INITIAL DECISION NO. 73

ADMINISTRATIVE PROCEEDING
FILE NO. 3-8395

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)	
NEW ALLIED DEVELOPMENT CORP., ERICA J. HULL, and GRADY A. SANDERS	)	INITIAL DECISION AUGUST 31, 1995

Appearances: Jennifer A. Ostrom, Esq.
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Securities and Exchange Commission

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Before: Glenn Robert Lawrence
Administrative Law Judge

ORDER INSTITUTING PUBLIC PROCEEDINGS AND ANSWER

These public proceedings were instituted by order of the Securities and Exchange Commission (SEC) dated July 29, 1994 pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b), 21B and 21C of the Securities Exchange Act of 1934 to determine whether allegations of misconduct made by the Division are true and what, if any, remedial action would be appropriate in the public interest. In substance, the Division alleges that Respondents, in violation of and Section 17(a)(1) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Securities Act of 1934 (Exchange Act) and Rule 10b-5 thereunder (collectively referred to as the "antifraud provisions"), failed to state material facts or stated false and misleading statements of material facts regarding: (1) the value of medical products invented by Dr. Michael Hull; (2) the progress of the proposed Tommy Knocker Casino (TKC); and (3) the background of Grady Sanders (Sanders) and his control and financial interest in New Allied Development Corp. (New Allied). It is further alleged that Sanders sold shares of New Allied stock when no registration was in effect, in violation of Securities Act Sections 5(a) and 5(c), and that Sanders and Erica Hull (Hull) diverted substantial sums of money from New Allied and failed to make proper disclosure of that fact in violation of the antifraud provisions. Additionally, the Division alleges numerous other charges against the Respondents - all involving violations of the federal securities laws.

In view of the foregoing, it is considered whether an order should issue against one or more of the Respondents requiring that they: cease and desist from future violations of the securities laws; account for and disgorge improperly acquired funds; be barred from participating in the offer of penny stocks; and be assessed a money penalty.

The Respondents answered on July 20, 1994 and largely denied the allegations in the

Order except admitted that the historical cost of the Hull invention was $17,000. Affirmatively, Respondents pleaded that investors would not have reasonably relied on any omissions or misrepresentations to purchase or sell the securities of New Allied. They further alleged that no registration statement was required under the Securities Act.

The findings and conclusions herein are based upon the preponderance of the evidence as determined by the record and upon my observation of the various witnesses who testified at the hearing held in Denver, Colorado on January 24, 25, 26, 27, 31 and February 2, 1995, as well as the briefs, and proposals of facts and law of the Division and Respondents and the argument of the parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

General Argument. Respondents argue, in substance that the misrepresentations they were charged with should be excused or ignored inasmuch as there was no showing of investor reliance or losses. (Respondents' Opening Brief, pp. 20, 23, 25) (hereinafter "RB __"). Along those lines Respondents point out that there were no stock transactions during some periods of time. It is well settled, however, that neither reliance nor investor losses need be shown as a prerequisite to finding that a violation of the antifraud provisions of the securities laws has occurred. James E. Cavallo, 43 SEC Docket 749, 753 (1989) ("[I]t is not necessary to establish that customers relied on salesman's misrepresentations in order to find violations of antifraud provisions."); Lester Kuznetz, 48 S.E.C. 551, 554 (1986) (not necessary to establish customers relied on misrepresentations to establish violations of antifraud provisions); James F. Novak, 47 S.E.C. 892, 895 (1983); First Pittsburgh Securities Corp., 47 S.E.C. 299, 303 n.11 (1980); Shaw Hooker & Co., 46 S.E.C. 1361, 1366 (1977) (no proof of loss required for proceeding

brought to redress the public interest); Hamilton Waters & Co., Inc., 42 S.E.C. 784, 790 (1965) ("We have repeatedly held that it is unnecessary to show reliance on such representations or that the customer was in fact misled in order to establish violations of the anti-fraud provisions.").

Jurisdiction. The conduct of Respondents described hereafter involved (1) statements publicly distributed during the time of offers (pink sheet quotations) or actual over-the-counter market trading from November 1988 through March 17, 1992 and after January 1993; and (2) sales of securities using instrumentalities of interstate commerce. Accordingly, the jurisdictional requirements of the antifraud provisions of the federal securities laws and the unregistered sales prohibitions of Securities Act Sections 5(a) and 5(c) have been met.

Erica Hull was born in 1957, has a college degree in retail textile sales and was first employed in 1987-1988 in retail sales in a fur salon in Dallas, Texas. (Transcript pp. 30, 1009; Division Exhibit 54, p. 8) (hereinafter "Tr. ___" and "Div. Ex. ___", respectively). She met Grady Sanders in Dallas, Texas in 1988 and has been living with him since 1989. (Tr. 29). In 1988-1989, she worked as the executive assistant to Grady Sanders for National City Corp. (National City) in Dallas, Texas. National City owned several restaurants and her duties were to perform whatever administrative tasks Grady Sanders assigned to her. (Tr. 31-32). She thereafter became the president of Gold Star Industries, Inc. (Gold Star) in Dallas, Texas. The company was dissolved in 1990. Gold Star operated a night club known as Profiles. Goldstar was controlled by Grady Sanders. (Tr. 32). In 1990, Hull became president of a company called Cats on Knoll Trail. She did not recall the business purpose of the company, and the company was dissolved in 1990. (Tr. 32-33). In 1990, Hull became president of the North Dallas Health Club in Dallas, Texas. (Tr. 33). On September 5, 1990, Hull became president, CEO, and a

director of New Allied. This is the first time she served as an officer or director of a public company. Hull later became vice president and treasurer of Tommy Knocker Casino Corp., (TKCC), a wholly-owned subsidiary of New Allied. (Tr. 33, 51; Div. Ex. 54, p. 8)

At the time Erica Hull became president of New Allied, she had no prior association with a public company and no experience with the disclosure requirements for public companies, including financial disclosures and the preparation of financial statements. Nor did Hull have experience investing in stocks, communicating with broker-dealers or even owning a brokerage account. Finally, Hull had no experience owning or operating a casino. (Tr. 33-34, 1007-1009).1/

In approximately August, 1991, Erica Hull and Grady Sanders moved to 550 East 12th Avenue, Apt. #603, Denver, Colorado and both of them lived there through at least 1993. (Tr. 29, Div. Ex. 644, Stip. 18). During the period of February through April 1992, Jim and Judy Nation also lived at 550 East 12th Avenue, Apt. # 603, Denver, Colorado. (Tr. 29-30).

Grady Sanders is 58 years old. (Tr. 296). He did not graduate from high school but obtained his GED while in the Navy. (Tr. 297). He entered the Navy in 1950 using the name of William E. Sanders. (Tr. 316). Sanders has had no bank account in his name since 1989 and claims to have been living off of borrowed money. (Tr. 313). He has filed no federal tax

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1/ Respondents argue that Hull, despite her inexperience, had all sorts of professional help and did not have to rely on Sanders with respect to New Allied's corporate affairs. (Respondents' Supplemental Comments and Objections to the SEC's Proposed Findings of Fact and Conclusions of Law, CPFF 8-8H, 11) (hereinafter "RSC ___"). Notwithstanding these contentions, my observation of the relationship between Hull and Sanders is that Hull deferred to Sanders on all significant decisions. It is considered that Sanders used Hull as a front for his activities inasmuch, as discussed *infra*, he was previously the subject of two injunctions in connection with securities fraud.

returns since at least 1988 or 1989. (Tr. 315).

On April 5, 1979, a permanent injunction was entered by the U.S. District Court in Nevada in an action brought by the SEC. The court enjoined Grady Sanders, Network One, Inc. and Houston Complex, Inc. from violating various provisions of the federal securities laws including the anti-fraud provisions of Exchange Act Section 10(b) and Rule 10b-5 thereunder. SEC v. Grady A. Sanders, et al., CV-LV-79-S7, RDF (D. Nev. Apr. 5, 1979). (Div. Ex. 609B, hereinafter the "Nevada Injunction"). As part of the Nevada injunction, Grady Sanders was enjoined from, among other things, fraudulently violating the provisions of Section 10(b) of the Exchange Act concerning:

> [T]he financial condition and operations of the issuer and its subsidiaries; projections of revenues by the issuer and its subsidiaries; the ability of the issuer to obtain financing; . . . the capacity, nature, status, existence and financial ability of the issuer with respect to proposed projects including, but not limited to, . . . plans to obtain financing and the necessary approvals to construct a hotel-casino in Atlantic City, New Jersey; the existence of stock options or other remuneration to officers and directors of the issuer. . . . (Div. Ex. 609B, pp. 3-4).

On July 18, 1989, a permanent injunction was entered by the U.S. District Court in Colorado in an action brought by the SEC. The court enjoined Grady Sanders from violating various provisions of the federal securities laws including the anti-fraud provisions of Section 10(b) of the Exchange Act in SEC v. Grady A. Sanders, et al., Civ. Action No. 85-C-2542 (D. Colo. July 18, 1989). (Div. Ex. 609, hereinafter the "Colorado Injunction"). As part of the Colorado injunction, Grady Sanders was enjoined from, among other things, fraudulently violating the provisions of Section 10(b) of the Exchange Act concerning:

> [T]he free tradeability of any of the securities of the issuer; The background and identity of any of the officers, directors, promoters, controlling persons, major shareholders, or beneficial owners of the issuer of the securities; acquisition or disposition of any securities of any issuer through the use of nominees or any other person or entity acting

at the control or direction of defendant Sanders...; the public sale of unregistered securities." (Div. Ex. 609, p. 2).

This matter involved the stock of Master Security Services.2/

Further, Sanders has a history of listing false officers and directors on corporate documents, using aliases and signing other people's names to documents. (Tr. 316, 341-42, 475, 497, 619-20, 622-24, 633; Div. Exs. 363, 376, 506B; Div. Ex. 644, Stip. 150). Businesses previously owned or controlled by Grady Sanders have filed for bankruptcy protection. (Tr. 337-38).

Sanders's application for a gaming license in New Jersey was denied in April 1991 based on his "fail[ure] to establish . . . qualifications for licensure." (Div. Ex. 645; Tr. 309-311). Grady Sanders has never been issued a gaming license in any state (Tr. 309-312) and he admitted at the hearing that he has never owned or operated a casino, rather he tries to "build them and furnish them and do the development part of it." (Tr. 312). At the time of hearing, Grady Sanders was acting as the project manager for Country World Casinos, Inc. (Country World), and was being paid $7,500 a month through a contract between First Federal Mortgage & Loan (First Federal) and Country World.3/ (Tr. 450-54). As project manager, Sanders claimed his duties included selecting contractors and overseeing architects and builders (Tr. 453), as well as contacting Country World's investment bankers. (Tr. 450-54, 958-60).

Protestations to the contrary notwithstanding (Tr. 1007-10; RB 13-18; RSC §§ IV.A. and

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2/ Both the Nevada and Colorado injunctions were entered pursuant to Sander's consent. Respondents argue inexplicably, in effect, that the consent injunctions establish nothing. (RSC 21a). This is hardly the fact.

3/ Country World is a public corporation which purchased New Allied's Colorado real estate in July, 1993. (Tr. 452; Div. Ex. 617).

IV.B.), having noted in the record the pervasive joint involvement of Sanders and Hull in most of the significant transactions involving New Allied, I find that they jointly controlled the corporation and its activities. Sanders attended directors meetings and assumed a dominant role in finding the shell company, entering the gambling business, negotiating for the management of the casino, raising money, and communicating with broker-dealers. (Tr. 152-60, 184, 322-23, 325, 440; Div. Ex. 644, Stip. 153).4/

William Campbell (Campbell) and Stanley Richards (Richards), along with Grady Sanders, were all involved together in conduct that was the subject of SEC enforcement actions concerning the stock Master Security Services. Richards and Sanders were friends until approximately December 1994 and had known each other since 1975 or 1976. (Tr. 299, 462, 949-52). Richards has more than thirty years experience in the brokerage industry. (Tr. 462). Campbell was president of New Allied and Brush Prairie Minerals at least until September, 1990. (Tr. 39, 65; Div. Ex. 47, p.3; Div. Exs. 54, 56; Div. Ex. 644, Stip. 11).

Respondents argue that Sanders had general and not specific knowledge of Campbell's past legal troubles and that there existed between them no conspiracy. (RSC 17). To the contrary, the record reflects that they knew each other well and acted in concert in a number of enterprises. Grady Sanders knew that William Campbell had been twice enjoined by federal courts in SEC actions from committing violations of the federal securities laws. He testified at the trial of William Campbell, where Campbell was charged with criminal violations of an SEC

4/ Respondents' argument is insubstantial that the Division supports its contentions about joint control based on a sexist reasoning. (RB 13). Hull had worked for Sanders as an employee in a number of concerns prior to the New Allied venture. It was to the advantage of Hull and Sanders to hide his control of the corporation. The record reflects this is what he and Hull attempted to do in this case.

obtained injunction. Sanders was also aware that William Campbell had been in federal prison for federal tax crimes. (Tr. 307-309; Div. Ex. 643: Stipulations pp. 1, 3; Presentence report, pp. 1, 4; July 22, 1987 Order by USDC ED Wash., finding Campbell guilty of contempt).

New Allied Development Corp. is a Colorado corporation located in Denver, Colorado since at least August, 1991. (Div. Ex. 644, Stip. 4). On February 24, 1992, TKCC was formed as a wholly owned subsidiary of New Allied. (Div. Ex. 644, Stip. 6). Prior to the acquisition of control of New Allied by Erica Hull in September, 1990, New Allied had no assets and had been a dormant uranium mining company controlled by Campbell. Erica Hull testified she considered it to be a "clean shell" because it had no assets or liabilities and that no business was taking place at the time she acquired it. (Tr. 39-41, Div. Ex. 47, pp. 3-4). New Allied stock was available for public trading from November 1988, through March 17, 1992. (Div. Ex. 644, Stip. 16). The SEC suspended trading in New Allied stock on March 17, 1992, for a single ten day period. In the order suspending trading the Commission stated that questions had been raised about the adequacy and accuracy of publicly-disseminated information concerning, among other things, the ability of New Allied to construct and open the Black Hawk, Colorado casino by May, 1992. (Tr. 996; Div. Ex. 644, Stip. 153; Securities Exchange Act of 1934 Release No. 30492, 51 SEC Docket 27, 1992 SEC LEXIS 669 (March 17, 1992)). Since January, 1993, New Allied stock has been publicly traded and quoted on the NASD OTC bulletin board. (Div. Ex. 644, Stip. 17). After failing to develop a casino in Colorado, New Allied sold its real estate to Country World in July, 1993. (Div. Ex. 617).

As of the time of the hearing in this matter, New Allied shareholders had not received tangible benefits in the form of cash dividends or a distribution of Country World shares as a

result of the sales transaction between New Allied and Country World. New Allied sold its commercial property to Country World for 250,000 shares of Country World common stock, a $190,000 down payment and a $725,000 promissory note, and sold its gaming property to Country World for 2,250,000 shares of Country World preferred stock, a $500,000 down payment and a $3,450,000 promissory note. As of the conclusion of the hearing in this matter, Country World had not attempted to register the shares that New Allied represented it would distribute to New Allied shareholders, and such a distribution had not yet taken place. (Tr. 548, 732-34, 982-984, 999; Div. Ex. 617).

From August 1990 through September 1990, there were approximately twenty transactions in New Allied stock and the stock traded at prices ranging from $0.625 to $1.25 a share. From October 1990 through April 1991, there were no trades of New Allied stock. From May 1991 through March 6, 1992, there were approximately one-hundred and seventy retail purchase transactions in New Allied stock and the stock traded at prices ranging from $0.03 to $7.00 a share. On March 17, 1992, as indicated, the trading of New Allied stock was suspended by the SEC for a period of ten business days. New Allied stock did not resume trading again until January, 1993. During January, 1993, there were twenty retail purchase transactions in New Allied stock and the stock traded at prices ranging from $1.50 to $2.875 a share. (Tr. 803-07, 871; Div. Ex. 644, Stip. 153). In January, 1995, New Allied stock was quoted at $0.18 a share. (Tr. 732-33). As of December 31, 1990, the book value of New Allied's total assets was $817,500. As of December 31, 1991, New Allied's assets were $1,310,090. As of December 31, 1992, New Allied's assets were $2,126,500. As of December 31, 1993, New Allied's assets were $1,969,106. (Div. Ex. 54, p. 14; Respondents' Ex. BB,

p. F-2, hereinafter "Resp. Ex. ___").

Hull and Sanders Take Control of New Allied. Dr. Michael Hull (Dr. Hull), Erica Hull's brother, had a number of medical inventions with patents pending. It was his desire to sell these inventions to a public corporation in order that he be insulated from personal liability. It was his impression that Sanders was a successful businessman and could help market his inventions. (Div. Ex 648, pp. 10-11). In furtherance of Dr. Hull's request, Sanders and Erica Hull negotiated with Campbell and acquired the publicly traded, shell corporation, New Allied Corporation on September 5th, 1990. (Tr. 321, 324-326). At the same time, Campbell or entities he controlled transferred 2,150,000 shares of New Allied common stock to entities and persons directed by Hull and 250,000 shares of common stock to Sanders's nominees, for the benefit of Sanders.5/ This gave Sanders and Hull a 52.4% share of New Allied. (Tr. 326; Div. Ex. 56, p.1, 4; Div. Ex. 644, Stips. 12-13).6/ In December 1990 and January 1991, Campbell, through his companies Brush Prairie Minerals, Inc. and O'Hara Resources, transferred to New Allied property zoned for gambling in Black Hawk, Colorado. The property was transferred in exchange for 720,000 shares of newly issued New Allied common stock. On this site the company proposed to build a 40,000 square foot casino. (Div. Ex. 47, p. 4).

The January 16, 1991 15c2-11 Statement. Pursuant to Exchange Act Rule 15c2-11, 17 C.F.R. § 240.15c2-11 (1994), Hull and Sanders prepared and issued New Allied's 15c2-11

5/ Sanders later sold 67,400 shares held by nominees and realized proceeds of $115,195. See, *infra*, **Sales of Unregistered Securities** section.

6/ Respondents argue that neither Hull nor New Allied knew anything about Sanders's transfer of stock to nominees through Campbell. (RB 21). This is a very doubtful proposition given the exceptionally high level of collaboration demonstrated in this record as between Hull and Sanders on practically all phases of New Allied's activity.

disclosure statement, unaudited financial statements as of December 31, 1990 and press releases to broker-dealers, for distribution to investors on January 16, 1991. (Tr. 95, 365-66; Div. Ex. 56).7/ The disclosure statement contained the representation that the rights to Dr. Michael Hull's products were valued at $2,150,000. (Div. Ex. 56, p. 4). In addition, the December 31, 1990 unaudited financial statements listed as an asset a "property agreement" with Dr. Hull at $2,150,000. (Div. Ex. 56, pp. 12, 15). Erica Hull admitted that she prepared such documents, was responsible for them and had reviewed such documents prior to their distribution to brokers, and that Grady Sanders may have been aware of the $2,150,000 valuation at that time. (Tr. 94-97). Sanders acknowledged reviewing this and all of New Allied's other 15c2-11 disclosure statements while Hull was president of the company. (Tr. 365-66).

The historical cost of rights to patent pending products owned by Dr. Michael Hull and transferred by him to New Allied was approximately $17,000. (Div. Ex. 644, Stip. 7). There had never been an appraisal of the value of the rights to Dr. Hull's products exchanged as part of the acquisition of the New Allied "shell". (Tr. 49). Listing the rights to the Hull products on New Allied's financial statements as an asset worth $2.15 million was a violation of generally accepted accounting principles (GAAP) according to New Allied's own CPA, Robert Hottman. (Tr. 280-81). Hull and Sanders were motivated in misrepresenting the value of the Hull

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7/ Rule 15c2-11(a) provides in relevant part:

> As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices, it shall be unlawful for a broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation or publication, in any quotation medium (as defined in this section) unless such broker or dealer has in its records the documents and information required by this paragraph. 17 C.F.R. 240.15c2-11(a) (1994).

products in order to facilitate the listing of New Allied stock on NASDAQ. (Tr. 99-102, 208-09).

Respondents argue that the value of the real estate as reflected in appraisals was not stated in the 15c2-11 materials, and therefore the disclosed total assets of New Allied were understated in the 15c-211 rather than overstated. (RB 8). This argument, which depends on the real estate appraisals of the Black Hawk, Colorado properties (Resp. Exs. CC and DD), is flawed inasmuch as the appraisals are dated December 22, 1992, while the 15c-211 where the misrepresentation as to the medical products occurred in the January 16, 1991 disclosure statement. Further, Respondents' argument that they were under no duty to comply with GAAP in the disclosure statement, thereby making the representation appropriate, completely lacks merit. (RB 7-8). While it is correctly asserted that audited financial statements in compliance with GAAP are not required of companies not registered pursuant to Exchange Act Section 12, the prohibition against material misrepresentations still applies to these companies via the antifraud provisions. The extraordinary disparity between the reported value of the product rights and their historical cost was inarguably material information to investors which Respondents failed to adequately disclose.

Sanders's involvement in and control of New Allied was not disclosed in the January 16, 1991 15c2-11 disclosure statement. The 15c2-11 statement did not disclose that Sanders: (1) was a control person for New Allied; (2) had a disciplinary history involving securities law violations; and (3) controlled a substantial amount of New Allied Stock through nominees. Presumably, this concealment was to avoid a potentially negative impact on the value or marketability of the stock and to facilitate the process of applying for a gambling license,

inasmuch as Sanders had a history of securities law violations and injunctions. Further, it is considered that a disclosure of Sanders's involvement would have engendered greater regulatory scrutiny.8/

A 13.79 percent interest in New Allied was held by Morning Star Trust. (D. Ex. 56, p. 7). Yet, the January 16, 1991 15c2-11 failed to disclose that Hull, who held 15.17% of New Allied shares, was a beneficiary of the trust and Sanders was a settler of the trust. (Div. Ex 56, pp. 8, 16). The disclosure statement further failed to disclose that Brush Prairie, owner of a 14.46 percent interest in New Allied, was controlled by Campbell who was twice enjoined for securities law violations and had two criminal convictions.

The December 5, 1991 Press Release. New Allied issued a press release on December 5, 1991 which was distributed to broker-dealers. (Div. Ex. 83, p. 10). The press release materially misrepresented that the Company had purchased 240 acres near Black Hawk, Colorado for a golf course on January 6, 1992 and that the gambling casino "will open in the Spring [1992]." In fact, New Allied had not purchased of the acreage for the golf course, and the company had no gaming license (and no pending application for a gaming license), building contracts, building permits, or funding necessary to construct the proposed Tommy Knocker Casino. Hull knew that the press release was false in that New Allied was in no position to open in the spring. Further, Hull later knew that New Allied had not closed as represented on the golf course property on January 6, 1992, but did not correct the December 5 announcement

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8/ Respondents' argument that the record does not reflect New Allied's or Hull's knowledge of Campbell's injunctions or convictions would in no way relieve them of their obligation to disclose such material information, which constitutes readily available public information discoverable upon reasonable investigation by the company, its officers or directors.

until the issuance of the March 10, 1992 15c2-11 statement. (Tr. 104-110 and 123, Div. Ex. 47, p. 8).

The March 3, 1992 Ground Breaking Documents. New Allied held a ground breaking on March 3, 1992 at the proposed casino site and distributed written material containing materially false misrepresentations that the casino would open in May 1992. (Div. Ex. 83, p. 4). The flier was distributed to members of the public and to securities broker-dealers. (Div. Ex. 644, Stip. 32). The document listed G. Sanders - Project Manager as the person to contact for further information. (Div. Ex. 83, p. 4). For the same reasons discussed *supra* with respect to the December 5, 1991 press release, New Allied was in no position to anticipate a May opening. (Div. Ex. 644, Stips. 33-39). When the representation was made, Hull and Sanders knew the statement was not true and that it would take at least six months to construct the casino. (Tr. 105-108, 354-361).9/ Respondents argue, in substance, that an investor who read New Allied's financial statement would see that New Allied was not able to build a casino by May 1992, inasmuch as they did not have adequate funds. Therefore, Respondents argue, the ground breaking announcement could not have impacted investors. (RB 20). It is not considered that a finding of fraud depends on an investor showing that there was no way for him to have detected the fraud. Rather, it is sufficient to show that an investor could have reasonably believed the fraudulent representation and the information is material. Further, the Division

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9/ Sanders stated at the hearing "I think everyone there [at the ground breaking] knew. I mean we were just breaking ground in March. I mean it didn't take a genius to figure out we weren't going to open in May." (Tr. 356). Notably, distribution of the information was not limited to attendees at the ground breaking, but also included securities broker-dealers. In their post-hearing filings, Respondents contest their own stipulation that on March 3, 1992 the release was distributed to both members of the public attending the ground breaking and broker-dealers. (RSC RPF 235c).

need not show harm to investors or reliance to prove a violation of the anti-fraud provisions of the federal securities laws. *See* James E. Cavallo, 43 SEC Docket 749, 753 (1989); Lester Kuznetz, 48 S.E.C. 551, 554 (1989); Shaw Hooker & Co., 46 S.E.C. 1361, 1366 (1977).

The March 10, 1992 15c2-11 Statement. New Allied prepared a Disclosure Statement dated March 10, 1992 pursuant to Exchange Act Rule 15c2-11 and attached unaudited financial statements for the company dated December 31, 1991, both of which were distributed to securities broker-dealers. (Div. Ex. 47; Div. Ex. 644, Stip. 40). The statement failed to disclose material facts concerning: (1) the amount of New Allied stock held in nominee names which Grady Sanders, a control person of New Allied, in fact controlled; (2) that Grady Sanders sold New Allied stock held in those nominee names and the amount of proceeds that he received from the sale of that stock; and (4) that Erica Hull, holder of 14.18% of New Allied's outstanding shares, was a beneficiary of Morning Star Trust, which held 12.89% of New Allied's shares. The 15c2-11 statement only disclosed that Hull was a trustee of Morning Star Trust. (Div. Ex. 47 pp. 4, 6).

The due diligence materials further failed to disclose that Grady Sanders was a control person of New Allied and had two permanent injunctions entered against him for violations of the federal securities laws, rather merely stating that Grady Sanders was in a consulting role and had previously entered into "a consent decree" in 1989. (Div. Ex. 47, p. 4). The statement also failed to disclose: (1) that a major shareholder, Brush Prairie Minerals (6.01% of outstanding stock) was controlled by William Campbell; (2) what disposition was made of the stock Campbell had previously owned (17.46% of outstanding stock); and (3) Campbell's two SEC injunctions and two criminal convictions. (Div. Ex. 47, pp. 6-7). The statement further

indicated that officers and directors would not receive cash salaries when in fact Erica Hull (President, CEO and director) and Grady Sanders (an undisclosed control person) had received substantial personal compensation from New Allied. (Div. Ex. 47, p. 13 (Note 6 to Financial Statements)).

The March 31, 1992 15c2-11 Statement. New Allied, through Sanders and Hull, prepared and distributed to broker-dealers a 15c2-11 dated March 31, 1992 with attached financial statements. (Div. Ex. 54; Div. Ex. 644, Stip. 43). With these materials, there was a failure to disclose, among others, the following material facts: (1) Sanders was a control person of New Allied; (2) Sanders held substantial stock interests in New Allied through nominee names; (3) the full scope of Sanders's SEC disciplinary history with two injunctions,10/ and (4) Campbell, with a substantial SEC disciplinary history, controlled Brush Prairie minerals which owned 6.0% of outstanding stock. It was also falsely represented that the officers and directors were not compensated, while Hull and Sanders actually received substantial sums of

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10/ The March 10, 1992 15c2-11 stated, in the context of Sanders's and First Federal Mortgage and Loan's contract as "management consultants for all gaming, commercial developments and acquisitions," that "[d]uring 1989, Mr. Sanders entered into a consent decree with The [SEC]." (Div. Ex. 47, p. 5). The March 31, 1992 15c2-11 states:

> In 1989, Grady Sanders entered into a consent decree with the SEC. Pursuant to said consent decree, Grady Sanders was permanently enjoined from violations of [specified provisions of the federal securities laws]. In connection with the consent decree, Mr. Sanders neither admitted or denied any allegation contained in the SEC complaint and there were no findings of fact or conclusions of law of an violations of the Securities Acts by Mr. Sanders. (Div. Ex. 54, p. 5)

Neither disclosure statement mentioned Sanders's Nevada injunction, which involved allegations of fraudulent misrepresentations regarding the financing and construction of a casino in Atlantic City, New Jersey. Such a non-disclosure, given that New Allied's principal activity was the development of a casino, was critical.

compensation from New Allied. (Div. Exs. 54; Div. Ex. 644, Stip. 43).

The January 26, 1993 Press Release. New Allied issued a press release on January 26, 1993 containing the material omissions that New Allied's real property was now subject to the payment of promissory notes by Country World, and possible foreclosure in the event of non-payment would be in the favor of First Federal and Morning Star Trust, entities owned or controlled by Sanders and Hull. (Div. Ex. 381).

Sales of Unregistered Securities. Unless a registration statement has been filed, Sections 5(a) and 5(c) of the Securities Act prohibit sales of securities through the mails or in interstate commerce. 15 U.S.C. §§ 77e(a), 77e(c); *See* SEC v. Continental Tobacco Co. of South Carolina, Inc., 463 F.2d 137, 155 (5th Cir. 1972). What follows are the findings relating to Grady Sanders sales of unregistered securities through nominees.

For introducing the Hulls to New Allied in August, 1990, Grady Sanders was offered 250,000 shares of New Allied stock by William Campbell. Grady Sanders claims he declined such an offer but requested that Campbell transfer of the stock into a list of names Sanders supplied. (Tr. 335-36; Div. Ex. 644, Stips. 12-13). This, it is considered, was a subterfuge to prevent investors from knowing Sanders's involvement in New Allied. On September 24, 1990, Interwest Transfer Co., Inc., at the direction of Brush Prairie Minerals Corp.,11/ transferred 250,000 shares of New Allied stock registered in the name of Brush Prairie Minerals Corp., into the names of Michael Culhane (25,000 shares), Wilbur Neilson (40,000 shares), Lloyd Campbell (47,000 shares), Rodney Owens (3,000 shares), Germain Bazan (5,000 shares), Alex Bickley

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11/ Respondents argue that Sanders's nominees did not receive their stock from Campbell but from Brush Prairie Minerals. (RB 26). However, the record supports the determination that Campbell controlled Brush Prairie.

(5,000 shares), Robert Bretz (5,000 shares), Diane Gould (2,000 shares), Robert Best (20,000 shares), First Commonwealth Insurance Corporation (30,000 shares) and Midsouth Resources Inc. (68,000 shares). (Div. Ex. 644, Stip. 13).

In violation of the registration provisions of the Securities Act, between June 3, 1991 and March 19, 1993, Sanders, while acting as a control person of New Allied, received $115,195.03 from fourteen sales of New Allied stock held in the name of his nominees Midsouth Resources, Inc. ($27,274.45), First Commonwealth Insurance Corp. ($45,340.58), Rodney Owens and Diane Gould ($6,000), Lee Olson ($25,500), and Wilbur Neilson and Michael Culhane ($11,080).

Midsouth Resources, Inc. (Midsouth) was a nominee used by Grady Sanders to sell New Allied stock as evidenced by the facts that: (1) Midsouth received its New Allied stock from William Campbell at Grady Sanders's request (Div. Ex. 644, Stip. 13); (2) Sanders had possession of all of Midsouth's corporate documents up until May 1993, when he sent them to his ex-wife Germain Bazan, instructing her to "hold onto [them] for a while" (Tr. 619); (3) Grady Sanders asked Bazan to sell Midsouth's New Allied stock for him and split the proceeds (Div. Exs. 506, 506B, 507B); (4) Sanders admitted that he owned at least 50% of Midsouth as of September 1990 (Tr. 336-37); (5) Sanders was in contact with the Kidder Peabody registered representative that handled the sales of New Allied stock held in Midsouth's name, even though Kidder Peabody never received documents giving Sanders authority to direct Midsouth's brokerage account (Tr. 701-06); (6) Sanders requested that Kidder Peabody stop payment on a proceeds check issued to Midsouth for the sale of New Allied stock (Tr. 702-05; Div. Ex. 373); (7) Sanders attempted to direct Midsouth's Kidder Peabody account (Tr. 705-06; (8) account

statements, confirmations and proceeds checks payable to Midsouth for the sale of New Allied shares were sent to a rented mail box and forwarded to Grady Sanders and Erica Hull (Tr. 586, 590-600; Div. Ex. 402; Div. Ex. 644, Stips. 66, 107, 111, 119, 121-125); (9) an account statement and confirmation regarding Midsouth's sale of New Allied shares were sent to Jim and Judy Nation's address and forwarded to Grady Sanders and Erica Hull (Tr. 501, 563, 587-91; Div. Ex. 370; Div. Ex. 644, Stips. 103, 104, 108, 109); (10) Dennis Ferraro cashed a proceeds check payable to Midsouth for the sale of New Allied shares at the request of Grady Sanders (Tr. 406-07, 476-77, 499-500; Div. Ex. 334); (11) Midsouth's new account form at Kidder Peabody listed Midsouth's telephone number as a phone number assigned to Grady Sanders (Div. Ex. 644, Stips. 49, 50, 105); (11) Grady Sanders received the proceeds from the sale of New Allied stock by Midsouth (Tr. 406-08, 476-78, 499-500; Div. Ex. 334); (12) Grady Sanders admitted to Stanley Richards he controlled Midsouth and admitted that he hoped to personally benefit from the New Allied shares Campbell transferred into the name of Midsouth Resources (Tr. 430, 477, 491-92; Div. Ex. 644, Stips. 12, 13).

First Commonwealth Insurance Corp. (First Commonwealth) was a nominee used by Grady Sanders to sell New Allied stock as evidenced by: (1) First Commonwealth received its New Allied stock from William Campbell at Grady Sanders's request (Div. Ex. 644, Stips. 12, 13, 68); (2) Grady Sanders received a proceeds check for the sale of New Allied stock by First Commonwealth from Stanley Richards (Tr. 448-49, 473-74; Div. Ex. 644, Stips. 70, 71); (3) telephone calls were made from Grady Sanders's phone to the Canaccord (formerly L.O.M. Western Securities Corporation) registered representative that handled the sales of New Allied stock held in First Commonwealth's name (Div. Ex. 644, Stips. 69, 90-95); (4) Sanders

admitted that he owned at least 29.2% of First Commonwealth at the time of the hearing and when Campbell transferred the New Allied shares in September 1990 (Tr. 368, 450); (5) First Commonwealth's new account form at Canaccord listed First Commonwealth's telephone number as a phone number assigned to Grady Sanders (Div. Ex. 644, Stips. 50, 64); (6) account statements and proceeds checks payable to First Commonwealth for the sale of New Allied shares were sent to a post office box opened by Erica Hull and forwarded therefrom to Sanders and Hull (Tr. 171-72, 174-75; Div. Ex. 644, Stips. 47, 48, 63, 67, 77, 79, 86, 87); (7) Grady Sanders obtained the proceeds from the sale of New Allied stock sold by First Commonwealth at Canaccord (Tr. 330-32, 366-67, 478, 493; Div. Ex. 644, Stips. 10, 52, 78-85, 87-89); (8) Sanders controlled the predecessor of First Commonwealth, Network One (Tr. 368-69; Div. Ex. 405; Div. Ex. 644, Stips. 55-58); (9) Grady Sanders told Stanley Richards he controlled First Commonwealth (Tr. 466-67); (10) Grady Sanders sold New Allied stock in the name of First Commonwealth to Jim Nation (Div. Ex. 644, Stip. 141); (11) Sanders wrote checks for First Commonwealth (Tr. 374-75; Div. Ex. 628, pp. 3, 11); (12) Sanders explanations concerning control of First Commonwealth by Lloyd Campbell, Terry Fritz and William E. Sanders were not credible.12/

New Allied stock in the name of Rodney Owens was controlled by Grady Sanders and

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12/ Grady Sanders ex-wife and even Sanders himself acknowledged that Sanders had often used the alias and signed the name of William E. Sanders, and that Grady Sanders had entered the military using that name. (Tr. 316-17, 632-33). Grady Sanders testified that Messrs. William E. Sanders and Lloyd Campbell are probably in the Yukon Territory of Canada "together, wherever they are." (Tr. 317-18). Grady Sanders's close friends and business associates Richards, the Nations and Germain Bazan did not recall ever meeting any of these men. (Tr. 478-77, 533-34, 600-01, 633). One has to believe they were invented by Sanders out of whole cloth.

Rodney Owens was a nominee name used by Grady Sanders. (Tr. 389, 1010). Grady Sanders was the true beneficial owner of the New Allied stock exchanged with Dennis Ferraro in the name of Rodney Owens, for dental services rendered to Sanders. (Tr. 394-95, 400-02; Div. Ex. 1187; Div. Ex. 644, Stips. 12, 13, 128). New Allied stock in the name of Diane Gould was controlled by Grady Sanders and Diane Gould was a nominee name used by Grady Sanders. Grady Sanders was the true beneficial owner of the New Allied stock bought by Ferraro in the name of Diane Gould. (Tr. 390-93, 402-05; Div. Ex. 325; Div. Ex. 644, Stips. 12, 13, 129). New Allied stock in the names of Michael Culhane and Wilbur Neilson were controlled by Grady Sanders and Michael Culhane and Wilbur Neilson were nominee names used by Grady Sanders. Sanders was the true beneficial owner of the New Allied stock sold to Jim Nation in the name of Michael Culhane and Wilbur Neilson. (Tr. 432-34, 514-20, 573-77; Div. Exs. 399 and 626; Div. Ex. 644, Stips. 12, 13, 121, 131, 132, 134, 135, 136, 137, 142, 155). New Allied stock in the name of Lee Olson was controlled by Grady Sanders and Lee Olson was a nominee name used by Grady Sanders. Sanders was the true beneficial owner of the New Allied stock sold to Stephen Anderson in the name of Lee Olson. (Tr. 336, 373-74, 433-39, 782; Div. Ex. 649, pp. 11-12, 13-15; Div. Ex. 644, Stips. 12, 13, 52, 130, 148, 149).

Respondent Sanders argues that: (1) Sanders's nominees did not acquire New Allied stock from Sanders, but rather from Brush Prairies Minerals, which Respondent argues was not an affiliate of New Allied; (2) under Securities Act Rule 144, 17 C.F.R. § 230.144, an officer, director or 10% shareholder is not necessarily a control person, citing American Standard, SEC No-Action Letter, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 79,071 (Oct. 11, 1972); (3) Brush Prairie, following a three year and nine month holding period, transferred

pursuant to Rule 144(k) "unlegended" free trading shares which were saleable without registration. (RB 26).

Respondent's assertion that the New Allied stock sold through his nominees were free trading shares and not subject to registration fails because Rule 144(k) only applies to transactions involving non-affiliate transferors, and it is clear from that record that Campbell (through Brush Prairie Minerals and other entities which he controlled) was affiliated with the issuer as president of New Allied at least up until some time in September, 1990.13/ As to the proposition that Sanders was not a control person under American Standard, the weight of all the evidence discussed above has shown Sanders to be a control person of New Allied, and nonetheless the facts of the American Standard No-Action Letter are distinguishable and of no value as precedent in this proceeding. Respondent Sanders therefore has not met his burden to show that he is exempt from registration. *See* SEC v. Ralston Purina Co. 346 U.S. 119, 126 (1953). Exemption from registration provisions are construed narrowly. SEC v. Murphy, 626 F.2d 633, 641 (9th Cir. 1980).

Personal Expenses. The Division alleges that from August 1991 to September 1993, Hull and Sanders, misused approximately $107,000 of New Allied corporate funds for non-

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13/ Securities Act Rule 144(k) provides in relevant part:

> The requirements [of the rule] shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months, provided a period of at least three years has elapsed since the later of the date the securities were acquired from the issuer or from an affiliate of the issuer. 17 C.F.R. § 230.144(k) (1994).

Respondent's argument that Campbell and his entity Brush Prairie were not affiliates of New Allied merely evidences yet another attempt to intentionally obscure the true control and ownership of New Allied shares through an intricate web of related parties and corporations.

business related purposes, including rent paid for Erica Hull's and Grady Sanders's apartment, rent paid for furniture rental for their apartment, monies paid for cable at their apartment, monies paid for utilities at their apartment, monies paid on a credit card account held by Erica Hull personally, monies paid to Grady Sanders and to a hospital for his medical treatment, hotel expenses, rental cars, credit card accounts and other expenses. (Tr. 788-94; Div. Exs. 620-623). Assuming *arguendo* that there was some method devised to eventually reimburse New Allied (Tr. 1012-13), as the Respondents argue, there was still no legal justification for dipping into New Allied's funds for personal expenses. It is analogous to a cashier in a bank "borrowing" bank funds with the intent to return it some day. Respondent further argues that Morning Star Trust had loaned $80,000 to New Allied and that expenses incurred by Hull and Grady were in an effect a draw against the $80,000 credit. (RB 5). Assuming for the purpose of argument that there was a valid indebtedness from New Allied to Morning Star and that Morning Star acted in conformity with the purposes of the trust, loan repayments should have been made to Morning Star and not anyone else. There has been no legal showing in this record that either the assets of Morning Star or New Allied can be expended to pay the personal expenses of Hull and Sanders. Rather, the record reflects that Sanders had no beneficial interest in the trust. Further, Hull's interest was as a beneficiary limited by the interests of co-beneficiaries Scott Sanders and Stephanie Sanders. The magnitude of her interest was not indicated. (Tr. 451-52).

Fraudulent Issue of Due Diligence and other Materials. As discussed, New Allied, Hull and Sanders on six occasions violated Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 promulgated thereunder by the fraudulent issuance of due diligence

and other materials. For example, while New Allied stock was trading in the over- the-counter market, the Respondents, as noted, in a number of its public documents: (1) fraudulently claimed approximately $2.15 million in New Allied assets;14/ (2) failed to disclose Sanders as a control person as defined in 17 C.F.R. § 230.405, and failed to disclose his disciplinary history (*see, e.g.*, G.A. Thompson & Co. v. Partridge, 636 F.2d 945 (5th Cir. 1981)); (3) omitted facts indicating Sanders held large New Allied stock interests that were sold to his benefit through nominees; (4) misrepresented New Allied's progress in building a casino; (5) failed to disclose transactions resulting in transfers of substantial New Allied funds to Sanders and Hull for personal expenses; and (6) failed to show real estate interests held by Morning Star trust which effectively would deprive New Allied of its real estate holdings - its only valuable asset.15/ These misrepresentations and omissions were material and were made in the course of the sale of stock.

Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, prohibit the employment of a fraudulent scheme or the making of material misrepresentations and omissions in and in connection with the offer, purchase or sale of any security. To prove a violation of these provisions, the Division must show: (1) that a

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14/ Respondents argue that no Section 10(b) or 17(a) violation occurred inasmuch as the December 5, 1991 news release occurred after most of the Midsouth and First Commonwealth sales. (RB 24). However, the critical misrepresentation that New Allied was in possession of 2.15 million dollars of assets when it should have been $17,000 occurred January 16, 1991, much earlier than the sales by Sanders through nominees.

15/ Respondents argue that they had stated in the release that "all of the notes are secured or otherwise collateralized by NADC properties" and that this should of alerted investors that New Allied had no assets to pay off the promissory notes. (RB 18). I disagree. The mere collateralizing of a debt is not considered tantamount to an inability to pay.

misrepresented or omitted fact was made in an offer, attempt to induce a purchase or sale, or an actual purchase or sale of a security; (2) that the misrepresented or omitted fact was "material;" and (3) that the respondent acted with the requisite "scienter." Basic, Inc. v. Levinson, 485 U.S. 224, 240 (1988); Aaron v. SEC, 446 U.S. 680, 701-702 (1980).

"[M]ateriality depends on the significance the reasonable investor would place on the withheld or misrepresented information." Basic, Inc. v. Levinson, 485 U.S. at 240. Information is deemed material upon a showing that there is a substantial likelihood that the omitted facts would have assumed actual significance in the investment deliberations of a reasonable investor. A statement is misleading if the information disclosed does not accurately describe the facts, or if insufficient data is revealed. Basic, Inc. v. Levinson, 485 U.S. at 232; *see also* United States v. Koenig, 388 F. Supp. 670, 700 (S.D.N.Y. 1974). The public statements made here would reasonably have been considered by an investor in deciding whether to buy or sell New Allied stock. *See* SEC v. Savoy, 587 F.2d 1149, 1171 (D.C. Cir. 1978), U.S. v. Naftalin, 441 U.S. 768, 778 (1979), Basic v. Levinson, 485 U.S. 224 (1988).

A showing of scienter is required to prove violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Aaron v. SEC, 446 U.S. 680, 701-702 (1980). Scienter has been described as "a mental state embracing intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). Scienter is established by a showing that the defendant acted intentionally or with severe recklessness. Raymond L. Dirks, 47 S.E.C. 434, 447 n.47 (1981), *rev'd on other grounds*, Dirks v. SEC 463 U.S. 646 (1983); *See* Broad v. Rockwell Int'l Corp., 642 F.2d 929 (5th Cir.), *cert. denied*, 454 U.S. 965 (1981); *see also* Warren v. Reserve Fund, Inc., 728 F.2d 741, 745

(5th Cir. 1984); Hackbart v. Holmes, 675 F.2d 1114, 1118 (10th Cir. 1982); Sunstrand Corp. v. Sun Chemical Corp., 553 F.2d 1033, 1039 (7th Cir.), *cert. denied*, 434 U.S. 875 (1977). Recklessness has been defined as highly unreasonable conduct involving not merely simple or excusable negligence, but an extreme departure from the standards of ordinary care. SEC v. Carriba Air, Inc., 681 F.2d 1318, 1324 (11th Cir. 1982); SEC v. Tome, 638 F. Supp. 596, 622 (S.D.N.Y. 1986). Proof of recklessness may be inferred from circumstantial evidence. Rolf v. Blyth, Eastman Dillon & Co., 570 F.2d 38, 47 (2d Cir.), *cert. denied*, 439 U.S. 1039 (1978). Notwithstanding arguments raised by Respondents in their brief (RB 20), it is determined that the Sanders and Hull and New Allied acted with the intent to deceive. In overvaluing the medical inventions by some two million dollars, in fraudulently misrepresenting progress on the casino, as well as hiding the disciplinary history of Sanders and others involved with New Allied, they intentionally initiated and participated in a scheme to defraud investors. Even assuming *arguendo* that they were honestly mistaken in their belief that their representations were true or their omissions immaterial, it is considered that their conduct at the best must be described as extreme recklessness.

Respondents argue that Hull and New Allied are immune from liability under 17(a) of the Securities Act inasmuch as they were not offerors or sellers of securities. It is considered that the Respondents have taken a more narrow view of the terms "offerors" or "sellers" than is justified. The release of 15c2-11 documents with fraudulent misrepresentations could be equally attributed to Hull, New Allied and Sanders. These acts induced investors to buy the stock. In Securities and Exchange Commission v. American Commodity Exchange, 546 F. 2d 1361, 1365 (10th Cir. 1976) the court indicated that actual sales by the defendant were not

necessary to establish a violation of the antifraud provision of Securities Act Section 17(a). To the same effect see U.S. v. Dukow, 330 F.Supp. 360 (D.C. Pa. 1971) and Fund of Funds Ltd. v. Arthur Andersen, 545 F.Supp. 1314 (1982). The Dukow court held that even though defendant was not a party to sales made by brokerage personnel, he was part of the scheme and was not exonerated from charges of securities fraud. The court in Fund of Funds held that "the securities laws include as a seller entities which proximately cause the sale . . . or whose conduct is a 'substantial factor in causing a purchaser to buy a security.'" Fund of Funds Ltd., 545 F. Supp. at 1353, *citing* Lawler v. Gilliam, 569 F.2d 1283, 1287 (4th Cir. 1978).

Penny Stock. Respondents Hull and Sanders offered for sale New Allied shares which were shares of penny stock. Penny stock in the context of this proceeding is defined as: (1) any security that has a price of less than five dollars for a particular transaction and the price is displayed in an automated interdealer quotation system (17 C.F.R. § 240.3a51-1(d)); or (2) the security of an issuer whose net tangible assets are less than $5 million, if the issuer has been in continuous operation for less than three years, or average revenue is less than $6 million for the last three years (17 C.F.R. § 240.3a51-1(g)).

PUBLIC INTEREST

Sanctions: Imposition of administrative sanctions requires consideration of:

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that his occupation will present opportunities for future violations. Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir., 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).16/

16/ Further, pursuant to Exchange Act Section 21B, in the imposition of monetary penalties, (continued...)

The amount of a sanctions depends on the facts of each case and the value of the sanction in preventing a recurrence. Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); Leo Glassman, 46 S.E.C. 209, 211 (1975); Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n. 67 (1976). In evaluating the appropriate sanctions, consideration is given to: (1) Sanders's, Hull's and New Allied's two years of repeated willful violations of the antifraud provisions of the federal securities law and their persistent denial of any wrongdoing; (2) the likelihood that they will engage in further fraudulent activity in the future; (3) Sanders's request to his wife that she perjure herself when she was questioned by the SEC (Tr. 628-639);17/ (4) Sanders two prior injunctions for securities law frauds (*see* Application of Frank J. Custable, Jr., 55 SEC Docket 2068, 2079 (1993); Richard O. Bertoli, 47 S.E.C. 148, 151 n.17 (1979)); (5) Sanders's and Hull's participation in the offering of penny stock.

Accordingly it is considered that sanctions are justified against Hull and Sanders as persons participating in the offering of a penny stock. Further, given their conduct, it is in the public interest to impose penalties on the Respondents pursuant to Section 21B of the Exchange

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16/(...continued)
the Commission may consider (1) whether the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard for the truth; (2) the harm to other persons resulting directly or indirectly from the act or omission; (3) the extent to which any person was unjustly enriched, taking into account restitution paid; (4) previous violations of the securities laws or rules; (5) deterrence; (6) other matters as justice requires; and (7) respondent's ability to pay. 15 U.S.C. § 78u-2.

17/ Respondents argue that Ms. Bazan, Respondent Sanders's wife, lacks credibility. On the contrary I find she was credible. Apparently Sanders felt he had absolute control over his former wife, including the ability to control her testimony and the disposition of stock shares in her possession. That she may have recovered for her own use proceeds as claimed by Sanders was suggestive of unresolved monetary problems from her marriage to Sanders, rather than theft as charged by Respondent. (RB 23).

Act. An order requiring an accounting and disgorgement against Hull and Sanders, pursuant to Exchange Act Section 21C(e), is also appropriate in this case to determine the full amount of money wrongfully diverted from New Allied by Hull and Sanders to pay their personal expenses. The purpose of an accounting and disgorgement is to deprive Hull and Sanders of any profits derived from their illegal conduct. *See, e.g.*, SEC v. First City Financial Corp., Ltd., 890 F.2d 1215, 1230 (D.C. Cir. 1989); *See* The Securities Law Enforcement Remedies and Penny Stock Reform Act of 1990, S. Rep. No. 337, 101st Cong., 2d Sess. 16 (1990) ("[D]isgorgement forces a defendant to give up the amount by which he was unjustly enriched"). Further, an order against Sanders is justified requiring disgorgement of proceeds, plus prejudgment interest, from his unregistered sales of New Allied stock through nominees.

Upon careful consideration of the record, the arguments and contentions of the parties, it is concluded that the sanctions requested by the Division are too harsh. Further, the specific amounts of alleged personal expenses which the Division requests be disgorged by Hull and Sanders are questionable as to whether they accurately reflect the extent of funds allegedly used by Respondents. Therefore, an equitable accounting shall be ordered to be performed by Respondents.

ORDER

Penalties: Erica J. Hull is hereby ordered to pay administrative penalties of $50,000 for every false 15c2-11 (3) and press release (3) for a total penalty of $300,000. Grady Sanders is ordered to pay administrative penalties of $50,000 for every false 15c2-11 (3) and press release

(3) plus $50,000 for every sale of unregistered securities (14) for a total penalty of $1,000,000.18/

Penny Stock Bar: Erica J. Hull and Grady Sanders shall each be barred from association with any offering of penny stock.

Disgorgement: Grady Sanders is hereby ordered to disgorge $115,195, plus prejudgment interest.19/ Payment shall be made on the first day following the day this initial decision becomes final.20/ The Division of Enforcement shall submit a plan of disgorgement to this office no later than sixty (60) days after Respondent Sanders has turned over the funds.

Accounting and Disgorgement: New Allied, Hull and Sanders are ordered to perform an accounting of the use of New Allied funds for the personal expenses. Respondents are hereby directed to submit the accounting to the Division of Enforcement and this Office no later than sixty (60) days after this initial decision becomes final pursuant to Commission Rule of Practice 17(f). Once that accounting is approved by this Office, the amount determined therein along

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18/ Payment must be by certified check, U.S. Postal money order, bank cashier's check or bank money order payable to the United States Securities and Exchange Commission, and shall be directed to the Controller, Securities and Exchange Commission, Room 2067, Stop 2-5, 450 5th Street, N.W., Washington D.C. 20549 with a cover letter bearing the legend "In the matter of New Allied Development Corporation, Erica J. Hull and Grady A. Sanders, Administrative Proceeding File No. 3-8395." A copy of this cover letter shall be served on this Office and the attorneys for the Division of Enforcement.

19/ Prejudgment interest shall be computed from the date of the first unregistered sale of the New Allied stock by Sanders's nominees until the last day of the month preceding which payment is made. The amount of interest shall be based on the rate of interest established under Section 6621(a)(2) of the Internal Revenue Code (26 U.S.C. § 6621(a)(2)), compounded quarterly.

20/ See *infra* note 18.

with prejudgment interest shall be immediately thereafter disgorged by Respondents Hull and Sanders, pursuant to the instructions discussed *infra*, note 18.

Cease and Desist: New Allied and Hull are ordered to cease and desist from violations of or causing violations of Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 thereunder of the Exchange Act. Sanders is hereby ordered to cease and desist from committing or causing violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 thereunder of the Exchange Act.

Review of this Initial Decision: Pursuant to Commission Rule of Practice 17(f), 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.

Glenn Robert Lawrence
Administrative Law Judge

Washington, D.C.
August 31, 1995