner of 490,000 shares, in a device to dispose of some of Roth's unregistered shares in the Minneapolis area. As a result, Wasson, as a registered representative in the Minneapolis office of former respondent Walston & Co., became implicated in the illegal distribution and the violation of Sections 5(a) and 5(c) of the Securities Act.

Wasson testified, as a witness called by the Division, that he was currently employed by a broker-dealer firm in Minneapolis. He had been employed at Walston's Minneapolis office from April 1968 to early 1970, and had approximately 10 years of experience in the securities industry, nine of which were as a registered representative. (Tr. 2094-6). At Walston, he continued to represent an automobile dealer named Samuel Proman (Proman), who had been his customer for perhaps nine years. Proman was general manager of Prestige Lincoln Mercury (Prestige), of Minneapolis.

On or about April 14, 1969, Proman called Wasson and inquired about the price of S&M stock. Wasson testified that he checked the quotes for a period of about a week with a Chicago or New York broker-dealer firm through Walston's wires, and reported to Proman periodically. (Tr. 2098). Thereafter, Proman told Wasson that a Minneapolis customer had 30,000 shares of S&M to sell. Wasson testified that he asked Proman if he knew where the stock came from, but he did not remember the answer; that after conferring with Biersach, his supervisor and manager of the office, he suggested that the stock be brought in, and that on or about April 24, 1969 Proman brought to Wasson at Walston's office one Howard Davidson (Davidson).

Davidson was a Canadian citizen, in this country on a visa and living in Minneapolis. He dealt in "real estate and some financing". The scheme involved several additional persons.

Davidson testified that in early 1969, Richard Mackey, an attorney in Dallas, Texas, whom he had known for a short time, telephoned him and indicated that he and his associate, Joe Watson, wanted to enlist his aid in finding a car dealer who would be interested in trading cars for some stock held by Miami people, allegedly because of a better market in Minneapolis than in Florida. The dealer was to "warehouse" the stock or hold it for investment or to feed it slowly into the market so that the price would not drop drastically. Davidson had been a customer of Proman, and when Proman responded to Davidson's inquiry with an expression of interest in the deal, Mackey came to Minneapolis on April 14, 1969, to accomplish the trade and sign the orders. Thus, the inquiry from Proman to Wasson on that day regarding the shares and the price. Davidson was

to receive $3,500 for his efforts as finder: seven Lincolns were to be exchanged for 30,000 shares of stock,[55/] and they were to be titled in the names of Mackey (1), Watson (1), American National Properties, of Dallas (1), and the Roths' company, First National Holding (4).

On April 21, Sy Guthrie, also of Dallas, who represented the Roths and Allen Martin, came to Minneapolis. On April 22, Kenneth Roth came from Miami with the S&M share certificates, three for 10,000 each and one for 2,000 shares. Mackey objected to taking the shares in his name, and Davidson was imposed upon to take the shares in his name, inasmuch as he was known in Minneapolis. He testified that he was concerned about this, particularly about possible responsibility if the price of the stock dropped. Kenneth Roth assured him that the shares were readily transferrable and that there would be no problems. (Tr. 2235). The shares were put in his name, and Davidson had his signature as assignor or transferror guaranteed in blank by his banker. The transfer of the shares was to be made to Prestige, but when Proman brought the stock certificates to Walston for sale, he was advised that since Prestige had no account at Walston and no corporate resolution was available, it would be necessary to sell the shares in Davidson's name. Wasson participated in arranging that an account would be opened in Davidson's name, but the money would not go into the account. A "new account agreement" was prepared for Davidson and was ready for him to sign on April 24

55/ The Order had charged that 23,000 shares of unregistered S&M stock were sold by Walston. On motion of the Division the figure was changed to 30,000 shares by amendment of the Order. (Tr. 2201).

when he arrived at Walston, as was an assignment of the proceeds to Prestige, both of which he signed. Wasson assured Davidson that there were no problems, and that his name and account were being used merely for the sale. (Tr. 2297). During the meeting which ensued, Wasson left frequently to go to Biersach's office. The checking of the transferability and free-trading status of the shares was undoubtedly being accomplished at this time by Biersach and by Walston's cashier, as indicated later. The certificates, of course, contained no legend.

Davidson testified that he could not recall that Wasson inquired concerning the source of his stock. He knew that he had explained to Wasson that he was "just in-between", that he did not own the stock and that it had been put into his name only "for convenience". (Tr. 2301).

Testimony of Biersach and Jimmy Mizuhata (Mizuhata), cashier of the Minneapolis office, indicated that when the certificates were received by Wasson they were in Davidson's name and contained no legend. They were turned over to Biersach, who asked the cashier to ascertain whether the shares were restricted or whether they could be sold. He suggested that the cashier call Mr. Moersbacher, head cashier of the Walston Division in Chicago. Following instructions received from Chicago, the cashier tried to reach the transfer agent by calling S&M in Grand Junction. He was advised that the transfer agent was no longer in Grand Junction but had removed to Miami.

He reached Allen Martin at S&M's offices and eventually Martin called back after "checking his files" and advised that the shares were free trading, unrestricted, and could be sold. (Tr. 2326-7). Mizuhata

also had called the Walston legal department in New York to ascertain the best way to effect a transfer of this large and unusual block of stock. He had also confirmed the Davidson signature guaranty by calling the bank. In effect, the cashier appears to have done what Biersach and he, aided by advice from the head cashier and the legal department, considered appropriate to assure the propriety of selling the stock.[56/]

What none of these persons knew, but what Wasson did know, was that Davidson was not the owner of the shares, that Lincoln automobiles were to be received by several persons other than Davidson, who was acting for Mackey and Roth, among others, and that the assignment of funds by Davidson to Prestige was in part designed to permit the delivery of the cars prior to the settlement date.[57/] (Tr. 2347; 2252-5).

Wasson was aware, or should have been aware not only of the unusual nature of the trade transaction but also of the red flags that flew when Miami people brought certificates from Florida to Minneapolis, put shares into the name of a nominee, and arranged for cars to be titled in the names of persons other than the nominee coming from Dallas and Miami, who found it undesirable to wait for the proceeds of a block of 30,000 shares of stock before they received seven Lincoln cars.[58/]

56/ This is not to suggest that the action or the advice or the supervision of Wasson was adequate. Consideration of these matters has been obviated by the settlements.

57/ Proman testified that the assignment was wanted "because they didn't want to wait for delivery of the cars until the payment date. But Prestige would wait for their money for a week or five days or whatever time element was involved."

58/ At least two of the cars were delivered by Prestige but probably were repossessed either in Dallas or between Minneapolis and Dallas when the stock was determined not to be "free stock" and Proman was so advised.

The 30,000 S&M shares were sold by Walston in three transactions: April 25, 1969, 1,000 shares were sold at 2-1/8; April 29, 10,000 shares at 2-1/8; May 1, 19,000 shares at 2.

Thereafter, on May 2, Kenneth Roth called Biersach and advised that he believed his "personally-owned shares" had been sold. When Biersach stated that the certificates had been described as free stock by Martin, he was told that Martin was in New York and would call him on May 3. Biersach reached Martin eventually and Martin "acknowledged" a mistake, and on May 6 delivered a certificate of 23,000 of his own shares of S&M as "free stock" to Walston. The end of the story and its details apparently were not known to any of the witnesses and they do not appear in the record.

What does appear, and what is relevant, is Wasson's failure or refusal to disclose facts which, had they been known, would or should have created even more caution in Biersach, in Mizuhata, and in Walston's offices in Chicago and New York. Wasson testified that he was not aware of the warnings set forth in Walston releases and procedures manual (Division's Exhibit 58), which suggested intensive questioning by the registered representatives concerning the status of the seller of securities and the possibility of a distribution of control stock being effected.[59/] He was derelict either in not having probed or in not having disclosed that the scheme for exchange of stock not owned by Davidson involved stock owned by a control person. Davidson knew that the stock was Roth's, and that Roth was Secretary of S&M. I find no basis for concluding that he would not, if asked, or did not, in fact, so inform Wasson.

59/ Wasson testified that he "was concerned that it was controlled stock because of the size of the block" (Tr. 2126). But he failed or refused to ascertain and disclose to Biersach that the source of the stock was Roth.

Those facts would have alerted Biersach to the need for more intensive investigation than was made. As the court stated in S.E.C. v. Mono-Kearsarge Consolidated Mining Company, 167 F. Supp. 248 (U.S.D.C. Utah, 1958), at 259, where, unlike here, a claim of exemption from registration was made:

> "The defendants are held to have knowledge of those facts which they could obtain upon reasonable inquiry. Probably the facts directly known by them were sufficient to acquaint them with the true situation.
>
> .....
>
> ...With all these red flags warning the dealer to go slowly, he cannot with impunity ignore them and rush blindly on to reap a quick profit. He cannot close his eyes to obvious signals which if reasonably heeded would convince him of or lead him to, the facts and thereafter succeed on the claim that no express notice of those facts was served on him."

Thus, beyond the prima facie violation of Section 5, the evidence shows that Wasson participated in a distribution of unregistered S&M shares and willfully violated and aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act by Walston & Co. As the court stated in Stead v. S.E.C., 444 F. 2d 713 (CA 10, 1971), in affirming sanctions against a registered representative for similar violations,

> "From these circumstances the Commission's finding that Stead knew or should have known that there was no registration is well supported by the evidence. The act of Stead in calling the transfer agent is obviously not a sufficient inquiry."

The Mono-Kearsarge and Stead decisions are also support for the Section 5(a) and 5(c) violations found above with respect to Tuffli and Forman, as is S.E.C. v. Culpepper, supra. Wasson's cavalier activity in accomplishing the sale transaction in apparent disregard of the Commission's

releases warning of fraudulent activity in the sale of unregistered control stock was negligent and inexcusable.

I have considered Wasson's good record over many years in the securities industry and the reliance he placed on the check made by Biersach and Mizuhata, albeit with insufficient factual data. The public interest requires a sanction which will be effective in preventing similar violations and I conclude that Wasson should be barred from association with a broker or dealer, provided that after 45 days he may apply to the Commission for permission to become so associated upon a showing that he will be properly supervised.

Conclusions, Public Interest and Order.

Each of the respondents has been found to have committed one or more willful violations of the securities acts charged in the Order. The courts and the Commission have repeatedly enunciated the importance to the securities industry of a philosophy of full and honest disclosure under both the Securities Act and the Exchange Act. Because of the variance in the violations found herein, the different circumstances under which they occurred and my evaluation of the public interest as it is affected by each of the respondents, the sanctions in the order which follows vary from the extremes of mere censure to a bar from being associated with a broker or dealer. The courts and Commission have stated, however, that a bar order is not necessarily a permanent exclusion from the securities business, and that such an order may be modified upon application by a respondent for permission in the future to re-enter the business upon an appropriate showing and subject to conditions designed to protect the public interest. 60/

Perhaps gratuitously, I feel constrained to remark that the total deficiency in training and in the supervision of the Ferman & Co. respondents is an unfortunate blot on the securities industry.

60/ Hanly v. S.E.C. supra. (p. 65), at 598; Pennaluna & Company, Inc., Securities Exchange Act Release No. 8892 (May 27, 1970).

ORDER

Accordingly, IT IS ORDERED that Gilbert F. Tuffli, Jr., Stanley Radler and Stephen A. Cahen, and each of them, is barred from association with a broker or dealer;

That Stanley J. Stewart, Eugene F. Lemoine, Calvin Yudin, and Sidney Gelber, and each of them, is barred from association with a broker or dealer, provided, however, that Stewart, after the expiration of three months, and Lemoine, Gelber and Yudin, after the expiration of six months, may each apply to the Commission for permission to become associated with a broker or dealer in a non-supervisory position upon a satisfactory showing that he will be properly and adequately supervised, and

IT IS ORDERED that Charles S. Goldy be and he hereby is censured; and

IT IS FURTHER ORDERED that Robert Forman be and he hereby is barred from association with a broker or dealer, provided, however, that after the expiration of six months he may apply to the Commission for permission to become so associated in a non-supervisory position upon a satisfactory showing that he will be properly and adequately supervised; and that George Wasson be and he hereby is barred from association with a broker or dealer, provided, however, that after the expiration of 45 days he may apply to the Commission for permission to become so associated in a non-supervisory position upon a satisfactory

showing that he will be properly and adequately supervised.

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

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (15) 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. 61/

Sidney Ullman
Administrative Law Judge

August 6, 1973
Washington, D. C.

61/ To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the issues presented. To the extent that the testimony of the Respondents is not in accord with the findings herein it is not credited.