ADMINISTRATIVE PROCEEDING
FILE NO. 3-2225

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
DANIEL J. BRESLIN d/b/a DANIEL BRESLIN & ASSOCIATES	INITIAL DECISION
File No. 8-12648	
THOMAS A. CONNAUGHTON ROBERT WILLIAMS	

Sidney L. Feiler
Hearing Examiner

Washington, D.C.
October 9, 1970

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APPEARANCES: Willis H. Riccio, Edward P. Delaney and Arthur F. Carr, Esqs., of the Boston Regional Office of the Commission, for the Division of Trading and Markets.

Daniel J. Breslin, 53 Hemlock Street, Needham, Massachusetts 02192, pro se, Thomas A. Connaughton, 44 Ellis Avenue, Norwood, Massachusetts 02062, pro se, and Robert K. Williams, 53 Matchett Street, Brighton, Massachusetts 02135, pro se,

BEFORE: Sidney L. Feiler, Hearing Examiner

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I. THE PROCEEDINGS

These proceedings were instituted by order of the Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934, as amended ("Exchange Act") to determine whether certain allegations set forth in the order were true and, if so, what, if any, remedial action was appropriate in the public interest pursuant to Sections 15(b) and 15A of the Exchange Act.

The order sets forth allegations of the Commission's Division of Trading and Markets that:

A. During the period from on or about April 1, 1969 to on or about July 31, 1969, Daniel J. Breslin and Associates, a sole proprietorship, ("the Registrant") and Thomas A. Connaughton and Robert K. Williams, salesmen for the Registrant during the period here material, (sometimes referred to herein collectively with Daniel Breslin as "the Respondents"), willfully violated and willfully aided and abetted violations of the registration provisions of the Securities Act of 1933, as amended ("Securities Act "), in connection with the offer and sale of the common stock of Design International Corporation (DIC), Sections 5(a) and 5(c); that said Respondents willfully violated and willfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the so-called anti-fraud provisions of the Securities Acts, in connection with the purchase and sale of the common stock of DIC; that said Registrant willfully violated and Connaughton and Williams willfully aided and abetted violations of Section 15(c) of the Exchange Act and

Rule 15c2-4 thereunder in that Registrant accepted part of the sale price of such DIC securities, but failed to promptly transmit the money or other consideration received to DIC; and that the Registrant willfully violated and Connaughton and Williams willfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder in that Registrant failed to accurately make and keep current certain of its books and records.

The Respondents filed a joint answer in which they denied violating the registration provisions of the Securities Act, stating that only indications of interest in shares of DIC had been accepted for approximately 53,000 shares at an estimated retail value of $477,000. Of this amount Connaughton was listed as having obtained indications of interest for 5,000 shares; Williams, for 7,000 shares; and Breslin for 15,000 shares. It is admitted that during the relevant period clients of the Registrant maintained credit balances with him, but it is denied that these represented any part of the sales price of DIC stock. Other allegations in the order are also denied.

Pursuant to notice a hearing was held in Boston, Massachusetts. The Division was represented by counsel. All the Respondents appeared in person. After the conclusion of the evidentiary hearing, the Division in accordance with post-hearing procedures which had been prescribed at the conclusion of the hearing, filed its proposed findings of fact, and conclusions of law, and brief in support thereof. Briefs were filed by Connaughton and Williams. After the Division had

moved that the record be closed, Breslin requested and was given an opportunity to file a brief. The Division filed a reply.

On the basis of the entire record, including his evaluation of the testimony of the witnesses, the undersigned makes the following:

II. FINDINGS OF FACT AND LAW

A. The Registrant

Daniel J. Breslin, doing business under the firm name and style of Daniel Breslin and Associates, has been registered with the Commission as a broker-dealer since September 18, 1965. He is a member of the National Association of Securities Dealers, a national securities association registered under the provisions of Section 15A of the Exchange Act.

During the period here relevant, April 1 to July 31, 1969, Breslin conducted his business from a main office at 53 Hemlock Street, Needham, Massachusetts and two branch offices; an additional office in Needham and a second office in Norwood, Massachusetts. Registrant was primarily engaged in trading activities in securities sold over-the-counter. The main office was used for record-keeping and trading activities. Sales to retail customers were made principally through the branch offices. Approximately 18 registered representatives were employed during the period; 10 were part-time, and 8 were employed full-time. There were 6 additional employees. Each branch office had a supervisor in charge. Breslin had over-all supervision over all the activities of the Registrant.

Connaughton was employed during the relevant period as a registered representative working on commission until sometime in the summer of 1969. Then he became an operations clerk working on the books of the Registrant. He is no longer associated with the Registrant. Williams was employed as a part-time registered representative working on a commission basis from sometime in April 1969 until approximately the end of that year. Breslin supervised their activities as well as those of the rest of the staff.

B. Registrant's Relationship with Design International Corporation

Design International Corporation, a Massachusetts corporation, incorporated in February 1969, during the relevant period, was engaged in the design, development and manufacture of hair pieces and in hair weaving. No registration statement has been filed with the Commission for any of its securities.

In January 1969, counsel for DIC communicated with Breslin to ascertain whether he would be interested in becoming an underwriter for an offering of securities for DIC. Breslin and his son, who also worked in the business, met with counsel for DIC and later with the president of DIC. In the approximately 6 meetings that were held there was a full discussion of the operations and financial condition of DIC and Breslin visited its offices. He suggested that there be a Regulation A offering and agreed to become the underwriter for this issue. A formal underwriting agreement was signed on January 23.

On May 28, 1969 DIC filed its proposed notification and offering circular with the Commission (File No. 24B-1595). This filing related

to a proposed public offering of 33,333 shares of its common stock at $9.00 per share to be sold in minimum units of 100 shares for the purpose of obtaining an exemption from the registration requirements of the Securities Act, pursuant to the provisions of Section 3(b) thereof and Regulation A, promulgated thereunder. The proposed offering was to be underwritten on a "best efforts" basis by the Registrant.

Breslin advised that the Regulation A procedure be used, reviewed the material before it was filed, and was fully familiar with the contents of the documents. He knew that DIC was in a poor financial condition.

On June 17, 1969, a letter containing extensive comments on the filing was sent to the president of DIC from counsel at the Boston Office of the Commission. Thereafter, on July 24, 1969, DIC filed an amended notification and offering circular. Further amendments were filed on August 12, and September 10, 1969. Breslin knew the contents of the letter of comment and of the amendments filed thereafter in an attempt to cure the alleged defficiencies. On November 12, 1969 an order of temporary suspension of the Regulation A exemption sought by DIC was entered by the Commission (Adm. Pro. File No. 3-2179, Sec. Act Rel. 5022). This order was made permanent on January 20, 1970.

C. Activities of the Respondents in the Disposition of DIC Stock

Breslin testified that DIC was the first underwriting in which his firm had participated. Some time in March, according to Breslin, he held a staff meeting at which he told members of his staff of the proposed offering. He told them of the business of DIC, stated that it

was not currently in a good financial condition, but spoke highly with regard to its potential. He asserted that he admonished his representatives not to discuss this offering with anyone until they had an offering circular to show their clients, but told them that they could take indications of interest in this stock (Tr. 205-208). Breslin also placed a display board in one of his Needham offices sometime in February 1969, which stated, "Design International Corporation speculative new issue now in registration, indications of interest now being accepted." Also Breslin had a notice published in the Commercial and Financial Chronicle, beginning in February 1969, of the proposed stock offering by DIC. He later published a similar notice in the Boston Globe (Div. Ex.2).

The records of the Registrant indicate that commencing on or about April 1, 1969, there was a sharp increase in credit balances reflecting money deposited by customers in amounts of $900.00 or multiples thereof (as previously noted, DIC stock was to be offered at $9.00 a share in minimum amounts of 100 shares). Fifty-six persons deposited $90,300.00 with Registrant in amounts of $900.00 or multiples thereof. The earliest deposit occurred on April 1, 1969 and the latest on June 16, 1969 (Div. Ex. 24, Tr. 257-263). Thirty-seven of these deposits were made in April and 18, in May 1969.

Of the number making the above deposits, 45 had never done business with the Registrant before. Their deposits were listed in the Registrant's records as deposits made to open new accounts. In the remainder instances, the deposits was recorded as a credit to the

customer's existing account. In 39 of the 45 instances where money had been deposited and listed as used to open a new account, the money was not used for any purpose and was eventually returned to the investor at his request. The entire sum of money refunded was $48,300.00. Refunding was made over a seven-month period. Sums aggregating $35,700.00 were used to pay for purchases. The sum of $6,300.00 was left on account. An additional 7 while still listed as open accounts have shown no activity after the original deposit.

A group of investors testified that they deposited money with the Registrant after speaking with one of his representatives about DIC with the intention of purchasing shares of that company from Registrant. Sometimes payments were mailed to the Registrant and sometimes they were given directly to the representative involved. None of these investors received an offering circular or any material in writing at the time they made their deposits. A few of the 16 investor witnesses who made deposits stated that they did not have any particular stock in mind when they made their deposits and the fact that these deposits were $900.00 or multiples thereof was merely a coincidence. In view of the ties of friendship to particular representatives which became apparent during the testimony of these witnesses the undersigned concludes that those deposits were also made with a view to acquiring Design International stock.

The Registrant acknowledged receipt of the deposits usually in writing and indicated that he understood for what purpose the money was intended. One method used was to use a form "speedy reply message."

In a typical example, Registrant, on July 22, 1969, in a message to an investor who had deposited $1,800.00 stated "PLEASE BE ADVISED THAT WE ACKNOWLEDGE AND APPRECIATE YOUR INDICATION OF INTEREST OF 200 SHS FOR THE PUBLIC OFFERING OF DESIGN INTERNATIONAL CORPORATION.

WE APPRECIATE YOUR PATIENCE IN REGARD TO THIS OFFERING AND WE SHALL NOTIFY YOU IMMEDIATELY AS SOON AS THE ISSUE BECOMES EFFECTIVE.

WE ANTICIPATED THE OFFERING TO BECOME EFFECTIVE IN MID AUGUST AND HOPEFULLY WITH A MORE ACTIVE MARKET THE ISSUE WILL BE A SUCCESS" (Div. Ex. 4; similar examples are Div. Ex. 6 (100 shares) and 9-B (100 shares)) In the case of one investor who deposited $30,000.00 after speaking with Breslin about DIC, his Statement of Account includes an entry dated April 24, 1969 noting an allocation of 3,333 shares of DIC W/I at a price of $9.00 for a total price of $29,997.00.

Connaughton during the relevant period, worked for part of the time as a registered representative and then transferred to the main office of the Registrant where he worked on his books and records. He attended one of the preliminary meetings that Breslin had with representatives of DIC prior to the underwriting commitment. He also attended the staff meeting where Breslin spoke of DIC and the Registrant's underwriting arrangement with it. Connaughton testified that he mentioned DIC to 25 or 30 persons and solicited indications of interest from them. He acknowledged that after he spoke of DIC to his customers several of them sent in $900.00 in the hopes of getting some DIC stock. He conceded that such sums were listed by him when he worked on the books of the Registrant as sums received to open new accounts or as additions to credit balances when they were added to existing accounts.

D.V. testified that he deposited $900.00 in an existing account with the Registrant on April 3, 1969 after a discussion with Connaughton during which mention was made that a new issue might be coming out and that it had something to do with a hair product. D.V. wanted to be on a preferred list for that issue and at Connaughton's suggestion deposited $900.00 in his account (Tr. 95-100). After leaving this money in his account for approximately 8 months he bought other stock for $300.00 and withdrew his balance of $600.00.

C.C. testified that after Connaughton told him that DIC made hair pieces and was going to come out with an issue, he asked whether C.C. would like some of the stock, he opened an account with Registrant and deposited $900.00 which was to be used to purchase 100 shares of DIC when it became available. This money was still on deposit with the Registrant, unused, at the time of the hearing.

Testimony of the 2 investor witnesses set forth above, which is credited, establishes that they deposited money with the Registrant after conversations with Connaughton about the forthcoming issue and that they intended their deposits to be used to purchase DIC stock.[1/]

Williams testified that after attending the staff meeting in which Breslin spoke of DIC and its forthcoming public issue, he told about 20 or 25 of his customers about DIC, stated that they could give indications of interest and also advised them that it would be possible

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1/ Connaughton has attached a statement to his brief from C.C. in which the latter states that while Connaughton did discuss DIC with him, they also discussed other stocks and C.C. felt free to purchase any stock which he might select. This statement does not negative C.C.'s testimony about his intentions when he opened his account at the Registrant after his discussion with Connaughton.

to get some of the stock when it came on the market. He recommended that they invest in it and his customers give him money or mail it in to Registrant with a view to investing in the stock when it was issued. He identified customers who made deposits specifically with a view to acquiring DIC. He further testified that he told Breslin which of his customers had made deposits with a view to acquiring DIC stock (Tr. 163-171).

Six investor witnesses testified that they made deposits of $900.00 or multiples thereof with the Registrant after Williams had discussed DIC with them. One of them, R.H.H., testified that he sent in a check for $1,800.00 after being told by Williams that DIC was a good stock, and that it was an expanding company selling hair pieces and that its stock would soon be coming on the market. R.H.H. intended to buy 200 shares of DIC with his deposit and received one of the "speedy reply messages" noting his "indication of interest" in 200 shares (Div. Ex. 4). A treasurer of an investment club (J.J.R.) sent in a check for $900.00 after one of the members of his club was advised by Williams that there was 100 shares available for $900.00. J.J.R.'s speedy reply message acknowledgement noted his indication of interest in 100 shares of DIC (Div. Ex. 6). While 1 or 2 of the investor witnesses testified that they did not have DIC specifically in mind when they made their deposits with the Registrant, the weight of the evidences of the investor witnesses is that deposits were made after Williams had discussed DIC with them and their specific intent was to purchase shares in that company from the Registrant.

Breslin testified that he told his representatives that they could take indications of interest in DIC and that he knew that this was being done. He estimated that so-called indications of interest were received from investors for between 50,000 and 60,000 shares of DIC for an approximate retail value of $477,000 (Tr. 220). He further stated that he kept a separate list of those interested in DIC but could not locate it at the time of the hearing. He admitted that there was no question in his mind that persons making deposits of $900.00 or multiples thereof intended to acquire DIC stock (Tr. 208). However, he treated the money deposited as general deposits to the accounts of his customers and did not ear-mark these sums in anyway. He maintained that clients were not guaranteed they would receive the stock and they were free to use the sums deposited for any purposes.

Contentions of the Parties; Conclusions

It is alleged in the order for these proceedings that the Respondents willfully violated Sections 5(a) and 5(c) of the Securities Act in the offer and sale of the common stock of DIC. Section 5(a), so far as it is material herein, provides that unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly, to make use of the facilities of interstate commerce or of the mails to sell such security, through the use or medium of any prospectus or otherwise. Section 5(c), so far as it is material herein provides that it shall be unlawful for any person, directly or indirectly, to make use of the facilities of interstate commerce or of the mails to offer to sell any security by the use of a

prospectus or otherwise, unless a registration statement has been filed as to such security. These general provisions are applicable to offerings of securities through the use of the facilities of interstate commerce or of the mails unless a specific exemption from the regulatory provisions can be established. The burden is on the person seeking to establish such exemption.2/ It is undisputed that the mails were used in connection with the deposits of sums with the Registrant by investors interested in DIC stock, that acknowledgement of these deposits were also mailed,and that no registration statement was ever filed on behalf of DIC.

The Division contends that the activities of the Respondents in DIC stock constituted sales or offers to sell DIC stock in violation of Section 5. The Registrant contends that only indications of interest were taken, that no sales or binding commitments to sell the shares of DIC were made and thus there was no violation of Section 5.

The terms used in Section 5 are defined in Section 2 of the Securities Act as follows: "(3) The term "sale" or "sell" shall include every contract of sale or disposition of a security or interest in a security, for value. The term "offer to sell", "offer for sale", or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." It is contemplated under the statutory scheme that, absent and exemption from the provisions of Section 5 of the Securities Act, offers

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2/ SEC v. Ralston Purina Co., 346 U.S. 119(1953); SEC v. Sunbeam Gold Mines Co., 95 F. 2d 699 (9th Cir. 1938).

to sell a security before a registration statement is filed are prohibited (Sec. Act Rel. No. 4697, June 5, 1964). Solicitations of indications of interest have been held to constitute "offers to sell" within the meaning of the Securities Act.[3/] Therefore they may only be sought after a registration statement is filed (Sec. Act Rel. No. 4697, Supra).

It is evident that the activities of the Respondents constituted "offers to sell" within the meaning of Section 5 and that absent any exemption from its provisions, the terms of Section 5 were violated by the Respondents.[4/]

Regulation A, enacted by the Commission pursuant to the provisions of Section 3(b) of the Securities Act, provides an exemption from the provisions of Section 5, under certain circumstances, for the issuance of securities where the aggregate amount at which such issue is offered to the public does not exceed $300,000. The procedure under Regulation A requires the filing of a "notification" on Form 1-A and certain exhibits, including an offering circular. This filing must be made with the Commission at least 10 days prior to the date on which the initial

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3/ Armstrong Jones & Co., SEC Exch. Act Rel. No. 8420 (Oct. 3, 1968), P. 12, Fn. 28, aff'd 421 F 2d 359 (CA-6), cert. denied 398 U.S. 958 (June 15, 1970).

4/ The newspaper notices which Registrant caused to be published and the notice it placed on a bulletin board in one of its offices all come within the broad definition of the term "prospectus" in Section 2(10) of the Securities Act and also constituted offers to sell DIC stock.

offering of any securities is to be made under the regulation (Rule 255). There is no provision in Regulation A comparable to the provisions relative to registration statements which permits offers to be made prior to effectiveness.[5/]

DIC filed its proposed notification and offering circular on May 28, 1969. Registrant, during approximately 2 months prior thereto, had been soliciting so-called indications of interest and had been accepting deposits from investors ear-marked for the purchase of DIC stock. The purpose of these deposits had been acknowledged by Registrant in receipts sent to these investors. This activity by the Registrant was continued after the DIC filing even though he was aware that a letter of comment had been sent from the Boston Regional Office of the Commission to DIC containing extensive references to alleged deficiencies in the filing. DIC, using procedures usually followed by issuers, filed amendments seeking to cure the deficiencies referred to in the letter. At no time did it authorize Registrant to proceed with the public sale of its stock. Eventually the Commission found that an exemption from Regulation A was not available to the issuer and entered an order of permanent suspension. Thus, an exemption under Regulation A was not available for the activity of the Registrant in the offer of DIC stock nor were the provisions of Section 5 of the Securities Act complied with.

The Registrant established procedures under which his employees brought the forthcoming issue of DIC stock to the attention of investors.

5/ American Television & Radio Co., Sec. Act Rel. No. 4355, April 18, 1961, p. 8; Ezra Weiss, Regulation A Under the Securities Act of 1933-Highways and Byways, p. 96-97.

He had full knowledge of what they were doing and that sums were being sent to him for the purpose of acquiring DIC stock. According to the answer, he personally took more indications than any of his representatives. Connaughton and Williams participated in this activity, discussed the stock with their clients and were aware that they were sending in money for DIC stock. It is concluded that the Respondents violated and aided and abetted violations of Section 5 of the Securities Act in the offer of the common stock of DIC and that said violations were willful.7/

The definition of "sale" in the Securities Act is broad and is intended to have a wider scope than the common law definition.8/ The Commission has held that when indications of interest are invited and payments are accepted for stock, such activity is violative of Section 5 of the Act unless a registration statement is in effect as to the security.9/

7/ The general standard applied by the Commission and approved by the Courts is that "willful"... "...means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the Rules or Acts." Tager v. SEC, 344 F. 2d 5, 8 (2nd Cir. 1965), affirming, Sidney Tager, Sec. Exch. Act Rel. No. 7368 (July 14, 1964); Accord Harry Marks, 25 S.E.C. 208, 220 (1947); George W. Chilian, 37 S.E.C. 384 (1956); E.W. Hughes & Company, 27 S.E.C. 629 (1948); Hughes v. SEC, 174 F. 2d 969 (C.A.D.C. 1949); Shuck & Co., 38 S.E.C. 69 (1957); Carl M. Loeb, Rhoades & Co., 38 S.E.C. 843 (1959(; Ira Haupt & Company, 23 S.E.C. 589, 606 (1946); Van Alstyne, Noel & Co., 22 S.E.C. 176 (1946); Thompson Ross Securities Co., 6 S.E.C. 1111, 1122 (1940); Churchill Securities Corp., 38 S.E.C. 856 (1959). See generally Loss, Securities Regulation, (1961 Ed.), Vol. II, pp. 1309-1312 (1969 Supp.), Vol. V, pp. 3368-3374.

8/ See Loss, supra, pps. 223-224.

9/ Franklin, Meyer & Barnett, 37 S.E.C. 47, 51-52 (1956); Gearbart & Otis, Inc., 36 S.E.C. 327, 329-330 (1955); Financial Equity Corporation, 41 S.E.C. 997, 999-1000 (1964).

It is concluded that the conduct of the Respondents constituted sales of DIC within the meaning of the Securities Act.

Rule 256(a)(2) in Regulation A contains the requirement that no securities of an issuer shall be sold unless an offering circular is given to the purchaser or otherwise provided to him. Since it has been stipulated that no offering circular was used by the Respondents, it is concluded that they did not comply with the provisions of Regulation A, that no exemption under that regulation was available to them, and that they violated Section 5 of the Securities Act in the sale, as well as the offer of DIC stock. It is further found that these violations were willful.

D. Violations of the Anti-Fraud Provisions of the Securities Acts

It is alleged in the order for the proceeding that during the relevant period, the Respondents willfully violated and willfully aided and abetted violations of the anti-fraud provisions of the Securities Acts[10/] in that they made false and misleading statements of material facts and omitted to state material facts concerning among other things: (1) the financial condition of DIC; (2) the substantial prior operating loss incurred by DIC; (3) the application and use of proceeds

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10/ 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.

from the sale of such securities; (4) and the fact that no registration was in effect as to such securities, and that the registration requirements of the Securities Act were not being complied with in the offer and sale of DIC stock.

It is evident from the testimony of investor-witnesses at this proceeding that they were given only fragmentary information about DIC before they deposited money with the Registrant for the purchase of DIC stock. Examples of these are--"supposed to be a good stock soon to come on the market--expanding company selling hair pieces"(R.H.H., Tr. 20-24);"... a good stock and the money would be pretty good for me" (K.S., Tr. 28); "... it was Design International, that it was a hair piece that would come out and it was strongly recommended that this stock would go" (J.T., Tr. 39); "... something to do with a hair product that might come out and that was the extent of it" (V.V., Tr. 97); and "... a new issue coming out and that made hair pieces..." (C.C., Tr. 103). None of the witnesses and, it was stipulated, none of the other persons who deposited money with the Registrant after discussions with his representatives about DIC were given copies of the offering circular or any written material.

The financial statements filed by DIC with the Commission revealed that it was not in good financial condition and had a net loss of $54,659 for the 7 months ended February 28, 1969. It had a retained earnings deficit of $43,723 and had a small stockholders equity of $2,575.

According to the president of DIC, Breslin was given full information about DIC, including the fact that it was losing money. It was stipulated that Breslin was aware that DIC had a deficit in its surplus account (Tr. 14). None of this information was given to any investor by the Registrant or any of his representatives. Obviously this was information of material interest to any investor considering purchasing DIC stock. Breslin testified that he told his representatives that DIC was in poor financial condition, but that it had a good future. This testimony was not corroborated by Connaughton or Williams and it is evident that Breslin gave his representatives only fragmentary information about DIC and made no effort to check on what was being told investors about DIC which caused them to send in money for the purchase of that stock.

Connaughton and Williams participated in the sales activity. As representatives they were under an obligation to obtain reasonably detailed information which would warrant the recommendation they were making to their customers.[11/] This they did not do. From their own testimony it was evident that they knew very little about the financial condition of DIC and were in no position to advise their clients about it.

None of the Respondents advised the persons they spoke to about the details of the underwriting nor was there any mention of the possible violations of the Securities Act by the activities of the Respondents. It is therefore concluded that the Respondents violated

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11/ Ross Securities, Inc., 41 S.E.C. 509(1963); Berko v. SEC, 316 F. 2d 137 (CA. 2, 1963).

the anti-fraud provisions of the Securities Acts as alleged in the order and that these violations were willful.

E. Other Violations

A broker or dealer, pursuant to the provisions of Section 15(c)(2) of the Exchange Act, is prohibited from making use of the facilities of interstate commerce to effect transactions in securities in connection with which such broker or dealer engages in any fraudulent, deceptive or manipulative act or practice. The Commission in Rule 15c2-4 issued under the provisions of this Section has defined as a "fraudulent, deceptive or manipulative act or practice" as used in Section 15(c)(2) of the Exchange Act for any broker or dealer participating in any distribution of securities to accept any part of the sale price of any security being distributed unless: if the distribution is being made on a basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs, the money or other goods received is promptly deposited in a separate bank account as agent or trustee for the persons who ~~have~~ has the beneficial interest therein until the appropriate event or contingency has occurred and then the funds are promptly transmitted or returned to the persons entitled thereto.

It was stipulated that none of the funds received by the Registrant which were intended for the purchase of specific amounts of shares of DIC were ever turned over to DIC. It also is undisputed that these sums except in one instance were noted as additions to credit balances

of the customers involved. The sums received were intended to be used for the purchase of DIC shares as soon as they could be legally transferred to the customers of Registrant. Until this contingency occurred the sums deposited were required to be segregated. It is concluded that the Registrant by his failure to segregate the sums received for DIC shares violated the aforementioned Section and Rule. Connaughton directly participated in this activity since during part of the relevant period he worked on the books of the Registrant. Williams knew the general procedures used by the Registrant in handling deposits from his customers and to that extent participated in the violation. It is concluded that Registrant's violations of the aforementioned Section and Rule were willful and that Connaughton and Williams willfully aided and abetted these violations.

Every registered broker or dealer is required to keep certain books and records as prescribed by the Commission in Rule 17a-3 enacted pursuant to the provisions of Section 17(a) of the Exchange Act. Among other requirements, records are directed to be kept of all sales of securities, a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Pursuant to these provisions and others contained in the aforesaid rules, it was incumbent on the Registrant to note on his records receipt of money for DIC stock. This was not done. Although Breslin stated that he had kept a list of those who had indicated interest in DIC, he was unable to produce it and it is clear that the specific records required by the rules were not kept by him.

The requirement that records be kept necessarily includes the requirement that they be complete and accurate.12/ To the extent indicated, the records of the Registrant were incomplete and inaccurate and thereby the Registrant willfully violated the provisions of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. For the reasons set forth previously, it is concluded that Connaughton and Williams willfully aided and abetted these violations.

III. CONCLUDING FINDINGS; PUBLIC INTEREST

The Commission, pursuant to the provisions of Section 15(b)(5) of the Exchange Act, so far as it is material herein, is required to censure, suspend for a period not exceeding twelve months or to revoke the registration of any broker or dealer if it finds that such action is in the public interest, and such broker or dealer, whether prior or subsequent to becoming such, has willfully violated any provision of the Exchange Act, the Securities Act, or any rule or regulation thereunder. It also may, pursuant to the provisions of Section 15(b)(7) of the Exchange Act, censure, bar, or suspend for a period not exceeding twelve months any person from being associated with a broker or dealer if it finds that such sanction is in the public interest and that such person has willfully violated any provision of the Exchange Act, the

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12/ Lowell Niebuhr & Co., Inc., 18 S.E.C. 471(1945); Carter Harrison Corbrey, 29 S.E.C. 283(1949).

Securities Act, or any rule or regulation thereunder. It also, pursuant to the provisions of Section 15A(1)(2) of the Exchange Act, may expel or suspend a member from membership in a registered securities association who it finds has violated the Exchange Act or the Securities Act, or any rule or regulation thereunder.

It has been found that the Respondents have willfully violated and aided and abetted violations of the registration provisions of the Securities Act and the anti-fraud provisions of the Securities Acts in the offer and sale of the stock of Design International Corporation. Violations also were committed by these Respondents of record-keeping provisions and regulations relating to the separation of payments received in connection with a distribution of securities.

The Division urges that the violations found were most serious and warrant a finding that the registration of Daniel J. Breslin be revoked. It points out that the conduct of Breslin was a serious breach of the regulatory framework designed to protect investors and that his activities have caused the suspension of the exemption of Design under Regulation A. It further maintains that he attempted to conceal his activities by failing to properly record the transactions.

Breslin, in addition to maintaining that no violation was committed by him, has asserted that he has been caused substantial harm by the proceeding. Connaughton has stated in his brief that no speedy letters were sent to his clients, has denied that he told customers that DIC was a good company or strongly recommended it, and has asserted that he acted in the best interest of his clients. He has further stated that his personal reputation has been severely damaged.

Williams has asserted that his lack of experience in the securities field resulted in the violations.

It has been found that the Respondents committed the violations alleged against them. The ~~previous~~ provisions violated were key sections designed to protect the investing public in the offer and sale of new issues. Respondents pre-sold the entire DIC issue before it could be offered to the public and undoubtedly this caused investors to deposit the money with the Registrant in the hopes of getting a preference. Ordinarily, the remedy sought by the Division would be appropriate in the public interest. However, the undersigned concludes from his observation of the witnesses and other evidence in the case, that Breslin's violations were chargeable to his lack of understanding of the appropriate rules and regulations regarding the marketing of a Regulation A issue. While this does not excuse the violations found or their willfulness under applicable case law, it is concluded that Registrant should be given an additional opportunity to demonstrate that he will exercise the care and expertise required of a broker-dealer. A period of suspension will be ordered as to him. It is further concluded that periods of suspension should also be ordered as to Connaughton and Williams. While they had individual responsibilities as registered representatives and employees, they clearly were misled to some extent by Breslin's improper instructions to his staff. Accordingly,

IT IS ORDERED that the registration of the Registrant, Daniel J. Breslin, d/b/a Daniel Breslin & Associates is suspended for forty-five days, and further that he is suspended from membership in the National Association of Securities Dealers and also from association with any broker or dealer for the same period.

FURTHER ORDERED that Thomas A. Connaughton and Robert K. Williams are suspended from association with any broker or dealer for periods of twenty days and fifteen days respectively.

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within fifteen days after service thereof on him. This initial decision pursuant to Rule 17(f) shall become the final decision of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or the Commission, pursuant to Rule 17(c), determines on its own initiative ~~iniative~~ to review this initial decision as to him. If a party timely files a petition to review or the Commission takes action to review as to a party, this initial decision shall not become final as to that party.[13/]

Sidney L. Feiler

Sidney L. Feiler
Hearing Examiner

Washington, D.C.
October 9, 1970

13/ All contentions and proposed findings have been carefully considered. This initial decision incorporates those which have been found necessary for incorporation therein.