ADMINISTRATIVE PROCEEDING
FILE NO. 3-6618

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

BILL R. THOMAS : (Private Proceeding)

Rule 2(e) - Rules of Practice :

INITIAL DECISION

January 7, 1987
Washington, D.C.

David J. Markun
Administrative Law Judge

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APPEARANCES: Linda D. Fienberg, Benjamin Greenspoon, Ruth E. Eisenberg, and John E. Birkenheir, Esqs., of the Office of the General Counsel, Attorneys for the Office of the Chief Accountant.

Lyman G. Hughes and Dana D. Hearn, Esqs., Carrington, Coleman, Sloman & Blumenthal, Dallas, Texas, Attorneys for Respondent Bill R. Thomas.

BEFORE: David J. Markun
Administrative Law Judge.

THE PROCEEDING

This private proceeding was instituted by an order of the Commission dated March 4, 1986, pursuant to Rule 2(e) of the Commission's Rules of Practice, 17 CFR §201.2(e) to determine whether the charges reflected in the order that Respondent Bill R. Thomas, a certified public accountant, engaged in unethical or improper professional conduct and wilfully violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and wilfully aided and abetted a violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder, are true, and, if they are, whether Respondent should be denied, temporarily or permanently, the privilege of appearing or practicing before the Commission.

A three-day hearing was held in May, 1986, in Dallas, Texas, after which the parties filed proposed findings of fact and conclusions of law and supporting briefs.

The findings and conclusions herein are based upon the record and upon observation of the witnesses. Preponderance of the evidence is the standard of proof applied. Steadman v. S.E.C., 450 U.S. 91 (1981).

In this proceeding the Office of the Chief Accountant ("Chief Accountant") urges, in essence, that Respondent Bill

R. Thomas, a certified public accountant, should be denied the privilege of appearing and practicing before the Commission on the basis that he is unprepared to fulfill the responsibilities associated with that role. As the Order Instituting Proceedings reflects, the Chief Accountant alleges that Thomas engaged in unethical and improper professional conduct and willfully violated and aided and abetted violations of the federal securities laws.

Thomas and two of his accounting partners, the Chief Accountant contends, held a direct financial interest in Xenerex, a publicly-traded corporation, at the same time that their accounting firm, through Thomas, audited and reported on Xenerex's financial statements. The Chief Accountant contends that Thomas prepared and signed an audit report that omitted to state that three partners in the auditing firm held a direct financial interest in Xenerex, and falsely represented that the auditors were independent and that the audit had been conducted in accordance with Generally Accepted Auditing Standards; that Thomas' misleading report was used in a public offering and was publicly disseminated during a time when Xenerex's securities were purchased and sold in the over-the-counter market; that although Thomas knew that he and his two partners held a direct financial interest in Xenerex, he engaged in a course of conduct designed to conceal that interest.

The Chief Accountant further contends that Respondent's conduct compels imposition of a sanction to protect the public interest by permanently denying him the privilege of appearing and practicing before the Commission; that the requirement that auditors be independent of their clients is crucial to the successful functioning of the national securities markets; that the purportedly knowing and flagrant manner in which Thomas violated that fundamental rule, together with his numerous efforts to conceal his violation and his lack of candor throughout this matter, establish that he does not possess the trustworthiness necessary to fulfill the public responsibilities assumed by independent auditors who practice before the Commission; that this is not the first time Thomas' conduct has led the Commission to institute proceedings against him pursuant to Rule 2(e); and that such considerations mandate that Thomas be denied the privilege of appearing before the Commission.

Respondent's contentions in support of his denial of any wrongdoing are, principally, that neither he nor his partners had a <u>direct</u> financial interest or a <u>material</u> indirect interest in Xenerex Corporation; that he personally had no further financial interest in any Xenerex shares that may have been owned by partners of his at the

time of the audit of Xenerex, that he had a reasonable basis for believing that his partners, who along with himself admittedly owned Xenerex stock at some point, had disposed of such stock prior to the consummation of the Xenerex audit engagement; and that he did not attempt to conceal or urge others to conceal evidence of the independence problem.

In the fall of 1983, Respondent Thomas was an audit partner in the Dallas, Texas office of Oppenheim, Appel, Dixon & Co. ("OAD"), a national accounting firm. Since September of that year, he had been soliciting the appointment of OAD as auditor of Xenerex Corp., a Dallas-based oil and gas corporation. His efforts, aided by others at OAD, proved successful, and by mid-October or early November it became apparent that OAD would obtain the Xenerex engagement. Thomas' successful solicitation gave rise to a serious problem, however, for Thomas and the two other partners in OAD's Dallas Office, Dewey L. Lawhon and G. Richard Holmes. In addition to being partners in OAD, Thomas, Lawhon and Holmes also were officers, directors and principal shareholders of an inactive professional accounting corporation named Lawhon, Thomas, Holmes & Co. ("LTH"). LTH owned approximately 144,000 shares of Xenerex common stock which it had acquired in lieu of direct payment for professional services furnished

to Xenerex's predecessor.[1/] Because of that stock ownership, Thomas, Lawhon and Holmes were not independent of Xenerex; and since they were not independent, neither was OAD. Thus, as long as LTH owned Xenerex stock, OAD had a professional and ethical obligation not to accept the engagement.

On several occasions during October and early November 1983, Thomas and his partners met to find a solution to the independence problem posed by the ownership of Xenerex stock. Thomas and the others knew they could not readily sell the stock, because it was not registered with the Commission and therefore could not be publicly traded. Buyers to whom the stock could be sold privately were not easy to come by. Although they could have given it away or returned it to Xenerex, they did not do so. Thomas proposed that they transfer the stock into street name and place it in a brokerage account, where it could be held until the trading restrictions were

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1/ Prior to October 1, 1983, Thomas, Lawhon and Holmes had practiced accounting through their professional corporation, LTH. On that date Thomas, Lawhon and Holmes became partners in OAD and LTH became inactive. LTH had acquired Xenerex stock during the summer of 1983 -- before Thomas, Lawhon and Holmes joined OAD. At that time, Xenerex owed LTH approximately $42,000 for services LTH had rendered to a predecessor of Xenerex. LTH accepted 144,066 shares of Xenerex common stock in lieu of direct, cash payment for services.

removed, and then sold. Thomas was an experienced auditor who had practiced before the Commission for many years, and Lawhon and Holmes followed his suggestion. After further discussions, the stock was sent to a broker with instructions to hold it in street name until the trading restrictions were removed, and to sell it as soon as practicable thereafter at any price above thirty cents per share, the price at which it was carried on LTH's books. In the meantime, LTH continued to own the stock, and Thomas, Lawhon and Holmes continued therefore to have a direct interest in Xenerex.

Having been instrumental in obtaining the engagement, and notwithstanding his and his partners' financial interest in the client, Thomas proceeded with the audit. He was the engagement partner and, as such, was responsible for the planning, supervision and execution of the audit, which lasted from early December 1983 until late March 1984. He participated in the preparation of OAD's report on the Xenerex financial statements, and he signed and caused the issuance of that report.

As Respondent Thomas well knew, the report was materially false and misleading in several respects. It represented that the auditors were independent when in fact they were not. The report also represented that the audit had been performed in accordance with Generally Accepted Auditing Standards ("GAAS") when in fact, because

the accountants were not independent, the entire audit had violated GAAS. Finally, the report did not disclose, as it was required to, that three partners in the audit firm held a direct financial interest in the client.

The report on Xenerex's financial statement was widely disseminated in the market place. It was filed with the Commission in April 1984 as part of a Xenerex annual report on Form 10-K, and in June 1984, with Thomas' consent, it was filed again as part of a registration statement on Form S-1. Both filings were publicly disseminated through the mails. During July and August 1984, the report, as part of the registration statement, was used in a public offering of Xenerex securities.

During OAD's performance of the Xenerex audit, Thomas and his two partners in Dallas began selling LTH's Xenerex stock, in order to recover the value of the fee for which they originally had accepted the stock. Around the start of the Xenerex engagement, in December 1983, LTH sold 27,400 of its shares in private placements. After the trading restrictions were removed in or about January 1984, 45,000 more shares were sold in the open market, with the proceeds of the sale going to LTH. During the period from late March through mid-August 1984, when the audit report was issued and publicly disseminated, LTH continued to own 71,666 shares of Xenerex stock. Throughout this time,

Thomas knew that the stock had not been sold, because he and Lawhon and Holmes, two other officers, directors and shareholders of LTH, frequently discussed it. Thomas' contrary testimony, for reasons discussed at a later point below, is not credited.

Thomas began concealing or failing to disclose LTH's ownership of Xenerex stock even before he had obtained the engagement. In or about September 1983, Thomas told Donald M. Tannenbaum, the managing partner of OAD, that he was soliciting the Xenerex engagement and obtained Tannenbaum's assistance in the solicitation. Despite its obvious significance, Thomas did not tell Tannenbaum that LTH owned Xenerex stock.

Only a few months later Thomas misled the OAD audit staff to deter them from pursuing the issue of OAD's independence. In mid-December 1983, Thomas discussed LTH's Xenerex stock with Ross Miller, the audit manager working under Thomas on the Xenerex engagement, after an OAD audit staff member had noted an entry of Xenerex stock issued to LTH. Thomas explained to Miller how LTH had acquired the Xenerex stock. He then, falsely, told Miller that the stock had been placed in a blind trust to avoid any independence problems, and that Tannenbaum had been consulted. He assured Miller that Tannenbaum had indicated the independence of OAD, as well as that of Thomas, Lawhon and Holmes, was not impaired by the stock ownership. This

statement, too, was false. After the discussion with Miller, Thomas recorded the misrepresentations in a December 15, 1983 memorandum for filing in the Xenerex workpapers. He later admitted to several OAD partners, including Holmes, that this memorandum was false, and that he had prepared it to lull the staff into proceeding with the audit without raising any questions.

Thomas' efforts to hide, fail to disclose, or to mischaracterize the effects of LTH's ownership of Xenerex stock continued into the summer of 1983 -- through the end of the audit, the issuance of the report, and into the period when the report was publicly disseminated. According to OAD policy, Thomas was required to read the firm's procedures for assuring its independence, review a list of the firm's publicly-held audit clients, and then state in writing whether he was aware of any situations which might impair OAD's independence from those clients. In November 1983 and April 1984 Thomas stated in writing that he was aware of no such situations, even though he was fully aware that LTH had owned stock in Xenerex since the start of the engagement and continued to own shares (after disposing of some) at the time of his certification.

Moreover, it also was OAD policy to distribute lists of the firm's publicly-held audit clients to all partners on a quarterly basis. The partners were required to read

the lists and notify the firm of any potential independence problems. Thomas received such lists during 1984, and Xenerex appeared on them. Thomas did not notify the appropriate OAD personnel that LTH owned Xenerex stock.

When OAD discovered the Xenerex stock ownership, Thomas counseled that the firm not disclose it. In August 1984, an OAD internal review team discovered a Xenerex stock certificate in LTH's name in the Xenerex workpapers. When Tannenbaum and his advisers learned that LTH owned Xenerex stock during the audit, they had no doubt that OAD lacked independence from Xenerex and would be required to withdraw its audit report.

Thomas, however, objected. He told Tannenbaum and the others that, in his mind, the firm had to make a "business decision" whether to withdraw the opinion. He argued that the stock ownership need not be disclosed because the amount of stock was immaterial, withdrawing the opinion might subject OAD to a lawsuit, and disclosure would severely harm OAD's ability to obtain new business in Dallas.

The OAD audit report was withdrawn in August 1984 and the financial statement of Xenerex was later certified by another accounting firm.

In addition to repeatedly misleading others and failing to disclose from September 1983 through August 1984, in order to conceal LTH's ownership of Xenerex stock, Thomas

attempted to shift any blame to Lawhon and Holmes once OAD discovered the independence problem.

After OAD discovered LTH's Xenerex stock in August 1984, Thomas began to tell others for the first time that he had disassociated himself from LTH at a meeting in August of 1983. At that meeting Thomas, Lawhon, and Holmes had met in Thomas' office to decide whether they wanted to join OAD. Thomas and Lawhon both wanted to be partner in charge ("PICOLO") of the projected local (Dallas) office of OAD if they joined, and neither would yield. In addition, the two had disagreed as to a receivable that Thomas owed LTH, of some $42,000. Based on rough estimates of the liquidation value of LTH, Thomas would have wound up owing LTH some $10,000 upon liquidation, and Thomas was adamant that he shouln't have to pay out anything upon liquidation of LTH. Since the agreement was in danger of breaking up over about $10,000, Holmes had volunteered to pay up to $10,000 out of his own distribution upon liquidation to keep Thomas from having to pay such a sum upon liquidation. This rough oral agreement that Lawhon should become PICOLO and that Thomas would be saved harmless from having to pay any sums to LTH upon its ultimate liquidation, had permitted the three of them to join OAD on or about October 1, 1983 and to become the Dallas office of OAD. (The two other shareholder-partners of LTH had not been invited to join). Meanwhile, LTH, though

essentially inactive, had continued to exist until ultimately liquidated in September 1984.

Respondent Thomas claims that in the agreement reached at the August 1983 meeting he had given up any interest in LTH's assets, including the Xenerex stock, and that after that time he had no further information about LTH's affairs.

These assertions are not supported by the record. At the hearing, Thomas admitted that he continued to be a director, vice-president and shareholder of LTH until late September 1984, when he first resigned his positions and returned his stock. He continued to participate actively in LTH's affairs until the time of his resignation. He attended meetings of the Board of Directors and signed minutes. He also admitted that in December 1983, as a partner in LTH, he had access to the firm's books and records and could have verified for himself whether LTH still held Xenerex stock. He continued to receive copies of LTH's periodic financial statements after August 1983. In addition, Lawhon and Holmes denied that Thomas "left" LTH in August 1983. Significantly, Thomas did not tell anyone that he had "left" LTH in August of 1983 until a full year later, in August of 1984, when it had become embarrassing for him to have had an interest in LTH's Xenerex shares.

At the hearing, Thomas offered into evidence two

documents which he claimed contained his contemporaneous notes of the August 1983 meeting in which this purportedly occurred. See Thomas Ex. 1; Thomas Ex. 10. Thomas' claims about these documents are not credited. First, although the notes supposedly were generated in August 1983, Thomas did not show them to anyone in August 1984, when he first tried to convince others at OAD that he had "left" LTH in August 1983. One of the documents was never produced to the Commission staff during the investigation preceding institution of this proceeding, and neither was presented to the Commission with Thomas' Wells submission. This failure to produce the purported notes is inexplicable since, in August 1984, both Lawhon and Holmes had denied Thomas version of the meeting.

Moreover, one of the documents, Thomas Ex. 1, is suspect on its face. It is written on OAD note paper, even though Thomas, Lawhon and Holmes did not become OAD partners, and did not receive OAD supplies, until more than a month after the fact. This document, I sadly conclude, was prepared for use in the proceeding.

Thomas does not contend that these purported notes of his from the August 1983 meeting were ever reduced to "minutes" or agreement form or presented to, signed by, or agreed to by Lawhon and Holmes.

Thomas now contends that his purportedly contemporaneous notes nevertheless reflect what actually ultimately

happened upon liquidation of LTH in September 1984, in that Thomas paid nothing to LTH on liquidation, his debts to LTH having in effect been "written off" by nominal payments to him of "special bonuses".

But, while there was informal understanding reached at the August 1983 meeting about Thomas' not having to pay anything to LTH upon liquidation, if the three became OAD partners, there was nothing that precluded Thomas' sharing in any distribution of LTH assets if his share had been sufficient at the time of liquidation to offset his debts to LTH. And, as bearing on the issues most pertinent here, it is clear, as already found above, that Thomas continued to be an officer and director of LTH, and fully active and informed concerning its liquidation, and that he never in fact or in law withdrew from such positions or from such participation until the formal liquidation of LTH.

Another instance of Thomas' dissembling in the course of this proceeding is found in his attempt to blame or attribute to Lawhon the contents of his (Thomas') December 15, 1983 memorandum purporting to reflect the absence of any independence problem. After Thomas' December 15, 1983 memorandum surfaced in August 1984, he began to claim for the first time that the memorandum merely recorded Lawhon's statements to him and did not purport to reflect what Thomas himself represented the

situation to be.

Thomas' claim that Lawhon deceived him about the sale of the stock is not credited. First, Thomas' December 15, 1983 memorandum does not attribute any information in it to Lawhon. Similarly, when Thomas spoke to Miller in December 1983 about the independence problem, he did not attribute any of his statements to Lawhon. Further, Lawhon denied ever having spoken to Thomas about the memorandum. And, as with the other fabrication found above, Thomas first began claiming that he had relied on Lawhon only after OAD discovered the independence problem in August 1984, some eight months after he wrote the memorandum.

Thomas also argues that there was no impairment of his or OAD's independence because OAD partners had only an indirect financial interest in Xenerex and that interest was not material. This argument lacks merit. A financial interest in an audit client can be a direct interest, even though it is held by someone other than the auditor, "if, under the circumstances, it appears that the holder [of the financial interest] is subject to the accountant's supervision or control." Codification of Financial Reporting Policies ("Codification"), §602.02.b.i, 6 Fed. Sec. L. Rep. (CCH) ¶73,258. In this case, Lawhon, Thomas and Holmes were the president, vice-president

and secretary of LTH, respectively, and they also constituted a majority of the LTH board of directors and collectively owned 80% of LTH's outstanding stock. Under these circumstances, and on the record as a whole, it is clear that LTH was subject to the supervision and control of Thomas, Lawhon and Holmes and that Thomas' interest and that of his two LTH partners in Xenerex was direct.

The foregoing findings and conclusions establish that Thomas engaged in unethical and unprofessional conduct in connection with the Xenerex audit. He audited and reported on the financial statements of a corporation with respect to which he was not independent; he supervised and participated in an audit that was not performed in accordance with GAAS; he signed an audit report even though he knew it to be false and misleading; and he allowed that report to be filed with the Commission and publicly disseminated.

The findings and conclusions above stated also establish that Thomas wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit misrepresentations, half truths, omissions and concealments of material information by any person using the means or instrumentalities of interstate commerce, or the mails in connection with the offer, purchase or sale of a security.

The evidence also demonstrates that Thomas committed the fraud violations and engaged in the unethical and unprofessional conduct with scienter. He knew LTH owned Xenerex stock throughout the course of the engagement. He also knew that LTH's stock ownership impaired OAD's independence. Moreover, he repeatedly covered up LTH's ownership of Xenerex stock, and argued for continued concealment from the public after OAD had discovered the problem. Thomas' knowledge that the report was false, and his consistently deceptive conduct, fully establish his knowing intent to deceive and defraud.

The findings and conclusions made herein also establish that Thomas wilfully aided and abetted violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 12b-20 thereunder.

There is no real doubt that Xenerex violated these provisions. Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and Rule 13a-1, 17 C.F.R. 240.13a-1, provide that the annual reports of corporations such as Xenerex must contain financial statements that have been audited by independent accountants. Rule 12b-20 requires that all reports filed pursuant to the Exchange Act must contain "such further material information, if any, as may be

necessary to make the required statements, in the light of the circumstances under which they are made not misleading." 17 C.F.R. 240.12b-20. The reporting requirements "embod[y] the requirement that such reports be true and correct, and a failure to comply with [Section 13(a)] would result in violations of the securities laws." SEC v. Kalvex, Inc., 425 F. Supp. 310, 316 (S.D.N.Y. 1975) (citation omitted). Xenerex violated Section 13(a) and Rule 13a-1 by filing an annual report on Form 10-K which contained financial statements that had not been audited by independent accountants. It also violated Rule 12b-20 because that annual report omitted to state the material fact that partners in the auditing firm had a direct financial interest in Xenerex during the engagement.

The evidence adduced at the hearing demonstrates that Thomas aided and abetted these violations. He was fully aware that his conduct was part of an improper activity because he knew that OAD was not independent of Xenerex, that OAD's report did not disclose the lack of independence, and that the report was to be filed with the Xenerex Form 10-K. He also knowingly and substantially assisted the violations: he supervised the audit, helped prepare the audit report, and then signed that report, all with the knowledge that OAD was not independent of Xenerex.

DISQUALIFICATION REQUIRED IN THE PUBLIC INTEREST

An auditor who, like Thomas, practices before the Commission "assumes a public responsibility" which "requires complete fidelity to the public trust[.]" United States v. Arthur Young & Co., 465 U.S. 805 at 817-18 (1984) (emphasis in original). Thomas violated that trust when he solicited, accepted and performed the Xenerex audit, all the while knowing that he was not independent, and aggravated that violation when he thereafter engaged in a course of conduct designed to conceal or to wilfully fail to disclose that lack of independence. Because of Thomas' conduct, investors purchased and sold securities based on false information, OAD had to withdraw its report, and Xenerex had to hire another accounting firm to audit its 1983 financial statements. Thomas' overall conduct demonstrates that the Commission no longer can trust him to live up to an independent auditor's "public responsibility."

As found above, Thomas acted with scienter. He acted as a seasoned professional with significant experience in auditing publicly-traded companies. He knew there was a lack of the requisite independence when OAD partners through LTH held stock in Xenerex, the firm being audited, since he discussed with Lawhon and Holmes the need for disposing of the Xenerex stock held by LTH on

numerous occasions and participated actively in the process of attempting to dispose of it.[2/] He thereafter told fabrications about his role in the process and testified untruthfully in that regard in this proceeding.

The evidence demonstrates a likelihood that Thomas will violate the law again in the future. This is not the first time Thomas' professional activities have led to the institution of proceedings against him under Rule 2(e). Thomas committed this fraud and improper professional conduct despite having been sanctioned once before. See, In the Matter of Haskins & Sells, Eugene Cobaugh, Timothy FitzGerald, Billy R. Thomas, Admin. Proc. File No. 3-5384 (February 10, 1978), which resulted in a 60-day suspension on consent. This reveals a lack of respect for the law and casts serious doubt on his willingness to obey it in the future. His violations in this case give rise to an inference that his violative

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2/ Thomas also acknowledged his clear awareness of the fact that he could not "own any stock in [Xenerex] if we are to become the aduitors again" in a letter of November 20, 1983, to the president of Xenerex with which Thomas returned to Xenerex 10,000 shares of Xenerex that the president had given him the prior summer. Thomas Exhs. 2, 2A.

conduct will be repeated. In the Matter of Carter & Johnson, [1981 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶82,847 at 84,150 (1981).

In a proceeding pursuant to Rule 2(e), an appropriate sanction is one that will protect the investing public and the Commission's processes from future professional misconduct. In the Matter of Carter & Johnson, at 84,149-50. In this case, only a permanent [3/] denial of Thomas' privilege to practice before the Commission will provide the protection necessary for the public interest and for the Commission's processes.

Thomas argues that sanctions against him are unnecessary because he does not intend to practice before the Commission in the future. This argument is not persuasive. Thomas has specialized in auditing for his entire career. He has practiced even after he left OAD; and it was not until the Commission authorized this proceeding that he purportedly withdrew from that practice. In light of the self-serving timing of his "withdrawal," his claimed intent no longer to practice before the

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3/ A permanent disqualification would not preclude Respondent's applying for readmission based upon a showing that over a period of time he has regained the qualifications expected of Commission practitioners. Cf. Hanly v. S.E.C., 415 F.2d 589, 598 (2d Cir. 1969). However, based on the findings herein, I do not find it possible to specify a time limit for the disqualification.

Commission is not credited. But even if it were, the public interest still would require this sanction. A bar is required to prevent Thomas from subsequently changing his mind and resuming his practice before the Commission, a role which his conduct in this case establishes he is unqualified to fill.

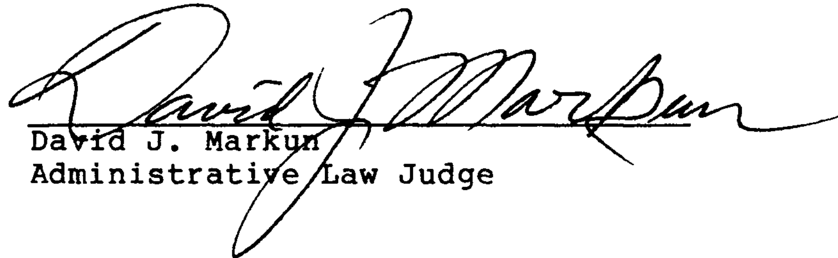
ORDER

Accordingly, IT IS ORDERED, pursuant to Rule 2(e) of the Commission's Rules of Practice, 17 CFR 201.2 (e), that Respondent BILL R. THOMAS is hereby permanently disqualified from appearing or practicing before the Commission.

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. 4/



David J. Markun
Administrative Law Judge

January 7, 1987
Washington, D.C.

4/ 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.