ADMINISTRATIVE PROCEEDING
FILE NO. 3-364

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matters of	
NORMAN POLLISKY ALLAN HARRIS AARON J. GABRIEL	
Waldman & Co. New York, New York (8-11460)	

INITIAL DECISION

Warren E. Blair
Hearing Examiner

Washington, D.C.
August 21, 1967

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APPEARANCES:

Robert G. Willner, Michael P. Stern, and Richard F. Fleischmann, of the New York Regional Office of the Commission, for the Division of Trading and Markets.

Davis J. Stolzar, for Aaron J. Gabriel and Allan Harris.

Gerald H. Goldsholle, of Kronish, Lieb, Shainswit, Weiner & Hellman, for Norman Pollisky.

BEFORE:

Warren E. Blair, Hearing Examiner

The initial decision, heretofore filed on January 30, 1967 in these proceedings, ordered, inter alia, that the registration of registrant, Waldman & Co., be revoked and that respondents Norman Pollisky, Aaron J. Gabriel, and Allan Harris be barred from association with a broker-dealer. Pursuant to Rule 17(f) of the Rules of Practice, the initial decision did not become final as to Pollisky, Gabriel, and Harris, who petitioned for and were granted review of the initial decision by the Commission.

After oral argument, the Commission determined that the initial decision of January 30, 1967 was unclear with respect to the quantum of proof relied upon in making the findings of fact and reaching the conclusions of law therein. Because of the uncertainty in this regard, the Commission declined for the present to consider the other issues raised in these proceedings and remanded the case "for the purpose of enabling the hearing examiner to make findings with respect to the petitioners specifically based on an application of the preponderance of evidence."

This initial decision is rendered in accordance with the directions of the remand. However, to lay to rest any doubt with respect to the findings made as to registrant and the other individual respondents, as well as to obviate possible question based upon a recital of different or additional facts

or the interpretation to be given to phraseology found in this as compared to the previous decision, it is now stated that the findings of fact and conclusions of law in the initial decision dated January 30, 1967 were made and reached only after determination that the preponderance of the evidence sustained such findings and conclusions.

Note has been taken of the Commission's view that no objection is seen to consideration in this initial decision of briefs and statements filed subsequent to the January 30, 1967 initial decision. Accordingly, the record upon which this initial decision is based includes those briefs and statements that have been filed or made after January 30, 1967.

Nature of Proceedings

The remand by its terms is for the purpose of having the hearing examiner "reconsider the issues as to respondents Gabriel, Harris and Pollisky, and issue an initial decision pursuant to this remand which shall make such findings as to them as may be based upon the preponderance of the evidence in the record." References will necessarily have to be made to respondent registrant and to the eleven other individual respondents in connection with the charges that Pollisky, Gabriel and Harris acted in concert with the other respondents.

Proceedings in this matter were instituted by the Commission on November 3, 1965 pursuant to Section 15(b) and 15A

of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether allegations of the Division of Trading and Markets ("Division") that the respondents, Waldman & Co. ("registrant"), Seymour Waldman ("Waldman"), Elliot Rose, Bernard Portnoy, Frank Engelman, Julius Gladstein, Samuel Lewis, Stuart Davis, Louis Pilnick, Reuben Ehrlich, Martin A. Fleishman, Norman Babat, Norman Pollisky, Aaron J. Gabriel, and Allan Harris wilfully violated and wilfully aided and abetted violations of the Securities Act of 1933 ("Securities Act") and the Exchange Act are true, and whether remedial action pursuant to Sections 15(b) and 15A of the Exchange Act is necessary.

The Division alleged, in substance, that from January 1, 1964 to November 3, 1965 respondents, singly and in concert, wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act, and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder, by offering and selling stock of Development Corporation of America ("DCA") and that of United Utilities Corp. of Florida ("UUF") by means of an intensive "boiler room" type sales campaign which included use of various misrepresentations and omissions of material facts concerning the present operations and future activities of DCA and UUF and the prospects of financial reward from investments in the stocks of those companies.

The Order for Public Proceedings also sets forth that the Commission's public files disclose that registrant, Waldman, Rose, Portnoy, Gladstein, Pilnick, Ehrlich, and Fleishman were enjoined from violations of the anti-fraud provisions of the Securities Act and Exchange Act in the offer and sale of common stocks of DCA and UUF by a preliminary injunction issued by a United States District Court in New York on May 13, 1965.[1/]

Answers which included general denials of the Division's allegations were filed by Pollisky, Gabriel, and Harris.

Gabriel and Harris appeared at the hearing and participated therein through counsel. Although presently represented by counsel, Pollisky appeared pro se at the hearing, and, after being advised of his rights to counsel, decided to participate therein without counsel.

As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings thereof were made by the Division, Gabriel, and Harris. Pollisky's counterstatement of proposed findings and conclusions filed January 31, 1967, and those briefs and statements filed subsequent to January 30, 1967, except for Pollisky's brief filed April 13, 1967 which was stricken and removed from the record on motion of counsel

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1/ S.E.C. v. Waldman, Rose & Company, Civil No. 65-1198 (S.D.N.Y., May 13, 1965).

for Pollisky, are part of the record now being considered.

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

Respondents

Registrant, under its present name and previous style of Waldman, Rose & Co., was registered under the Exchange Act as a broker-dealer from May 11, 1963, to March 1, 1967 when its registration was revoked. During the period in question registrant used the mails and means and instruments of transportation and communication in interstate commerce to effect transactions in DCA and UUF stock. Waldman and Rose were general partners of registrant until March 12, 1965, at which time the registrant became a partnership of Waldman and Lucille Waldman. Respondents Babat, Davis, Ehrlich, Engelman, Fleishman, Gladstein, Harris, Lewis, Pilnick, Pollisky and Portnoy were registrant's salesmen during the period in question, with Harris being employed from about July 30, 1965 to October 14, 1965, and Pollisky from about December 16, 1964 until about March 15, 1965. On the dates that registrant employed Babat, Engelman, Fleishman, and Portnoy, or during the course of that employment, each of them was or became a respondent in proceedings instituted by the Commission under the Exchange Act.[2/]

2/ Thomas F. Quinn, File No. 8-8997, January 11, 1965 (Babat, Fleishman); William Glanzman & Co., Inc., File No. 8-10312, May 27, 1963 (Engleman); Costello, Russotto & Co., File No. 3-163, May 24, 1965 (Fleishman); Fabrikant Securities Corporation, File No. 8-9565, July 17, 1964 (Portnoy).

In addition, Babat's securities activities prior to his employment by registrant resulted in a permanent injunction against him.[3/] At the time of the entry of that injunction on June 1, 1965 Babat was still in registrant's employ.[4/]

As a result of an injunctive action filed by the Commission on April 20, 1965, a preliminary injunction was entered on May 13, 1965 in the United States District Court in New York enjoining registrant, Waldman, Rose, Ehrlich, Fleishman, Gladstein, Pilnick, and Portnoy from violating the anti-fraud provisions of the Securities Act and Exchange Act in the offer and sale of DCA and UUF stocks.[5/]

Gabriel entered the securities business in 1954, and was employed as a salesman by several broker-dealers over the years until 1958, when he activated his own securities firm under the name of Gabriel Securities, later changed to A.J. Gabriel Co., Inc.[6/] About

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3/ S.E.C. v. Bankers Intercontinental Investment Co., Limited, Civil No. 65-24-CF (S.D. Fla., June 1, 1965).

4/ An amendment to registrant's application for registration setting forth the existence of the injunction against Babat was filed June 16, 1965.

5/ S.E.C. v. Waldman, Rose & Company, supra.

6/ A withdrawal of the registration of A.J. Gabriel Co., Inc. as a broker-dealer became effective on March 17, 1966.

October, 1964, Gabriel moved from a building in which he had an office for several years into an office with a salesman of registrant until September, 1965. Allegedly, Gabriel was a salesman for registrant during the period in question. Gabriel denies that he was a salesman for registrant and contends that he sublet the space he was using from registrant for the purpose of carrying on a consulting business under the name of National Business Consultants and for servicing old customers of A. J. Gabriel Co., Inc. Waldman's testimony is that neither he nor Rose ever employed Gabriel in any capacity, and that Gabriel was never employed by registrant nor ever on registrant's payroll.

Gabriel's testimony is that during the summer of 1964 he repeatedly refused offers by Rose of employment as a salesman for registrant pending the outcome of an NASD action that had been taken against him and A. J.Gabriel Co., Inc., 7/ but about September, 1964 moved into space leased by registrant in order to cut down expenses. The move resulted from a conversation with Rose in which Gabriel asked if registrant had space available for him. During the discussion Rose indicated registrant was taking additional space and looking for salesmen; Gabriel suggested Seymour Forrest, who had worked for

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7/ A. J. Gabriel Co., Inc., Securities Exchange Act Release No. 7696 (September 3, 1965).

him, as a prospective salesman, and agreed to move into one of registrant's offices, sharing it with Forrest. In exchange for office space located on the floor below registrant's principal offices and for telephone service consisting of a private telephone and a second set connected to registrant's switchboard, Gabriel's payment was to be one-half the $75 per month rent on that office and an additional amount for use of the telephones. In addition, Gabriel was to pay Rose an unspecified percentage, which was to be later agreed upon, on any business Gabriel obtained through use of the telephones.

To the contrary, Forrest testified that Gabriel was supposed to receive $200 per week from registrant; that Gabriel offered and sold stock of DCA and UUF to his former customers; that Gabriel identified himself to customers as Forrest or, after Forrest left registrant's employ and Ehrlich replaced him in the office, as Ehrlich; and that a girl in registrant's employ placed telephone calls for Gabriel and Ehrlich to former customers of Gabriel and to persons whose names were taken from a telephone directory. Forrest further testified that in one instance while he had Dr. C.R. on the telephone, Gabriel interrupted for the purpose of offering DCA stock to Dr. C.R. Upon Dr. C.R.'s agreeing to buy 1,000 shares, Gabriel had Forrest make out the order ticket. The commission on the sale to Dr. C.R. was paid to Gabriel by means of a check which

registrant made payable to Forrest, who then cashed it and turned over the proceeds to Gabriel.[8/] Dr. C.R.'s corroborating testimony was that Gabriel broke into a conversation he was having with Forrest; that Gabriel made various favorable statements about DCA and its stock, and that upon Gabriel's finishing his sales talk, he heard Gabriel tell Forrest to "take the order from Dr. R." When Forrest came back on the telephone, Dr. C.R. gave him an order for 1,000 shares of DCA stock.

The preponderance of the evidence relating to Gabriel's role while occupying space in registrant's office establishes that Gabriel, pursuant to agreement with registrant's principals, acted as a salesman for registrant. Gabriel's statements that he carried on a business under the name of National Business Consultants are given credence, but such activity does not negate an additional and simultaneous association with registrant. That the two activities were not inconsistent is well evidenced by the fact, unbeknownst to registrant for some time, that Ehrlich, an acknowledged salesman for registrant, was devoting a substantial amount of time to Gabriel's other interests. Gabriel's denials that he was a salesman cannot be

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8/ Less a small amount that Forrest kept to cover the income tax payable as a result of including the entire commission as income on his tax return.

accepted in the light of his entire testimony and that of Forrest and Dr. C.R. The vagueness of the terms on which Gabriel claims registrant and he supposedly agreed for payments to registrant, the purported cash payments by him to registrant which permit of no verification, the inability of Gabriel to recall the amount of income derived from National Business Consultants which would allow a judgment to be made on whether he was deriving a living therefrom, are all circumstances which normally are not encountered when business relationships are of the kind Gabriel offers as an explanation of his presence on registrant's premises. Moreover, Gabriel's statements on material matters while on the stand which were inconsistent with or contradictory to previous statements made under oath, and his admission with respect to one previous statement that he had lied under oath lessen the credence that can be given to his version of the relationship between himself and registrant. Waldman's testimony favoring Gabriel is rejected as being inconsistent with the greater weight of evidence indicating that registrant arranged for Gabriel's services under an agreement whereby his association was not to be disclosed upon registrant's records.

Accepting Gabriel's argument that the tenor of his testimony with respect to National Business Consultants was that he was not making a living from its operation merely adds to the

weight of the evidence indicating that Gabriel was probably deriving his living from acting as an undisclosed salesman for registrant. Further on the point and contrary to Gabriel's argument, the inability of Gabriel to recall the amount of National Business Consultant's income is not premised upon the fact that he claimed his privilege under the Fifth Amendment. Nor was any inference drawn from the assertion of that privilege. Rather the finding flows from the answers given by Gabriel to a line of questions directly on the subject of the amount of income enjoyed by that enterprise.[9/] At no time did Gabriel indicate that he was concerned about answering those questions, and in fact, following the assertion of the privilege, the Division went to some pains to foreclose the possibility that Gabriel had given false testimony because of his concern regarding an investigation then being conducted by another federal agency.[10/] If, as now contended, Gabriel in fact was evasive or testified that he did not recall the answers to the questions because of that other investigation, then Gabriel's disregard for his oath to testify truthfully in these proceedings becomes even more evident.

The money order that Gabriel gave in payment of rent in September, 1965 does not lend the support that Gabriel claims

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9/ See Tr. pp. 1463-69.

10/ Tr. pp. 1472-73.

for it. As brought out in Gabriel's testimony, the payment was made to the landlord to cover the rent for the last month in the offices that he had occupied for nearly a year, and paid then because registrant had vacated those offices.[11/] Such payment does nothing to clarify or give acceptable reason for the unusual arrangements that Gabriel claimed he entered into with registrant.

DCA and UUF

DCA, incorporated under Florida law in February, 1960, is engaged in the development and construction of residences and communities in Florida. In 1961, DCA made a public offering of 200,000 shares of its common stock at $3 per share; since then the stock has been traded in the over-the-counter market.

DCA's net income for the year 1960 was slightly over $200,000, which declined to $178,113 for 1961, and to $30,909, or 3¢ per share for 1962. Earnings rose in 1963 to $75,587, equivalent to 10½¢ per share and again dropped the following year ending December 31, 1964 when net income amounted to $20,312, less than 3¢ per share. For the year 1965, DCA reported net income of $71,175, amounting to 10¢ per share.

In October, 1963 DCA and Alan Fink, one of DCA's promoters, entered into a contract under which Fink agreed to

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11/ Tr. pp. 1524-25.

sell his holdings of 297,582 shares of DCA stock to DCA. In exchange, Fink received DCA's promissory note for $297,000, payable over a 20-year period in annual installments of $10,000 plus 50% of DCA's profits in excess of $10,000. The contract also restricted DCA's dividend payments during the time the note remained unpaid, providing that no dividend could be declared or paid in any year that DCA's current obligations under the note were not met.

UUF, a utility company engaged in the development and operation of utilities systems in Florida, was a wholly-owned subsidiary of DCA until 1962, at which time DCA distributed 325,000 shares of UUF to DCA stockholders. Most of UUF's operations were confined to areas in which DCA had an interest in developing, and over half of UUF's business was derived from DCA.

UUF's net income for seven months ending December 31, 1962 was $8,404, or 2½¢ per share, and for the entire year 1963 amounted to $1,441, less than ½¢ per share. For the year 1964, UUF's net income declined to $778, less than ½¢ per share, and for 1965, its earnings were slightly better than $2,000. In 1963 and 1964 stockholders' equity increased 32¢ and 6¢ per share, respectively, as a result of UUF's receiving contributions in aid of construction. These contributions, made by real estate developers, are, in effect,

payments for the installation of utilities on the land being developed. The contributions are not considered as earnings by UUF and are shown on its statements of income and expense as an item separated from net income and retained earnings.

DCA's and UUF's financial statements were requested by registrant, Waldman, and Rose and made available to them by Alvin Sherman, the president of both companies. In addition, Sherman acquainted Waldman and Rose with the terms of the Fink contract and had frequent conversations with them regarding the operations of DCA and UUF and the prospects of the companies. About the end of the year 1964 Sherman specifically advised Waldman and Rose that 1964 would not be one of the "better years" for DCA, and that DCA's net income would be less than the $75,000 earned in 1963.

Fraudulent Offer and Sale of DCA and UUF Stock

From about July, 1964 to May, 1965 transactions, mostly on a principal basis, in DCA and UUF stocks accounted for 80% to 90% of registrant's business. Salesmen were instructed to concentrate their efforts on those securities, and were paid unusually large commissions on their sales. Registrant's operations were those of a "boiler-room" in which salesmen, using high-pressure techniques, sold highly speculative stock by means of repeated telephone calls to persons unknown to

them.[12/] Investors, many of whom could ill-afford to take the risk of loss inherent in a purchase of DCA or UUF stock, were induced to buy through misrepresentations and extravagant predictions concerning the operations and earnings of DCA and UUF and of a rapid rise in the market price of the stocks. Misrepresentations were also made regarding the risk of loss involved in a purchase of DCA or UUF stocks, the listing of DCA stock on the American Stock Exchange, and the prospects of a dividend in the form of cash or stock of a DCA subsidiary. Other "boiler-room" techniques employed by registrant and its salesmen were their insisting upon hasty decisions by customers without concern for the customers' investment needs, making of inconsistent recommendations which were based upon the salesmen's interest in selling DCA and UUF stocks rather than upon the intrinsic merits of those securities or the customers' circumstances, switching of a customer's investment from one stock to another without apparent reason, sending of "wooden tickets" which purported to confirm purchases of securities which were not ordered, and charging customers excessive prices for their purchases.

By Respondents Other Than Pollisky, Gabriel, and Harris

Babat attempted by telephone to induce J.H., with whom he had no previous contact, to purchase DCA stock by representing

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12/ See Hamilton Waters & Co., Inc., Securities Exchange Act Release No. 7725 (October 18, 1965).

that DCA was a good investment on which money could be made in a hurry, and that the price of the stock would go up in a couple of days. Although J. H. refused to buy, he received a confirmation from registrant for a purchase of 100 shares of DCA stock. Davis induced one of his customers, A.M., to purchase DCA stock by stating that DCA was building a 300-unit apartment house, owned two hotels, would spin-off stock of a subsidiary, American Hardware Company, to DCA stockholders, and expected to earn 50¢ to 60¢ in the next year. A second customer, Mrs. H.L., was told by Davis in the course of repeated telephone calls to her that DCA was practically without risk, that he could practically guarantee that she would make money on it, that her profit would be sufficient to pay for her car repairs and another vacation, and that DCA stockholders would be given stock in a hardware company. At Davis' request, Rose also telephoned Mrs. H.L., telling her that DCA was an excellent investment and implying that only good friends of the salesmen were being allowed to purchase that stock. During the course of eight or ten telephone calls to Dr. H.T. in early 1964, Engelman tried to sell DCA and UUF stocks by representing that UUF stock priced at $2 would be $3 in four to six weeks because of the limited number of shares outstanding, that UUF was expected to earn 20¢ per share for the year, and that the price of DCA stock was due to rise. Although Dr. H.T.

refused to order either of the stocks, he received a confirmation of purchase on both stocks from registrant.

By means of numerous telephone calls toward the end of 1964 and in the first half of 1965, Fleishman sold three customers DCA or UUF stock. R.M., who was called five or six times, was told that UUF was a gas and electric public utility, was buying up other companies, would become as large as Florida Power and Light, and had earnings of 6¢ or 7¢ per share which would be ten times greater within a few years. In selling 200 shares of DCA and 100 shares of UUF stock to E.B., Fleishman stated in the course of a number of telephone conversations that DCA would be applying for a listing on the American Stock Exchange within 45 to 60 days, that the stock would shortly double to $6, that DCA's earnings were 45¢ to 50¢ per share for 1964, that DCA stockholders would receive stock in a hardware or utility company being purchased by DCA, and that UUF earnings were good and would be better the following year. In February, 1965, Fleishman caused E.B. to sell his DCA stock and buy an additional 115 shares of UUF stock by representing that the market for DCA stock would be going down. J.M., a third purchaser, who later canceled his order, testified that in May, 1965, Fleishman represented that DCA's earnings had multiplied many times and would be $1 in 1965, that DCA would be paying a dividend in 1965, and that the price of the stock, then $5, would be around $10 by the end of the year.

Gladstein sold UUF stock to W.G. with representations that UUF would have a very good price rise within six months to a year, and that the absence of dividends would be more than compensated by the increase in price. A few months later, W.G. sold the UUF stock in order to buy DCA stock which Gladstein stated to be a more promising situation for a price rise than UUF, and on which dividends could be expected. Another customer, Dr. M.S., was told that UUF was a good growth stock whose price would rise in a short time, and that DCA stock was a good investment, a growth stock whose price would go up in a matter of months. J.C. purchased DCA stock in October, 1964 after being told by Gladstein that DCA would make 12½¢ in 1964 and 62½¢ in1965, that the company had a large government contract for 1965, that hardware stock DCA owned would be spun-off, and that the price of DCA stock would rise to $4.50 in about three weeks. A second purchase of DCA stock was made by J.C. the next month upon Gladstein's assurances that the government contracts previously spoken about would be coming in and that the price of the stock would increase. Representations to B.I., who purchased UUF stock in early 1964 after receiving numerous telephone calls from Gladstein, were that UUF stock had fantastic potential and in a short time would increase in price to $14, and that UUF was to merge with another company whose name he could not disclose.

Gladstein tried unsuccessfully to induce B.I. to purchase DCA stock by telling him that the stock would increase to about $5, and that he couldn't lose money on it. Gladstein was also unsuccessful in his attempts to persuade L.T. to buy DCA stock which Gladstein represented to be a stock that would probably be listed on the American Stock Exchange and would go up to $7 by the Spring of 1965. Although L.T. never ordered stock from Gladstein, registrant mailed a purchase confirmation for 100 shares of DCA stock to him.

In soliciting A.A. to purchase DCA stock, Pilnick represented during a series of telephone calls that DCA had earned 12½¢ per share in 1963 and was expected to earn more in 1964, that DCA stock had a book value of $6 or $7 per share, and that the stock of a hardware company owned by DCA which would be spun-off might well go to $5 per share. Another customer, J.R., was told by Pilnick that DCA stock would go up from its then price of 2-1/8 to 5 or 6 in a short time, that in relation to earnings the price of DCA stock was low, that DCA earnings would be better in 1964 than in 1963, and that a stock dividend might be paid when DCA spun off a subsidiary. Following his purchase, J.R. received further telephone solicitations from Pilnick in which he was told that the price of DCA was rising, that a stock dividend was coming out in a few months, and that DCA had received a million dollar

contract to build a hospital in Florida which would yield DCA a 17% net profit margin. In selling DCA and UUF stock to three of his customers, Portnoy projected price rises which would bring a profit of $100 within a couple of months, double or triple the purchase price, or go to $6 to $10 per share. In addition, Portnoy told E.R. that DCA was building apartments for retired people, told L.C. that UUF would probably have earnings of 25¢ or 30¢, and told A.I. that DCA was supposed to be listed on the American Stock Exchange, and that A.I. would not lose money with DCA. The DCA stock purchased by A.I. in July, 1964 was sold in February, 1965 to pay for UUF stock which was bought at 5-5/8 on Portnoy's representations that UUF stock would move up faster than DCA stock, that the price would be going to $10 or $12 within three to six months, that UUF's earnings were 12¢ to 15¢ and would go to 50¢ or 60¢, and that UUF was a safe investment which he guaranteed. Mrs. F.T., a widow whose husband had met Portnoy, received a confirmation from registrant addressed to her husband who at that time had been deceased for eleven months. The confirmation purported to confirm a purchase on September 4, 1966 of 200 shares of DCA stock, which Mrs. F.T. denied she had bought.

Repeated telephone solicitations were also used by Lewis to sell stock to his customers. DCA was represented to

J.P. as a company whose 1964 earnings would exceed those of 1963 by a tremendous margin, and on whose stock there was a good possibility that dividends would be paid. Lewis also predicted that the then price of 2-3/4 for DCA stock would go up to 6 or 6¼ by the end of 1964 and that by then the stock would be listed on the American Stock Exchange. Following J.P.'s first purchase, Lewis continued to urge further purchases because DCA was proceeding according to expectations. As a result, J.P. sold another stock to obtain money to buy more DCA shares in October, 1964. During November, 1964 Lewis continued to press J.P. to make additional purchases despite J.P.'s several refusals to do so because, as he told Lewis, he could not afford further investment in DCA stock. R.S., who told Lewis that he was using his son's money hoping to accumulate enough for the son's college education, bought DCA stock in October, 1964 when Lewis assured him that DCA had the character of a utilities company, had earnings of between 13¢ and 18¢ in 1963, and was putting up apartment buildings in Florida which would raise the value of the stock. Further representations inducing R.S. to purchase were that the price of 2-3/4 would go to 6 by July, 1965 and that the stock would be listed on one of the exchanges. A third customer, S.G., bought DCA stock in November, 1965 upon Lewis' statements that DCA was constructing an apartment building,

had control of a utility company "which controlled the utilities at Cape Kennedy," and would pay a substantial dividend on its stock in January, 1965. Lewis also told S.G. that DCA stock would double in value by January 1, 1965, and that he could then sell half of his shares, receive all of his investment, and still own the other half. S.G. agreed to purchase only if Lewis verified his statements, but when he received a purchase confirmation two or three days later decided to pay for the stock confirmed even though he had not ordered it. Lewis also offered, but S.G. refused to buy, stock in the utilities company described by Lewis as being controlled by DCA and controlling the utilities at Cape Kennedy.

Ehrlich made frequent telephone calls to N.E. about December, 1964 to persuade him to buy DCA stock, representing that DCA had built numerous apartment buildings and planned to build a hospital and an office building in Florida. After N.E. had purchased DCA stock, Ehrlich had further conversations in which he told N.E. that a spin-off was pending before the S.E.C., and that a report was due shortly which would show DCA's earning power to be 60¢ to 70¢ a share and which, Ehrlich hoped, would create enough interest in the stock to cause it to rise to $7. Ehrlich also induced N.E. to buy UUF stock by telling him that UUF was in the "building line" and dealt with different builders in installing sewage and water drain

lines. A sale of DCA stock was made by Ehrlich to H.Z. in early November, 1964 by means of representations that DCA had acquired a substantial area of land which it was going to develop and that with the beginning interest of other brokers in DCA stock, there was a chance of the stock going up two points. After H.Z. had made his purchase, Ehrlich again spoke to him and that time told him about a potential spin-off of a hardware company by DCA in 1965. Mrs. B.B., who eventually ordered DCA and UUF stock from Ehrlich, told Ehrlich during their first telephone conversation that she was interested only in listed securities. To quiet her concern about DCA and UUF stocks being over-the-counter securities, Ehrlich told her that he was concentrating on these two stocks because he had found out everything about them and that they were not speculative, and would not balloon up and burst. Mrs. B.B. was persuaded to purchase UUF stock in February, 1964 by Ehrlich's statements made in the course of many more telephone solicitations that UUF was a thin issue in which a Canadian syndicate was interested, that more money could be made in UUF stock than DCA, that the price of UUF stock was "going to skyrocket," and that a hospital had been constructed which needed gas and electricity. After a number of further telephone conversations, Ehrlich induced Mrs. B.B. to buy DCA stock in April, 1965 with representations that the same Canadian syndicate that had been interested in

UUF was interested in DCA; that there was little DCA stock available, which caused the price to go up whenever orders were placed; that DCA had grown about four times over the last year; that its business was about four times the amount of the previous year. Mrs. B.B. made a second purchase of DCA stock in May, 1965 upon receiving a call from Ehrlich informing her that DCA was in great demand, but that he was advising a woman leaving for Israel to sell. Ehrlich went on to say that he would like Mrs. B.B. to buy some of that stock because she could make money on it but that she must make up her mind very quickly.

Each and every one of the noted representations used by these salesmen in offering and selling DCA and UUF stock was false in its entirety or misleading in character, and the opinions and projections expressed were either without any basis or lacked sufficient justification. DCA's and UUF's earnings were not and have never been sufficient to support predictions of a price rise in the stocks of those companies, and this is especially true in regard to price rises which were supposedly to take place within days or months. Nor were there any future prospects for these companies upon which the respondents could reasonably rely for a justification of their opinions that the price of the stock would rise, earnings increase, or dividends be paid. Sherman, president of DCA and UUF since their inceptions, was in constant communication with Waldman and Rose during the period in question

and indicated to them that 1964 would not be one of DCA's better years. He denied that there was any basis for representing with respect to DCA that it would have earnings such as respondents predicted, intended to pay dividends, or to spin-off a hardware company. Moreover, dividend payments were restricted during the life of the Fink note, and DCA's earnings were not such as to indicate any possibility of dividend payments being made as early as 1965. The record further establishes that DCA's book value was never higher than $2.25 during the period in question; that DCA did not have a controlling interest in or operate a utilities company which supplied utilities for Cape Kennedy, an increase in orders of four times those of 1964, a subsidiary named American Hardware Corporation, or two hotels in Miramar, Florida; that DCA was not building apartment houses on Cape Kennedy; that DCA never had a contract to build a veterans hospital; and that DCA had neither listed nor applied for listing of its stock on the American Stock Exchange. UUF did not engage in any merger negotiations with another company, did not contemplate payment of any dividend, and did not control, own, or operate most of the utilities at Cape Kennedy. No Canadian syndicate was interested in buying UUF, and UUF did not necessarily benefit from DCA's contracts, as UUF was involved only in DCA's subdivision developments.

The false statements, unjustified opinions and predictions, and failures to disclose material facts concerning the operations and financial results therefrom of DCA and UUF constituted a fraud upon purchasers of those stocks by respondents. Registrant's pattern of operation, the conduct of Waldman and Rose, and the noted sales practices clearly establish that during the period in question at least certain salesmen joined and participated in a scheme conceived by Waldman and Rose under which registrant was used by them as a vehicle to offer and sell stocks of DCA and UUF to the public through an intensive "boiler-room" campaign and that such scheme was in operation while Pollisky, Gabriel, and Harris were salesmen for registrant. Whether they or any one of them joined or participated in that scheme will be separately considered.[13/]

Undoubtedly Waldman and Rose were aware of the methods being utilized by their salesmen, for they were the source of

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13/ Since Pollisky did not join in the stipulation entered into between Gabriel, Harris and the Division that testimony and exhibits of certain investor witnesses introduced in the case of S.E.C. v. Waldman, Rose & Co., et al. (65 Civil Action File No. 1198) be admitted as evidence in these proceedings, such evidence was not considered in determining whether the scheme was in existence and operation during the time that Pollisky was employed by registrant as a salesman. The greater weight of the evidence remaining after exclusion of that covered by the stipulation is that such scheme was in existence and operation during Pollisky's employment.

much of the misinformation that was relayed to customers. By their inaction after being informed regarding the use of certain unsavory sales practices, Waldman and Rose evidenced their acquiescence and participation in the actions of their salesmen. In addition, Waldman and Rose affirmatively implemented and encouraged the scheme by employing girls with attractive telephone voices to make "cold calls" to locate prospects for the salesmen, by paying unusually high commissions to the salesmen, and by engaging salesmen having backgrounds of previous association with "boiler-rooms," or who were respondents in other proceedings before the Commission. The similarity of the representations used by salesmen in inducing purchases of DCA and UUF stocks, their proximity to each other, the previous relationships between the salesmen, and their acceptance of the unusual inducements to work for registrant are adequate to show a joining and participation in the fraudulent scheme of Waldman and Rose.

Besides the misrepresentations made by its salesmen and as a part of the scheme, registrant engaged in further fraudulent activity by mailing "wooden tickets" purporting to confirm purchases of unordered DCA and UUF stock,[14/] and by

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14/ R. A. Holman & Co., Inc., v. S.E.C., 366 F. 2d 446,451 (2d Cir. 1966); Shelley Roberts & Co., 38 S.E.C. 744, 751 (1958).

charging investors excessive prices for their purchases without disclosing that such prices were not reasonably related to market price.[15/] In addition to investors who testified that they had received confirmations from registrant on unauthorized purchases of DCA and UUF stock, the extremely high rate of cancellations of orders experienced by registrant[16/] indicates that registrant resorted to the use of "wooden tickets" as a sales technique. The record also discloses that on at least 187 sales of the 264 sales of DCA stock effected in 1964, registrant's prices ranged between 5% and 50% of its contemporaneous cost in a same day transaction, and that in connection with 120 of 188 sales of UUF stock in 1964, registrant charged a price that was 7.1% to 100% greater than its contemporaneous cost in a same day transaction. The prices charged by registrant were clearly excessive and cannot be considered as bearing a reasonable relationship to the market price for those stocks as determined by registrant's contemporaneous cost.[17/] Sales at prices not reasonably related to the prevailing price constituted a fraud upon those customers.[18/]

15/ J.A. Winston & Co., Inc., Securities Exchange Act Release No. 7337 (June 8, 1964); W.T. Anderson Company, Inc., 39 S.E.C. 630 (1960).

16/ During the year 1964 over 35% of registrant's sales, accounting for nearly 20% of all shares of DCA stock, were cancelled, and over 30% of its sales of UUF stock representing more than 21% of all shares of that stock sold, were cancelled.

17/ See J.A. Winston & Co., Inc., supra.

18/ Ibid.

By Norman Pollisky

Pollisky accepted employment as a salesman with registrant after seeking that position at the suggestion of an acquaintance. During the employment interview, Waldman informed Pollisky that registrant's salesmen were doing well by selling DCA and UUF stock that was very low-priced. Waldman further said that his interest in DCA and UUF was long-standing and that he had started off with the companies "at a very low price." He also advised Pollisky that registrant would be selling securities of additional companies within a month or six weeks, and that salesmen would eventually be allowed to "go into other securities" provided the customers paid for their transactions in such other securities in advance. While Pollisky apparently did not start selling for registrant until January, 1965, the employment interview appears to have taken place on or about December 16, 1964 when he signed his application to the National Association of Securities Dealers, Inc. for registration as a registered representative of registrant.

Pollisky was initially officed in a room with Portnoy, whom he had met previously, and with Gladstein, but moved to the next room after a week or ten days when they told him to go there because it appeared that they "wanted to work with a closed door." During the time that he officed with Portnoy

and Gladstein and some time later while still with registrant, Pollisky many times overheard them tell prospective investors that there was a "potential spin-off on a hardware company" by DCA, that earnings were 60¢ to 80¢, and that there was a possibility of the company earning a dollar per share and of the company's stock being listed on an exchange. Pollisky apparently was aware that such representations were without foundation, and when he "looked at them, cross-eyed" on one occasion, they became annoyed with him and "thought it was time [he] left the room." Off and on, after the first week in the office, Pollisky spoke to Waldman about the representations he continued to overhear Portnoy and Gladstein using, and they on the other hand complained about Pollisky annoying them. As a result of those complaints, Waldman threatened to fire Pollisky, saying that he didn't like Pollisky's attitude.

In offering and selling DCA and UUF stock, Pollisky made misrepresentations and omitted material facts concerning DCA and UUF and the stocks of those companies. In March,1965 he succeeded in selling UUF stock to Mrs. A.Z., a widow of very limited means with whom he had no previous acquaintance, by making persistent telephone calls. In the course of those conversations, he represented that an investment in UUF would provide an opportunity for her to make a good profit, that UUF's earnings would increase, and that the stock might rise

two points in six months or so. Mrs. A.Z. informed him that she was a widow without much income and that she could not afford to lose money whereupon Pollisky assured her that UUF was a good investment on which she would not lose. Before inducing Mrs. A.Z. to buy UUF, Pollisky attempted to sell DCA stock to her, but she decided to buy UUF stock because Pollisky told her that it was a utility company and she therefore felt, as she told Pollisky, the stock was less risky. At no time did Pollisky mention the earnings of UUF other than to voice his belief that they would increase.

In selling 100 shares of DCA stock on March 11, 1965 to Mrs. D.R., with whom he had no previous contact, Pollisky in the course of four or five conversations stated that DCA "had a good record behind it," and "expected it to grow rapidly." He also represented that he expected the price, then around 3, to go to 6 within six months or so. In a conversation after the first one, Pollisky stated that the price of the stock had gone up and told Mrs. D.R. that if she "wanted to get it when it was good, to get in right away." Immediately after her purchase, Pollisky again telephoned to urge her to buy more of the stock, telling her that "it was still going up, and doing very well."

Pollisky called R.A., another customer previously a stranger, nearly every night for a week in March, 1965 to

persuade him to buy 400 shares of UUF at 5 3/4. In the course of the conversations with R.A., Pollisky represented that because registrant controlled large blocks of the stock and had "big orders coming in to purchase the stock," UUF stock would double in price in two weeks to a month, that UUF earnings would "appreciate quite a bit," that UUF was greatly expanding its business, and that R.A.'s satisfaction with UUF stock would be the basis for future business between them. Shortly after the UUF purchase, Pollisky attempted to interest R.A. in DCA stock, but R.A. refused to place an order, saying that he was not interested until he found out what happened on UUF. Although he had not placed an order for DCA stock, R.A. received a confirmation for purchase of 200 shares of DCA stock from registrant.

The noted representations used by Pollisky to induce purchases of DCA and UUF stocks were false and misleading, having no basis in fact or being without justification. Pollisky's denials that he made such representations are rejected as is such of his testimony that conflicts with that of Mrs. A.Z., Mrs. D.R., and A.B.

The predictions of price increase for which there was no warrant in themselves are a "hallmark" of fraud,[19/] and, with the other misleading statements, constitute violations

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19/ See Floyd Earl O'Gorman, Securities Exchange Act Release No. 7959 (September 22, 1966); Hamilton Waters & Co., Inc., supra; Albion Securities Company, Inc., Securities Exchange Act Release No. 7561 (March 24, 1965).

of Section 17(a) of the Securities Act and of Section 10(b) and Rule 10b-5 thereunder.

Further, the record clearly and convincingly establishes that Pollisky joined and participated in the scheme to offer and sell stocks of DCA and UUF to the public by fraudulent means. Pollisky had previous experience in the securities business, and knew or should have known and recognized registrant for the fraudulent operation that it was. The characteristics of that operation were brought to his attention beginning with his employment interview and certainly became obvious by the time he was forced out of the office he shared with Portnoy and Gladstein. By choosing to remain with registrant during the ensuing eight weeks or so, and to offer and sell DCA and UUF stocks by methods and misrepresentations that bore a resemblance to those utilized by other of registrant's salesmen, Pollisky clearly demonstrated he intended to and did participate in and further the scheme in question.

In view of the foregoing, it is concluded that Pollisky, singly and in concert with other respondents, wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder.

By Aaron J. Gabriel

As earlier noted, Gabriel interrupted a telephone conversation between Forrest and Dr. C.R. for the purpose of selling DCA stock to Dr. C.R. Gabriel induced Dr. C.R. to purchase by statements that DCA was a low-priced stock that was going up in a very short time, and that DCA would shortly spin-off a hardware company. Gabriel also stated that he had just returned from Florida and expressed the opinion, based upon a personal check of the situation while there, that DCA "was a good situation to get into." Telephone conversations Gabriel had with other customers, which Forrest overheard, included statements by Gabriel that DCA was an excellent stock, that it would be $10 "in no time," that DCA was expected to spin-off American Hardware Corporation which was DCA's hardware division, that DCA had a contract to build a veterans hospital at Vero Beach, and was building a hotel in Miami. With respect to UUF, Forrest heard Gabriel say that the market for UUF was very thin, that there were only 40,000 shares, that the stock should go to $10, and that the earnings of UUF should continue to increase.

The false and misleading representations made to Dr. C.R. and those which Gabriel was overheard using in

offering DCA and UUF stock to the public and the long association with registrant under a secretive arrangement suffice to establish that Gabriel decided to join and participate in the fraudulent scheme that Waldman and Rose had conceived and activated.

Counsel for Gabriel contends that the testimony against Gabriel is biased and unbelievable and that the charges against Gabriel, being essentially criminal in nature, must be proved beyond a reasonable doubt. Neither of these contentions has merit. As previously noted, the testimony of Forrest and Dr. C.R. indicating that Gabriel was a salesman for registrant is given credence. The testimony of Forrest and Dr. C.R. relevant to Gabriel's sales practices is also credited, and that of Gabriel and Ehrlich in that regard is rejected. While the evidence indicates that Forrest and Dr. C.R. have a bias against Gabriel, and that such bias was a factor in their willingness to testify against him, it does not appear that their bias prevailed over their oath to testify truthfully. Moreover, the representations that Forrest testified Gabriel used are similar to those used by other of registrant's salesmen and fit the pattern of the over-all scheme.

The charges against Gabriel have been proved by the required preponderance of the evidence,[20/] and it is therefore concluded that Gabriel, singly and in concert with other respondents, wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder.

By Allan Harris

Although Waldman hired him as a salesman, it became apparent to Harris about three weeks after he started working on or about the end of July, 1965 that Kortnoy and Gladstein were "in charge of everything," and were the "bosses." About the same time, Harris also became aware of the injunctive action[21/] instituted by the Commission against registrant, its principals, and certain of its salesmen, and of the preliminary injunction obtained in that action.

20/ See Underhill Securities Corporation, Securities Exchange Act Release No. 7668, p. 6 (August 3, 1965).

21/ S.E.C. v. Waldman, Rose & Company, supra.

In offering and selling DCA stock, Harris induced his customers to purchase by means of false and misleading statements of material facts. During conversations with Mrs. H.B. by telephone and at her place of work in a supermarket, Harris persuaded her to purchase DCA stock in July, 1965 at a price of 5 1/2. Mrs. H.B., who had never purchased stock from anyone other than Harris, whom she trusted, and who, as Harris knew, had very limited means, was telephoned numerous times and visited at her place of employment by Harris to induce her to buy DCA stock. Harris told her that "it was a good stock and it will go up," that as a friend he was advising her to buy, that she was "foolish not to buy," and assured her that she would make money. Mrs. R.K., a 70 year old lady who Harris knew to be a substitute school teacher, bought DCA stock at 5 1/2 in July, 1965 because Harris assured her that DCA stock was a good investment for her, that the Hartford Fund had approximately 40,000 shares of DCA stock, that she would make money on DCA, and that the stock was not speculative but a safe investment.

Mrs. R.K.'s understanding was that when a fund buys shares such as the Hartford Fund was represented to have done, "the corporation must be pretty good." In reality,

Hartford Fund not only had not purchased 40,000 shares of DCA stock, but had refused to acquire 25,000 shares that had been offered to it by DCA stockholders.

Granting the contention of Harris' counsel that the testimony of Mrs. H.B. and Mrs. R.K. was vague and even confused in certain respects, nevertheless on salient points to the extent indicated herein their testimony was direct, positive, and credible. The denials by Harris that he made the representations attributed to him by these witnesses are rejected. Such denials lose credibility when considered in context with his other testimony, especially in light of his admission that he repeated to customers whatever Waldman told him about DCA. The argument of counsel for Harris that Waldman's testimony was not admitted in evidence as to Harris and that therefore there was no evidence as to what Waldman may have told Harris about DCA ignores the testimony of Harris. He testified on cross-examination that, among other things, Waldman told him that DCA was expected to earn 70¢ per share in 1965, that he"could sell it to your own brother, your own family," that he could tell his customers "not to worry about this stock. They will all do well." Such statements had no justification in fact and when repeated to customers in the offer and sale of DCA stock were false and misleading, as were those made to Mrs. H.B. and to Mrs. R.K.

In addition, it appears from the methods adopted by Harris to induce purchases of DCA stock, and from his acquaintance with the manner in which registrant, its principals, and certain of its salesmen had been and were continuing to operate that Harris joined in and participated in the fraudulent scheme that was in being and operation during his employment with registrant. 22/

In view of the foregoing it is concluded that Harris, singly and in concert with other respondents, wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder.

Public Interest

In view of the wilful violations by Pollisky, Gabriel, and Harris, it is necessary to determine the remedial action appropriate in the public interest. After careful consideration of the character and extent of the violations involved, and of all the facts and statements submitted for

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22/ Cf. Coplin v. United States, 88 F.2d 652, 660 (9th Cir. 1937), cert. denied, 301 U.S. 703 (1937).

consideration in connection with the imposition of sanctions, it is concluded that the public interest requires that these respondents be barred from association with any broker or dealer.

While it is true that neither Pollisky nor Harris was with registrant for the length of time of other of registrant's salesmen and that Gabriel did not devote his time exclusively to registrant's business, the record demonstrates that they joined and engaged in the pervasive fraud that marked registrant's operations during the period in question. The lack of fundamental honesty shown by Pollisky, Gabriel, and Harris, and their apparent lack of appreciation or comprehension of the high standards of fair dealing required of the securities business, make it clear that nothing short of a bar would suffice to protect the investing public from the danger of receiving further injury from these respondents. 23/

Accordingly, IT IS ORDERED that Norman Pollisky, Aaron J. Gabriel, and Allan Harris are each barred from association with a broker or dealer.

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

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

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

Warren E. Blair

Warren E. Blair, Hearing Examiner

Washington, D.C.
August 21, 1967