ADMINISTRATIVE PROCEEDING
FILE NO. 3-6063

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
JAMES S. DOYLE	:
THOMAS F. RYAN	:

INITIAL DECISION

David J. Markun
Administrative Law Judge

Washington, D.C.
March 4, 1982

ADMINISTRATIVE PROCEEDING
FILE NO. 3-6063

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
JAMES S. DOYLE THOMAS F. RYAN	:	INITIAL DECISION

APPEARANCES: Patrick J. Finley and Andrew Goldstein, New York Regional Office (with Paul Dutka and Daniel E. McIntyre on the brief), for the Division of Enforcement.

James S. Doyle, pro se.

Thomas F. Ryan, pro se.

BEFORE: David J. Markun, Administrative Law Judge.

THE PROCEEDING

This public proceeding was instituted by an order of the Commission dated October 16, 1981, to determine whether Respondents James S. Doyle and Thomas F. Ryan were, as the Division of Enforcement alleged in the order, (a) convicted on March 13, 1980, on five counts of an indictment that (1) involved the purchase and sale of a security, (2) arose out of the conduct of the business of a broker dealer, (3) involved the fraudulent conversion of funds and securities, and (4) involved the violation of Section 1341 of Title 18, United States Code, and (b) permanently enjoined on December 7, 1978, in the United States District Court for the Southern District of New York from violating the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and, if so, the remedial action, if any, that is appropriate in the public interest pursuant to Sections 15(b) and 19(h) of the Exchange Act.[1/]

The evidentiary hearing was held on December 1, 1981, in New York, New York. Respondent Ryan appeared at the hearing pro se, and testified in his own behalf. Respondent Doyle, who also represented himself in this proceeding, did not attend the hearing, on the stated ground that he could not afford the expense [2/]; Doyle did, however request and receive permission to file proposed findings of fact, conclusions of law, and supporting brief. [3/]

1/ 15 U.S.C. §§ 78o(b), 78s.

2/ Doyle was living in Florida at the time of the hearing.

3/ Provisions were made at the hearing to afford Respondents access to the hearing transcript, exhibits and other documents constituting the record in this proceeding.

Preponderance of the evidence in the standard of proof applied. Steadman v. S.E.C., 450 U.S. 91, 101 S. Ct. 999 (1981).

The Division filed its proposed findings of facts, conclusions of law, and a supporting brief. Respondent Ryan on February 16, 1982, filed a one-page letter to the Secretary of the Commission, dated February 11, 1982.4/ Respondent Doyle filed a three page response on February 17, 1982.

FINDINGS OF FACT AND LAW

Subsection 15(b)(6) of the Exchange Act provides in pertinent part as follows:

> (6) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, or seeking to become associated, with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person . . . has been convicted of any offense specified in subparagraph (B) of . . . paragraph (4) [of this subsection] within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of said paragraph (4) . . . .

The offenses and injunctions specified in subsections 15(b)(4)(B) and 15(b)(4)(C) are, respectively, as follows:

4/ The contentions in the letter, discussed at a later point in this decision, leave it unclear as to whether it was intended as a direct response to the Division's proposed findings, conclusions, and supporting brief.

(B) . . . any felony or misdemeanor which the Commission finds --
(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; or

(iv) involves the violation of section 152,1341, 1342, or 1343 or chapter 25 or 47 of title 18, United States Code.

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

* * *

The record establishes, and it is not disputed, that Respondents Doyle and Ryan, along with Russell Reed ("Reed") were convicted after a jury trial in the United States District Court for the Eastern District of New York, in July of 1980, on one count of securities fraud, three counts of mail fraud, and one count of conspiracy to commit securities and mail fraud. The offenses were felonies. The principal statutes violated under the five-count convictions were, respectively: Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78j(b), along with the Commission's Rule 10b-5 promulgated thereunder, 17 C.F.R. 240. 10b-5; 18 U.S.C. § 1341; and 18 U.S.C. § 371. The convictions were affirmed on appeal. United States .. Reed, 639 F.2d 896 (C.A. 2d, 1981).

As a result of the convictions Doyle and Ryan were sentenced to imprisonment for a period of two years on each of the five counts of the indictment, the sentences to run concurrently. On condition that they be confined in a jail type institution for a period of 3 months, execution of the remainder of their sentences was suspended and they were placed on probation for 3 years following their releases from confinement.

The convictions arose out of a scheme under which Reed was able to engage in more than $2 million worth of speculative trading in securities through the broker-dealer firm of Shearson Hayden Stone Inc. ("Shearson") during an eight week period without in reality risking or putting up any of his own funds. Reed ostensibly paid for the trades with twelve checks whose total face value exceeded $394,000, all of which were drawn upon accounts in which the funds were almost wholly insufficient. In the language of the Court of Appeals (supra, at p. 899), " . . . The scheme was permitted to continue, despite SEC and Shearson in-house rules requiring payment within five days of any given purchase, through the cover-up activities of appellant Ryan, a registered representative at the Shearson branch office in Huntington, New York, and appellant Doyle, the operations manager of that branch. When Reed's account was ultimately sold out, Shearson took a substantial loss."

It is clear from the nature of the offenses of which Respondents Doyle and Ryan were convicted that such convictions afford a jurisdictional basis for the Commission's imposition of sanctions upon

them under each of the four categories of offenses set forth in subsection 15(b)(4)(B) of the Exchange Act, quoted in pertinent part above.

The record also establishes, and this, again, without dispute, that Respondents Doyle and Ryan on December 7, 1978, were permanently enjoined, on consent, without admitting or denying the allegations of the Commission's complaint, by the United States District Court for the Southern District of New York, from violating, directly or indirectly, in connection with the purchase or sale of any security, the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5, 17 C.F.R. 240.10b-5, promulgated thereunder. S.E.C. v. Russell Reed, et al, 78 Civil 5581 (HFW) (U.S.D.C., S.D. N.Y. 1978).

The entry of these final judgments of permanent injunction against Respondents Doyle and Ryan established further jurisdictional bases for the imposition by the Commission of sanctions upon them in that they are within the categories of injunctions specified in Subsection 15(b)(4)(C) of the Exchange Act, quoted above.

THE PUBLIC INTEREST

There remains for determination the issue of what, if any, sanctions need to be imposed in the public interest. In this connection, some further elaboration of the facts relevant to the

criminal convictions will be useful. 5/ The United States Court of Appeals for the Second Circuit in its decision on the appeal, supra, at pp. 899-890, found the basic facts concerning the securities-fraud scheme to have been as follows:

> The facts need not be elaborated at length. Reed engaged in what is known as a "free-riding scheme" by opening three separate brokerage accounts at Shearson in the names of three corporations, on the first two of which he listed himself as corporate principal and on the third of which he used the assumed name Stephen Whitney. He established the three accounts in the names of the International Credilogical Corporation (ICC), the Universal Gym Equipment Corporation (UGE), and Whitney, Stonehill & Lawler (WS&L), on August 24, September 12, and September 26, 1978, respectively.
>
> Ryan, a broker at Shearson, placed the orders on the accounts and Doyle, as operations manager, communicated payment information to the Shearson margin department. Doyle also had responsibility for ensuring that SEC and house regulations regarding timely payments for trades were followed. As checks on the ICC, UGE, or WS&L accounts came in, were deposited, and were returned as drawn on insufficient funds, Doyle would order the checks redeposited. Doyle later claimed that he had verified Reed's checks with several persons at the various banks, but the bank employees he named all turned out to be fictitious. Meanwhile, Reed was buying and selling on margin and purchasing highly speculative stocks and stock options.
>
> Reed did have accounts at each of the four banks upon which the checks were drawn, but the balances were minimal. For example, Reed deposited five checks in the UGE account drawn on the Canada Trust Company for $10,444, $15,000, $20,000, $39,094, and $20,611, when at the time his balance in that bank totaled only $24.58. And he drew checks in excess of $171,000 on his account at the Bank of America in Puerto Rico, when his total deposit there was only $100. As a result of Doyle's redepositing Reed's checks at Shearson despite this insufficiency of funds, Reed's brokerage accounts continued to show credit for substantial periods of time, giving him the opportunity

---

5/ The injunctions were predicated in essence upon the same scheme or course of conduct as were the criminal convictions.

to have the market move in his favor and to make additional purchases.

A phone call on October 30, 1978, from the vice president of the Bank of America in Puerto Rico finally alerted the Huntington branch manager to this scheme and Shearson's executives took action. For almost a week Reed staved off the inevitable selling out of his accounts with the confidence man's story that he was obtaining a line of credit at one bank or another. Even as the accounts were being sold out, with a loss to Shearson of approximately $379,000, Reed was bragging to Peter Kujawski, a Shearson vice president and lawyer who was investigating the matter, how smart he had been to do what he had done at Shearson, how dumb Shearson had been to let him get away with it, and how stupid Ryan and Doyle had been not to ask for some money "up front" for their participation in the scheme . . . .

Respondent Ryan joined Shearson in early 1978 as a registered representative after about ten years' prior experience in the securities industry in various other broker-dealer firms. Reed was referred to Ryan as a potential customer in July of 1978 by Hayes Walker, a registered representative at Bache Halsey Stuart in Smithtown. Walker had handled Reed's account at Bache until that firm "threw out" the account because the Internal Revenue Service had placed a lien upon it. Ryan testified (R. pp. 60-61):

A I knew that Russell Reed was not an angel. I knew that he had had problems with the tax thing but generally people who speculate in the market, it's been my experience, big traders like this generally they have their problems and I was fully aware of that. I was also told by Mr. Walker that Russell Reed would not hurt me and that he could be trusted. I was also told that he did have a substantial line of credit coming in which would cover any stocks he purchased.

Q And who told you that?
A I was told this by Russell Reed and also by Hayes Walker.

Q Mr. Ryan, did you make any attempt to verify the fact that Mr. Reed had a substantial amount of credit coming in?
A No.

Q Did you verify any of his bank references to see if the IRS, the Internal Revenue Service had put a tax lien on any bank accounts?

A I did not.

Q Did you check the county record where Mr. Reed lived to determined [sic] whether or not the IRS put a tax lien on his home?

A I did not.

Q Did you check the county tax records of Mr. Reed's purported businesses to see if the IRS had placed a tax lien on any of the businesses, its land or any of the equipment therein?

A I did not. See Mr. Reed had been referred to me by a friend. And the friend said "he's an active trader. He'll give you a lot of commissions and you'll not be hurt by him".

Respondent Ryan testified that he gave Walker a "cut" in commissions of at least $750 for having referred Reed to Ryan as a customer.

As already noted, Respondent Doyle was the operations manager at the Huntington Branch Office of Shearson at the time the offenses were committed. Doyle did not have customer accounts of his own; he reported to Vincent Agud, the Huntington Branch Office Manager.

Both Respondents Doyle and Ryan contend in effect that Shearson's Huntington Branch Manager Agud and other unnamed Shearson officials or personnel were the real culprits and that Respondents Doyle and Ryan are merely "scapegoats". 6/ They contend that several Shearson officials committed perjury.

6/ Ryan's contentions and assertions are reflected both in his testimony and statements at the hearing and in his one-page letter referred to above at footnote 4 and text related thereto.

The answer to these contentions is twofold.

Firstly, the United States District Court's final judgment of permanent injunction and the criminal convictions in the U.S. District Court cannot be relitigated in this proceeding because of the way Subsection 15(b)(6) of the Exchange Act is structured and because of the collateral estoppel concept as well. Cf. Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979).

Secondly, Ryan's own testimony in this proceeding would show his and Doyle's deep participation in the offenses, especially in what the Court of Appeals called their cover-up activities, even assuming, purely arguendo, that one or more other Shearson personnel also had some degree of culpability or involvement . Thus, Ryan testified (R. p. 54):

Agod [sic] [Agud, the Huntington Banch Manager] was made aware of the fact that checks were bouncing. I was told not to worry about it. In fact on October 20th when the phone call came in from the Bank of American [sic] in Puerto Rico stating that there's a fraud going on here, Vincent Agod [sic] told me and he told Jim Doyle to conceal this thing, to go along with him for one more week. We were told not to call anybody in Shearson Hayden Stone in the city. Agod [sic] concealed this from his supervisor. He concealed it from, at that time there was a branch audit going on - we were told to keep our mouths shut. He said if we opened our mouths he would deny knowledge of everything and he said if we opened out mouths and told what happened, we'd be all through including Agod .[sic]

Ryan also urged at the hearing (R. p. 44), in the course of argument on an evidentiary question, while opining that "all ana-

logies limp," the analogy to the house that burns down because the child playing in the kitchen with matches was not properly supervised. While he conceeded he was playing with matches, Ryan contends that he wasn't supervised or, if supervised, " . . . they didn't care what was happening there as long as they were getting the commissions." This analogy does indeed "limp", for the fact is that Ryan was an experienced registered representative operating within a context in which he, as such, had individual responsibility to see that the law, regulations, and company operating procedures were observed, quite apart from the degree of supervision he may have been receiving. Cf. Paul L. Rice, 7 SEC DOCKET 915, 916, and authorities there cited (1975).

Doyle's participation in the felony offenses, as summarized in portions of the Court of Appeals decisions quoted above, were also anything but peripheral. Both Doyle and Ryan were found by a jury to have conspired with Reed to commit the securities fraud and mail fraud offenses they were all found guilty of.

The offenses of which Respondents Doyle and Ryan were convicted are of course of the utmost seriousness. The circumstance that individual customers did not sustain losses is not realistically a factor in mitigation since it is abundantly clear that such losses sustained by a broker-dealer firm because of the fraud of its employees are ultimately borne collectively by customers of the securities industry. And, of course, the occurrence of such fraud does nothing to sustain the public's confidence in the integrity of the securities markets or industry.

It is evident that the U.S. District Judge, who imposed periods of actual incarceration and substantial 3 year probationary periods viewed Doyle's and Ryan's offenses as very serious ones indeed.

The Commission has long regarded misconduct of the kind here involved with the "utmost seriousness." Thus, in Davis D. Esco, Jr. 14 S.E.C. DOCKET 963 (1978) on review of disciplinary action taken by the National Association of Securities Dealers, ("NASD"), where Esco, a registered representative, successively, at two member firms of the NASD paid for securities transactions in his own accounts with checks drawn on insufficient funds, and effected unauthorized transactions in one customer's account, the Commission affirmed the NASD's bar of Esco from the securities business, saying, at p. 965:

> Esco argues that the sanctions imposed on him are "far too severe." 13 We cannot agree. The misconduct that we and the NASD have found is of the utmost seriousness. In our opinion, it clearly demonstrates that Esco should be excluded from further participation in the securities business. [footnote omitted]

I am very mindful of the serious effects of the imposition of a bar on Respondents. The purpose of a bar is not to punish them, but to protect the public from future harm at their hands. In view of their continued efforts to attempt to justify their very serious offenses by endeavoring to shift responsibility to supervisory authority and their refusal to acknowledge their own misconduct and its serious character, there is little reason to expect that they would refrain from future misconduct.

Morecver, the deterrent effect of sanctions upon others must also be given heavy weight in this case of criminal convictions involving such serious offenses. The Commission stated recently concerning this aspect of sanctions, in Thomas A. Sartain, Sr., 19 SEC DOCKET 562 (1980), at pp. 567-8, as follows:

> Finally, when we deal with the public interest requirements in a particular case, we must also weigh the effect of our decision on the welfare of investors as a class and on standards of conduct in the securities business generally. If these proceedings are to be truly remedial, they must have a deterrent effect not only on the respondent before us, but also on others who may be tempted to engage in similar misconduct. 31/ [footnote omitted]

On the basis of the foregoing considerations, it is concluded that the sanctions ordered below are necessary and appropriate in the public interest.

ORDER

Accordingly, IT IS ORDERED that Respondents James S. Doyle and Thomas F. Ryan are hereby barred 7/ from association with a broker or dealer.

7/ A permanent bar order is not necessarily an irrevocable sanction; upon application the Commission, if it finds that the public interest no longer requires applicant's exclusion from the securities business, may permit his return. Hanly v. S.E.C. 415 F.2d 589,598 (C.A.2d, 1969).

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice, 17 CFR §201.17(f).

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (15) days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party. 8/

David J. Markun
Administrative Law Judge

Washington, D.C.
March 4, 1982

8/ All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the findings, conclusions and views stated herein they have been accepted, and to the extent they are inconsistent therewith they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented.