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ADMINISTRATIVE PROCEEDING
FILE No. 3-5

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
BROADWALL SECURITIES, INC. ARNOLD MAHLER JACK EINIGER ALEXANDER LAPIDUS STANLEY MILLER	:
File 8-11096	:

INITIAL DECISION

SIDNEY ULLMAN
Hearing Examiner

Washington, D. C.
March 2, 1965

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INITIAL DECISION

APPEARANCES:

Lawrence M. Levy, Haig M. Casparian and David Y. Handelman, Esqs.
for the Division of Trading and Markets.

Irwin L. Germaise and Barry Silverman, Esqs.
for respondents Broadwall Securities, Inc., Arnold Mahler, Jack Einiger and Alexander Lapidus.

BEFORE: SIDNEY ULLMAN, HEARING EXAMINER

NATURE OF PROCEEDINGS

The sole issue now before the Hearing Examiner in these public proceedings is whether, under Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration as a broker and dealer of Broadwall Securities, Inc. ("registrant" or "Broadwall") pending final determination whether such registration should be revoked. 1/

The proceedings were instituted by the Securities and Exchange Commission ("Commission") by order dated January 22, 1965 ("Order"), pursuant to Sections 15(b) and 15A of the Exchange Act. The Order alleges that registrant is a New York corporation registered with the Commission as a broker-dealer pursuant to the provisions of Section 15(b) of the Exchange Act since November 3, 1962; that it is a member of the National Association of Securities Dealers, Inc. ("NASD"), a national securities association registered pursuant to

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1/ Section 15(b) of the Exchange Act provides with respect to suspension of registration as a broker or dealer:

> "Pending final determination whether any such registration shall be revoked, the Commission shall by order suspend such registration if, after appropriate notice and opportunity for hearing, such suspension shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors."

With respect to revocation, Section 15(b), as applicable to this case, provides that the Commission shall revoke the registration of any broker or dealer if it finds it is in the public interest and such broker or dealer or any officer, director or controlling or controlled person of such broker or dealer has willfully violated any provision of the Securities Act of 1933 or the Exchange Act or any rule thereunder.

Section 15A of the Exchange Act; that respondent Arnold Mahler is its president and sole stockholder and that respondent Jack Einiger is its secretary. The Order also alleges that on January 15, 1965, the United States District Court for Miami (Southern District of Florida) entered a temporary restraining order restraining registrant "from further violation of Sections 5(a) and (c) and Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder"; that the United States District Court for the Southern District of New York entered a temporary restraining order on December 29, 1964 restraining registrant "from further violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder." All of the above allegations were admitted in the answer filed in this proceeding on behalf of registrant and respondents Arnold Mahler, Jack Einiger and Alexander Lapidus.[2/]

The Order also alleges, and the answer of respondents admits, that Einiger has been employed by Broadwall as a cashier and a registered representative since March 1963 and is still so employed; that Lapidus has been employed by Broadwall as a registered representative since April 1964 and is still so employed; and that Miller was employed by Broadwall as a registered representative from September 1963 to November 1964.

2/ No notice of appearance or answer was filed by or on behalf of the respondent Stanley Miller. Nor did he appear at the hearing in this matter. However, inasmuch as this initial decision relates only to the issue of suspension of registrant, the default of Miller under Rule 6(e) of the Commission's Rules of Practice is not treated herein.

One additional allegation in the Order which is admitted in the answer asserts that the Coast to Coast Company, Inc. ("Coast to Coast") is a Nevada corporation with its principal place of business in New York City and that its business is that of acting as a distributor of frozen lobsters. The further allegations of the Order relate to alleged violations by Broadwall and the other respondents of the anti-fraud provisions of the Securities Act of 1933 ("Securities Act") and the Exchange Act and rules thereunder in the over-the-counter sales of Coast to Coast stock during the period March 26, 1964 to December 29, 1964.[3/] These allegations are denied in respondents' answer.

A hearing on the issue of suspension of registrant was held before the undersigned at the New York Regional Office of the Commission on February 18 and 19, 1965, pursuant to the Order. The Order further provides that after the determination of the question of suspension the hearing shall be reconvened for the purpose of taking evidence on the remaining issues in the Order, i.e., whether the allegations of the Division of Trading and Markets ("Division") of respondents' violations of the anti-fraud provisions are true, and on the further question of

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3/ The anti-fraud provisions alleged to have been violated are Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 (17 CFR 240.10b-5) and 15(c)1-2(a) and (b) (17 CFR 240.15c1-2(a) and (b)) thereunder. The composite effect of these provisions as applicable to this case is to make unlawful the use of the mails or means of interstate commerce in connection with the purchase or sale of any security by the use of a device to defraud, an untrue or misleading statement of a material fact, or any act, practice, or course of business which operates or would operate as a fraud or deceit upon a customer, or by the use of any other manipulative, deceptive or fraudulent device.

what remedial action, if any, is appropriate in the public interest pursuant to Sections 15(b) and 15A of the Exchange Act. All parties to the proceedings with the exception of respondent Stanley Miller were represented by counsel at the hearing. In accordance with Rule 19 of the Commission's Rules of Practice and its special provisions relating to suspension of broker-dealer registrations, proposed findings of fact and conclusions of law together with a brief in support thereof were submitted by counsel for the Division on the issue relating to suspension and proposed findings and conclusions on said issue were submitted on behalf of respondents by their counsel.

On the basis of the record in this case, including the transcript, the exhibits, the proposed findings of fact and conclusions of law, and the Division's brief, and after observation of the witnesses appearing at the hearing, the Examiner believes, for the reasons set forth infra, that there has been a sufficient showing of misconduct on the part of registrant to make it necessary and appropriate in the public interest and for the protection of investors to suspend the broker-dealer registration pending the final determination of the other issues in the Order, including the question of revocation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Coast to Coast Company, Inc.

The factual basis upon which the Division urges that the registration should be suspended for violation of the anti-fraud provisions consists largely, but by no means entirely, of the very substantial difference between the nature, extent and condition of the business and operations of Coast to Coast, on the one hand, and the deceptive and unfounded statements which the credible evidence shows were made by registrant's representatives to its customers in their selling efforts of Coast to Coast stock during the period from April 1964 to August 1964.

During this period Coast to Coast was in a weak financial condition and was doing very little business, as appears below. The company existed and could continue in business only because it had received loans of approximately $11,000 and a letter of credit for $15,000 in October 1963 as a result of a take-over by new management. Prior to this financing it appears to have had little or no funds: its credit was exhausted and it could not purchase the lobsters it needed to continue in business. At the time of this change in management the "main office" of the company was moved from Boston to New York City, where the company shared, without payment of rent, the offices already occupied by some of the new management, Philip Levy and Harry Vogel, in conducting their other business enterprises.

During the year prior to the take-over the company's gross sales approximated $75,000, according to an unaudited report prepared by

Richard Mandel, who was then its president, and it had a pre-tax profit of $1,488. Mr. Mandel then owned 2,500,000 shares of Coast to Coast stock out of a total of 4,000,000 shares outstanding. Robert Miller was vice president of the company and the company's sales efforts were aided by one salesman, Buddy Robinson. The "office" was the home of Robert Miller in the Boston area.

In October 1963, with the infusion of the new money and credit into the Coast to Coast business, Mandel transferred to Philip Levy and Harry Vogel, who acted through a corporation known as Vista Industries, Inc., 800,000 shares of his Coast to Coast stock, and he took from Coast to Coast a note for moneys he had previously advanced to the company. Robert Miller continued to maintain the company's Boston "office" at his home and Robinson continued his efforts to sell, out of Boston, on a commission arrangement even after the removal of management to New York and the election of Philip Levy to the office of president of the company.

Another person active in the take-over, Jay W. Kaufmann, a stock broker in New York City, also participated in the infusion of the new funds into the company in October 1963. Kaufmann loaned the company $5,500, or one-half of the aforementioned $11,000 and Vista Industries loaned the other $5,500. Kaufmann, Levy and Vogel acted as co-guarantors for the $15,000 letter of credit which the company received from a bank in the New York City metropolitan area.

Philip Levy testified that during the one year he was president of the company, i.e., from October 1963 through September 1964, Coast to Coast owned no fixed assets and no property other than whatever

inventory of frozen lobsters it might have at any time. It owned no patents, had no salaried officers or employees, and paid no rent.

At no time during the incumbency of Mr. Levy did the company have any contracts for the sale of lobsters; nor did it carry on negotiations for contracts with any super-market chains. 4/ Although the Boston operation of the company was not terminated, inasmuch as Miller and Robinson continued their efforts to effect sales, no moneys or profits were received by the management in New York from any Boston activities. Conversely, Levy testified:

> " . . . there was a very tenuous situation. We couldn't reach them. We couldn't get anything from them.
>
> Everything was peaceful in harmony when we first started, but the moment we invested our personal money and signed our personal notes to get the lobsters down, everything stopped."

The lobsters came down from Canada by purchase from Sea 'n Surf, Limited, a Canadian company located at Clark's Harbor, Nova Scotia, which processed the frozen product. Coast to Coast, conversely, owned no lobster ponds nor any plant for processing the product it sold, and except that it purchased the lobsters from Sea 'n Surf, Limited, it was in no way connected with this Canadian corporation.

4/ There is some evidence that during the prior year one or more sales were made to the Great Atlantic and Pacific Tea Company and perhaps to one or two other super-market chains. Any such sales were sporadic rather than under a supply or requirements contract and they long ante-dated the sales period with which we are concerned.

As stated above, on the basis of Mandel's report, during the 12 month period prior to the take-over the company's sales approximated $75,000. During the following year, according to Mr. Levy's testimony, sales were between $40,000 and $50,000 and pre-tax earnings were perhaps $2,500 inasmuch as the company had no fixed expenses. Levy barely succeeded in repaying the loans made in October 1963. He resigned as president of the company a year later and was succeeded by Jay W. Kaufmann.

This, then, is perhaps an incomplete and somewhat sketchy picture of the company whose common stock was sold by registrant in large volume during the period commencing March 26, 1964 and continuing, according to a stipulation of the parties, at least to October 28, 1964. 5/ It serves, nevertheless as a basis for the charge of fraud which is predicated largely on the sales methods and activities described below.

Sales by registrant

Mrs. June C. Springer, an accountant from Williamsport, Pennsylvania, testified that around April 6, 1964 she received a telephone call from respondent Miller. He represented himself to be a Broadwall salesman and advised her that the stock of Coast to Coast would be a good purchase. Miller stated, according to Mrs. Springer, that Coast to Coast had a new process for freezing lobsters and was in the business of

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5/ According to the stipulation of the parties, Broadwall sold a total of approximately 116,000 shares to the public. Approximately 96,000 shares were sold from March 26, 1964 to July 20, 1964 at prices from 25¢ to 40¢ per share and approximately 20,500 shares were sold between July 27, 1964 and October 28, 1964 in the same price range.

processing its product; that the lobsters were being sold in a supermarket on a test basis which was proving favorable; that the company was negotiating with the chain supermarket for a contract which was drawn up but not yet signed; that they expected the contract to be signed within one month and at that time the price of the stock would increase considerably and probably would double.

In response to Mrs. Springer's inquiry whether there was a prospectus on the company Miller advised that although nothing was then available, one would be available shortly and he would see to it that she received a copy. In response to her inquiry with regard to earnings, Miller stated that no report was available at that time.

Mrs. Springer made no purchase of the stock during the initial telephone conversation, but she received another call from Miller on the following day, during which she purchased 500 shares at a price of 37½¢ per share. She received a confirmation and stock certificate in the mail and paid for the stock by check drawn on her bank in Williamsport. A week or ten days after this purchase Miller again called and recommended the purchase of additional shares, advising that there was great activity in the stock and that they expected that the contract with the chain supermarket would be signed any day. Mrs. Springer did not purchase any additional shares of the stock as a result of this conversation.

At no time did Miller advise Mrs. Springer that Coast to Coast had 4,000,000 shares of stock outstanding, that the company was in a questionable or weak financial condition, or that its earnings were negligible.

John Di Bartolo, a retired employee of the City of New York, testified that he receives a pension from the City and does occasional light

tile work from which he receives a small income. In March 1964 respondent Lapidus called Di Bartolo and recommended the purchase of Coast to Coast stock. The witness did not know Lapidus and had not heard of Broadwall or Coast to Coast prior to this call. During the conversation Lapidus advised that he was giving Di Bartolo an opportunity to pull himself out of a financial rut and "if you will only follow my instruction and do as I say you will be all right". He advised that Coast to Coast would increase at least 4 or 5 times over its current value within a period of from 6 to 10 months. He stated that the company had a patent on a process for canning shell fish, which would obviate the danger of food poisoning, reminding Di Bartolo of recent newspaper publicity concerning poisoning from canned tuna fish.

Lapidus called the witness about a week later, pursuant to arrangements made in the first conversation, to advise that he now had 1,000 shares of stock for him. When the witness mentioned his lack of funds, Lapidus suggested the selling of Tayco Development stock owned by Di Bartolo, which, according to the witness, Lapidus stated "isn't doing any good". The sale of Tayco was made and 1,000 shares of Coast to Coast were purchased with the proceeds, at a price of 37½¢ per share.

Two or three weeks later Lapidus again called Di Bartolo, advising that although Coast to Coast was doing "very good", it could not fill the orders without expanding its factory, and more stock accordingly was being put up for sale. He advised the witness that

although the stock was worth about 75¢ per share, he could get it for him at 40¢ and he suggested the purchase of another 1,000 shares. This appeared to the witness to be an excellent value, and he purchased an additional 1,000 shares of the stock at 40¢ per share. Funds for the purchase of this second block of stock were received from the sale of the remainder of Di Barolo's stock in Tayco Development, as suggested by Lapidus.

In the telephone conversations Lapidus advised that the company's product was being demanded by the Brass Rail, by Howard Johnson, and by other large restaurants, but that the orders could not be filled because the company had inadequate facilities to produce the quantities demanded. He also stated that when the price of the stock increased as he predicted it would, he would advise Di Bartolo when to sell his holdings.

In none of the conversations did Lapidus advise the witness that the company had 4,000,000 shares of stock outstanding, that the company's financial condition was poor, or that its earnings were negligible.

Michael De Marco, an attorney, and a real estate assessor employed by the City of New York, was telephoned in May 1964 by respondent Einiger and was asked to open an account with Broadwall. Prior to this call the witness had never heard of Broadwall, Einiger or Coast to Coast. In early August 1964, Einiger again telephoned De Marco and suggested the purchase of Coast to Coast stock, recommending that it had great possibilities for appreciation. Einiger stated that the company owned lobster ponds, was in the business of freezing lobsters, and that the supply of lobsters, otherwise seasonal, would be stabilized by the freezing process.

With the stabilization of supply, he stated, the company would be able to obtain contracts from chain food stores. The witness bought 400 shares of Coast to Coast stock at 25¢ a share.

Later in August, Einiger again called the witness and advised that the price of the stock had risen from 25¢ to 40¢ a share and he recommended the purchase of 600 shares so that the witness would own an even 1000 shares of stock. He stated that the price of the stock should rise to $5 per share and he repeated what he told the witness in the earlier conversation with regard to the business and operations of Coast to Coast. As a result of this conversation, the witness bought 600 shares at 40¢ per share.

In neither of the conversations did Mr. Einiger advise the witness of the large number of shares of stock outstanding, of the company's precarious financial condition, or of its negligible earnings.

It hardly seems necessary to point out or repeat the representations by registrant's salesmen which were false and fraudulent statement of fact, or to point up either their materiality or the materiality of the facts which the salesmen omitted from their sales presentations, for such representations and omissions stand out in bold relief and in sharp contrast to the factual background of the company described above. As we have seen, the representations as to existing contracts, current negotiations with supermarket chains, the

company's ownership of processes and properties, and the need for plant expansion, were among the many false statements of fact made to registrant's customers.

As urged by the Division in its brief, in light of the precarious financial condition of Coast to Coast and its marginal operations as a distributor of the frozen lobster product, the predictions of price rise also were made without any basis in fact. The Commission has indicated in numerous decisions that such predictions are fraudulent. Alexander Reid & Co., Inc., 40 S.E.C. 986 (1962); Barnett & Co., Inc., 40 S.E.C. 1, (1960); Leonard Burton Corporation, 39 S.E.C. 211 (1959). In the last-cited case the Commission stated:

> "A prediction by a securities salesman or dealer to an investor that a stock is likely to go up implies that there is an adequate foundation for such prediction and that there are no known facts which would make such a prediction dangerous and unreliable."

And in Alexander Reid & Co., supra, the Commission indicated at page 989, in the following language, the ineffectiveness of an argument that predictions of price rise were merely expressions of opinion:

> "As to the optimistic representations which were couched in terms of opinion and expectation, we find that these also were fraudulent within the meaning of the anti-fraud provisions of the securities laws and we reject registrant's contention to the contrary. Such representations could only have been made with the intention and expectation that they would be relied and acted on by investors even though they

> "were not made in the form of statements of existing fact. It must be borne in mind that the proscription of the anti-fraud provisions of the securities laws does not extend merely to fraud in the common law sense. The fact that a security is 'intricate merchandise' operates against such a limited standard. [citation omitted]. A broker-dealer cannot avoid responsibility for unfounded statements of a deceptive nature, recklessly made, merely by characterizing them as opinions or predictions or by presenting them in the guise of a probability or possibility. The deceptive and fraudulent character of these representations is enhanced where, as here, they are made in conjunction with demonstrably false statements of fact."

Cf. S.E.C. v. F. S. Johns & Co., 207 F. Supp. (D.N.J. 1962), where the court said:

> "...Nor may refuge be sought in the argument that representations made to induce sale of stock dealt merely with forecasts of future events relating to projected earnings and the value of the securities, except to the extent that there is a rational basis from existing facts upon which such forecast can be made, and a fair disclosure of the material facts."

Arnold Mahler, president and sole stockholder of registrant, must have known of the insubstantial nature of the Coast to Coast business and operations and of the extreme improbability of any rapid and substantial rise in the price of the stock based on earnings. In an undated "confidential memorandum" which he prepared and distributed to his salesmen some time prior to their effecting the sales described above, Mahler mentioned the capitalization of the company at "approximately 4,000,000 shares of common stock" and described the

business as a "new and highly speculative field, that of distribution of frozen lobsters". The memorandum also stated that:

> "Coast to Coast Corp. has never had any strike or work stoppage and considers its relationships to be satisfactory".

The implication of this language is, of course, that the company employed some number of laboring personnel. In fact the language appears designed to conjure up a picture of a work force busily if not happily employed, perhaps in the work of breeding lobsters, or at least in packing or processing the frozen product. Of course Mahler knew better. The work force consisted of the officers of the company and Buddy Robinson, and their efforts were to sell the product as the company might purchase it from the Canadian corporation.

Mahler's memorandum was received in evidence in conjunction with alleged admissions against interest made in testimony he gave on July 20, 1964 in the Commission's investigatory proceedings and in his testimony in one of the injunctive proceedings mentioned above in the United States District Court. At the request of counsel for respondents that the balance of the testimony be received in evidence, the Hearing Examiner ruled that it would be received solely as background and in explanation of the alleged admissions offered by the Division but not as affirmative evidence. 6/ Mahler's memorandum and his admissions

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6/ Also introduced and received in evidence were alleged admissions against interest by Einiger, Lapidus and Miller, as made in testimony given during the Commission's investigation and in the injunction proceedings. Except to the extent that admissions of Mahler and Einiger, as officers of registrant, may be relevant to the suspension issue now under consideration, any admissions in the testimony will be considered only in connection with the issues other than suspension, and accordingly are not discussed in this decision.

indicate that his investigation of Coast to Coast was utterly inadequate and was unworthy of a man with his educational background and his experience in the securities field. 7/ Moreover, his distribution of the memorandum to the salesmen for use in selling Coast to Coast stock bespeaks at least a reckless indifference regarding the company and the true potential of the stock thereafter sold by registrant in large volume. This is pointed up by evidence that Mahler made fruitless efforts to obtain from the Boston "office" of the company information concerning its local operations. A letter of May 6, 1964 from Mahler to the Boston "office" was returned with its envelope marked "not here". And Mahler's reliance, in preparing the memorandum, upon information furnished by Jay W. Kaufmann, a broker from whom Broadwall received the major portion of the shares it was selling, is consistent with this indifference toward the facts.

Mahler did not testify in the instant proceedings. Nor did any of the other respondents testify before the Hearing Examiner. It seems appropriate at this time to state that the Examiner credits the testimony of the three investor witnesses who appeared in the proceeding and of Philip Levy, former president of Coast to Coast.

7/ One of the admissions is Mahler's testimony that he was graduated from the University of Pennsylvania, majored in finance at its Wharton School of Finance, and that he had several years of experience in the securities field.

Mahler's actual knowledge and awareness of the fraudulent misrepresentations and omissions of the salesmen made in connection with the sales of Coast to Coast stock is not a requisite or a sine qua non for the relief sought by the Division. Registrant's responsibility for the false and unsupported statements of its representatives and for their failure to state necessary material facts in accordance with the required principles of fair dealing between broker-dealer and customer is well established in the securities law. Reynolds & Co., et al., 39 S.E.C. 902, 916 (1960). As the court said in R. H. Johnson & Co. v. S.E.C., 198 F.2d 690 (C.A. 2, 1952), a contrary rule "would encourage ethical irresponsibility by those who should be primarily responsible". Cf. Aldrich, Scott & Co., Inc., 40 S.E.C. 775 (1961); Luckhurst & Co., Inc., 40 S.E.C. 539 (1961).

Under these circumstances it is apparent that registrant did not fulfill its duty to supervise its sales force in such a manner as to prevent the material misrepresentations and omissions set forth above. Cf. Midland Securities, Inc., 40 S.E.C. 635 (1961). In addition, of course, Einiger was an officer of registrant, and Mahler's active derelictions have, to some extent, been discussed.

Public Interest

In A. G. Bellin Securities Corp., 39 S.E.C. 178 (1959), at page 185, the Commission responded, as quoted below, to an argument that

suspension of a broker-dealer's registration was not required because there was no showing of imminent danger to the public interest inasmuch as the broker-dealer had ceased trading in the particular stock and was enjoined from such trading by court order.[8/]

> "The suspension provision in Section 15(b) of the Exchange Act indicates recognition by the Congress that where it is preliminarily shown that a registered broker-dealer has engaged in serious misconduct, proper protection of investors and the securities markets requires that the statutory permission to engage in interstate securities transactions with others which is conferred by his registration be withdrawn pending further hearings on the revocation issue. Under that provision, we are only directed to inquire into the question of whether the public interest or the protection of investors warrants suspension, and there is no requirement that suspension be based upon findings of willful violations or the other grounds specified with respect to revocation. The pattern of Section 15(b) thus shows that in balancing the interests of the registrant on the one hand and of investors on the other, Congress viewed the interest of investors in being protected from such broker or dealer as outweighing his interest in continuing to have full access to investors. Nor is it necessary, as urged by registrant, that the record show imminent danger to the public interest in connection with the particular securities involved. In our opinion we are required in the public interest or for the protection of investors to suspend registration where the record before us on the suspension issue contains a sufficient showing of misconduct to indicate the likelihood that after hearings on the revocation issue registrant will be found to have committed willful violations or any of the

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8/ With respect to the instant proceeding, the temporary restraining order issued by the United States District Court for the Southern District of New York pertained to Coast to Coast stock: the order of the United States District Court for the Southern District of Florida pertained to other securities.

"other grounds prescribed with respect to revocation in Section 15(b) will be established, and that revocation will be required in the public interest. Such a showing of misconduct, including fraudulent representations to investors, has been made in this case. However, this is not to be construed as a determination on the issues other than that of whether registration should be suspended at this time; those issues, which are the subject of further proceedings, are not now before us".

The Hearing Examiner concludes, in light of the foregoing circumstances, that it is necessary and appropriate in the public interest and for the protection of investors that an order issue forthwith, under Section 15(b) of the Exchange Act, suspending the registration of Broadwall as a broker-dealer pending final determination of the remaining issues in the Order. 9/

Respectfully submitted,

Sidney Ullman
Hearing Examiner

Washington, D. C.
March 2, 1965

9/ To the extent that the proposed findings and conclusions submitted to the Hearing Examiner are in accord with the views set forth herein they are accepted, and to the extent they are inconsistent therewith they are expressly rejected.