

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :
:
J. P. HOWELL & CO., INC. :
MICHAEL LA MARCA :
CHARLES HOFFMAN :
BENJAMIN GREENE :
JOEL KAPLAN :
STEPHEN NEGRI :
PHILIP WALDMAN :
EDWARD VANASCO :
:
File No. 8-5548 :

FILED

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SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

SIDNEY L. FEILER
Hearing Examiner

Washington, D. C.
December 22, 1965

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APPEARANCES:

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for the Division of Trading and Markets.

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Michael LaMarca, Charles Hoffman,
Stephen Negri, Philip Waldman and
Edward Vanasco.

BEFORE: SIDNEY L. FEILER, HEARING EXAMINER.

1. THE PROCEEDINGS

The Commission, by order dated August 31, 1964 instituted proceedings pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934, as amended, ("Exchange Act") to determine whether J. P. Howell & Co., Inc. ("registrant"), Michael LaMarca (the president, a director and beneficial owner of 10% or more of the equity securities of registrant), and Charles Hoffman, Benjamin Greene, Joel Kaplan, Stephen Negri, Philip Waldman and Edward Vanasco (salesmen of the registrant) have violated provisions of the Exchange Act and the Securities Act of 1933, as amended, ("Securities Act"); and, if so, what if any remedial action is appropriate in the public interest.

Pursuant to notice, a hearing was held in New York, N. Y. before the undersigned Hearing Examiner. The Division of Trading and Markets and all the respondents named in the order for the proceedings, except Benjamin Greene and Joel Kaplan, were represented by counsel. Greene and Kaplan were not served and did not participate.

The parties appearing at the hearing were afforded full opportunity to be heard and to examine and cross-examine witnesses. At the completion of the presentation of evidence, opportunity was afforded the parties to state their position orally on the record. Oral argument was waived. Opportunity was then afforded the parties for filing proposed findings of fact and conclusions of law, or both, together with briefs in

support thereof. Proposed findings, together with supporting briefs, were submitted on behalf of all the parties who were represented.

Upon the entire record and from his observation of the witnesses, the undersigned makes the following:

11. FINDINGS OF FACT AND LAW

A. The Registrant

The registrant, a New Jersey corporation, has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act since January 7, 1957. It is a member of the National Association of Securities Dealers, Inc. During the period relevant to these proceedings, the registrant maintained its principal place of business at 51 Beaver Street, New York, N. Y. From December 28, 1961 to May 31, 1962, the registrant also maintained a branch office at Rockville Centre, Long Island. Michael LaMarca has been president of the registrant since May 17, 1960. He is also a director and owner of more than 10% of the common stock of the registrant.

Registrant's New York office consisted of one large room containing six desks and four small rooms with one desk in each. Salesmen sat in the large room. The smaller rooms were occupied by the receptionist, the cashier, Greene and LaMarca. There was a telephone on the desk in each of the small rooms and telephones were also installed on the desks in the large room.

Registrant's branch office at Rockville Centre was located in a store. It was divided into a small front room and a large back room. There were three desks in the front room, three desks enclosed on three sides by partitions in part of the back room, and eight desks in the remainder of the back room, set against the wall. There were three telephones on the desks in the back room. The telephone installation was so arranged in the New York City office that conversations of the salesman could be monitored. This could not be done at Rockville Centre.

LaMarca's principal activities consisted of supervising the salesman and managing the affairs of the registrant rather than direct selling of securities. He spent most of his time at the New York office. Of the other individual respondents named in the order for these proceedings, Charles Hoffman was employed by the registrant as office manager of the Rockville Centre branch office from January to April, 1962. Stephen Negri and Philip Waldman were employed in that office as salesmen. Benjamin Greene and Joel Kaplan were employed as salesmen in the New York office. Edward Vanasco was first employed by registrant at its New York office in December, 1960 as cashier. He subsequently became a registered representative and acted as salesman.

LaMarca, Hoffman, Negri and Greene had had prior experience as registered representatives with other brokerage firms. Waldman, Kaplan and Vanasco had none. There were at least three other salesmen with no prior securities experience.

Registrant also employed as salesmen persons who had previously worked for other brokers who had been the subject of Commission proceedings or disciplinary action by the National Association of Securities Dealers, Inc. Hoffman and Negri were in this category.

By order of the Commission, Greene was found a cause of the expulsion of Aviation Investors of America, Inc. from membership in the National Association of Securities Dealers, Inc. and also a cause of the revocation of the registration of Aviation as a broker and dealer for violations of the Securities Acts (Securities Exchange Act Release No. 7113, August 8, 1963).

The registrant had no formal training program for its salesmen except a lecture on mutual funds, which was conducted by representatives of a mutual fund sold by the registrant. LaMarca would occasionally speak with the salesmen, according to his investigative testimony, but he had no formal course of instruction. Charles Hoffman, manager of the Rockville Centre branch office, had no responsibility or duties for the training of salesmen in his office, even though three or four salesmen in that office had no prior experience.

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

1. Organization of Puritan Chemical Corporation; Background Information

One of the matters put in issue by the order for these proceedings, as amended, is whether, during the period from about June

1, 1961 to approximately July 31, 1962 registrant, LaMarca, and registrant's salesmen, singly and in concert, willfully violated and aided and abetted in willful violations of the anti-fraud provisions of the Securities Acts in offering, selling and effecting transactions in the common stock of Puritan Chemical Corporation.^{1/}

Puritan, a Delaware corporation, was incorporated on February 13, 1959 for the purpose of acquiring the assets of Ayer Chemicals, Inc. By agreement dated February 20, 1959, Puritan purchased all of Ayer's assets in exchange for shares of its capital stock. Puritan received all of Ayer's rights to manufacture, distribute, sell or otherwise deal in certain deodorizing products which were being marketed under trade names.

On March 24, 1959, Puritan entered into an underwriting agreement with Dunne & Co., a broker-dealer, pursuant to which Dunne & Co. was to underwrite a public offering of 500,000 shares of Puritan stock to be offered at \$1.25 per share. A registration statement was filed on March 30, 1959 and became effective on June 22, 1959. The offering commenced on that date and continued through

^{1/} Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 (17 CFR 240.10b-5 and 15c1-2) thereunder are sometimes referred to as the anti-fraud provisions of the Securities Acts. The composite effect of these provisions, as applicable here, is to make unlawful the use of the mails or interstate facilities in connection with the offer or sale of any security by means of a device or scheme to defraud or untrue or misleading statements of a material fact, or any act, practice, or course of conduct which operates or would operate as a fraud or deceit upon a customer or by means of any other manipulative or fraudulent device.

April 24, 1961 by which time Dunne & Co. had sold 32,250 shares.

Puritan received gross proceeds of \$40,312.50.

2. The 1961 Underwriting of Puritan Stock

In the spring of 1961, the registrant entered into an agreement whereby it agreed with Puritan to act as co-underwriter with Dunne & Co. for the purpose of offering and selling the remaining 467,750 shares of Puritan stock remaining unsold from the original offering. The underwriters undertook to sell the shares on a best-efforts basis. The original registration statement effective June 22, 1959 was amended, and as amended, became effective on June 1, 1961. The offering was terminated July 11, 1961.

During the period from June 1, 1961 to July 11, 1961, registrant sold approximately 70,100 shares of Puritan stock. The total number of shares of Puritan sold during the entire underwriting period by the underwriters was 103,080 shares, which included the 32,250 shares of Puritan sold by Dunne & Co. in the original underwriting and the 70,100 sold by registrant from June 1, 1961 to July 11, 1961.

3. The Operations and Financial Condition of Puritan

During the period here relevant, the most important part of Puritan's business was in the marketing of plastic flower arrangements permanently set in flower holders or boxes, given the trade name of Plantarama Window Boxes. Some of Puritan's artificial flowers were unique in that they were scented, but the unscented flower arrangements represented the bulk of Puritan's sales.

Puritan was a relatively small factor in the highly competitive aromatic chemical industry.

Mr. Barney Shinberg has been the president and director of Puritan since its inception and for three years prior to the incorporation of Puritan, he was president and director of Ayer from whom Puritan purchased all its assets. Puritan leased building space in Lawrence, Massachusetts in which it maintained its office and plant. The number of persons employed by Puritan varied from a maximum of 70 in late summer of 1961 to a twelve man skeleton crew, consisting of the office staff, a foreman and a forelady. Puritan did not have a sales force. It did have a sales manager in part of 1961 but after his employment was terminated, all sales efforts were carried on by Barney Shinberg.

Puritan's accountant, who also served as accountant for Ayer, testified as to the financial condition at Puritan and its predecessor. His testimony was not challenged and much of the information he supplied was also contained in the amended prospectus of June 2, 1961 which was used by the registrant in its sales activities.

The profit and/or (loss) condition of Ayer and Puritan at stated intervals was as follows:

Ayer Chemicals, Inc.

| <u>Period</u> | <u>Profit or (Loss)</u> |
|-----------------------------|-------------------------|
| Year Ending 8/31/58 | (\$10,196.19) |
| Four months ending 12/31/58 | (4,577.71) |

(Div. Exh. 20)

Puritan Chemical Corporation

| <u>Period</u> | <u>Profit or (Loss)</u> |
|---------------------------|-------------------------|
| Year ending 8/31/59 | (\$14,954.45) |
| Ten months ending 6/30/60 | (\$17,309.73) |

(Div. Exh. 21)

| | |
|---------------------|---------------|
| Year ending 8/31/61 | (\$62,043.35) |
|---------------------|---------------|

(Div. Exh. 22)

| | |
|---------------------|---------------|
| Year ending 8/31/62 | (\$57,757.92) |
|---------------------|---------------|

(Div. Exh. 23)

The relationship between Puritan's net worth and cumulative deficit was as follows:

| <u>Period as of</u> | <u>Net Worth</u> | <u>Accumulated Deficit</u> | |
|-------------------------|----------------------|--------------------------------|----------------|
| 8/31/59 | \$43,923.46 | \$14,954.45 | (Div. Exh. 21) |
| 6/30/60 | 33,313.73 | 32,264.18 | (Div. Exh. 21) |
| 8/31/61 | 92,325.95 | 93,969.90 | (Div. Exh. 22) |
| 8/31/62 | 37,124.47 | 151,727.82 | (Div. Exh. 23) |

According to Shinberg, whose testimony on this point was not challenged, Puritan never showed a profit with the exception of a two or three month period around September, 1961, when the company showed a profit of approximately \$7,000. During this period Puritan did about half of the year's total business. Shinberg verified the fact,

as shown in the accounting data submitted at the hearing, that from the date of its incorporation, Puritan incurred continuously increasing deficits and it never paid or declared a dividend.

Puritan did make sales to some large concerns. A schedule of these sales during the period June 1, 1961 to August 31, 1962 is as follows:

Sales from June 1, 1961 to August 31, 1962

| <u>Name</u> | <u>Amount</u> |
|----------------------------|---------------|
| Sears Roebuck (Mail Order) | \$ 5,565.34 |
| Sears Roebuck (Retail) | 4,050.40 |
| Food Fair Stores | 7,152.95 |
| Macy's | 155.22 |
| Humble Oil & Refining | 2,004.12 |
| Abraham & Straus | 908.45 |
| Western Auto | 249.00 |
| Masters, Inc. | 1,003.70 |
| Rich's, Atlanta, Ga. | 270.40 |
| A & P | None |
| Rexall | None |
| Safeway | None |
| Kenn's ("Kanns (?)") | None |
| Woolworth's | None |

(Div. Exh. 27)

The Prospectus used in the 1961 offering not only contained financial statements showing the operating history of Puritan and its predecessor, but also included statements that Puritan was in the development stage, it had operated at a deficit since its inception, there was no assurance that a market for the company's products would be developed, the company would be a small factor in a highly competitive industry and its ability to compete would be dependent upon the skill of its management in merchandising and promoting its products.

4. Activities of the Registrant and its Salesmen in the Sale of Puritan Stock

The sale of Puritan stock was a very important part of registrant's business from the commencement of the underwriting in June, 1961 until after the first two months of 1962. Figures supplied by the registrant showed that in June, 1961 registrant sold substantially more in dollar volume of Puritan stock than of all other stocks. It also had high sales in July, 1961. Most of the balance of the year sales of Puritan were substantial but not as high as in prior months. However, in the two-month period of January and February, 1962, after the Rockville Centre office was opened, sales of Puritan were in excess of registrant's sales of all other stocks. The Rockville Centre office concentrated on the sale of Puritan.

Registrant's salesmen often contacted and made sales of Puritan stock to customers with whom they had no previous acquaintance. The registrant supplied its salesmen with names

of prospective customers which it obtained from phone books, yellow pages, professional directories, business directories, mailing lists purchased by the registrant and the Puritan stockholder list.

In its activities in marketing Puritan stock, the registrant made use of reprints of newspaper articles containing information supplied directly by Shinberg or by a public relations representative of Puritan. These articles were duplicated in lots of approximately 500 and were mailed to customers and prospective customers of the registrant. Salesmen were also permitted to make free use of this material. The first such article appeared in the New York Times on August 21, 1961 (Div. Exh. 8). It purported to furnish information supplied by Shinberg. The use and market for polyethylene flowers was described, the production and future plans of Puritan were outlined, and Shinberg was described as excited about the product and its commercial possibilities. Another story appeared in the New York Times on November 19, 1961 (Div. Exh. 10). This story, for the most part, was a factual description of the Plantarama Window Box, as produced by Puritan and its value as a permanent unit requiring no care. It concluded with an estimate by Shinberg that there was a \$25,000,000 a year market for ready-made artificial floral arrangements and window boxes in private homes alone.

Another story that was used by the registrant was one appearing in the New York World-Telegram and Sun on December 8, 1961 (Div. Exh. 17). This story quoted Shinberg as expecting to make a million

dollars in sales in the current year of the Plantarama Window Boxes and further stated that outlets included top department stores, super markets, and other important outlets. Shinberg was further quoted as expecting that the artificial flower industry sales would be estimated at \$80,000,000 in the current year and \$150,000,000 in 1965.

The registrant also made use of leaflets issued by Puritan illustrating Plantarama Window Box arrangements. It also issued a Special Bulletin on Puritan which it distributed to customers and prospects (Div. Exh. 8). The Bulletin described the Plantarama flower arrangements, stated that Puritan was concentrating on the production and sales of Plantarama through intensive sales and promotional programs, that distribution was being handled by national retailers, department stores, mail order concerns, and other stores, that the artificial flower business had been experiencing dynamic growth and stated authoritative sources estimated that gross business of the industry would be over \$80,000,000 for 1960. It quoted Schinberg as estimating that the market for window box units would become a \$25,000,000 market by 1965 with Puritan in the forefront.

The individual respondents in this proceeding, except LaMarca, were salesmen of the registrant at either its Manhattan or Rockville Centre office. Witness testified as to their dealings with them in transactions involving the purchase of Puritan stock. Only one of the respondents, Edward Vanasco, testified in these proceedings. As previously noted, Benjamin Greene and Joel Kaplan could not be served; the other salesman respondents, Charles Hoffman, Stephen Negri, Philip

Waldman and Vanasco were represented by counsel. The testimony of each of the customer witnesses, which was not contradicted by the particular salesman involved, except in the case of Vanasco, has been found mutually corroborative and trustworthy and has been credited as indicated in the following findings:

Benjamin Greene

Greene occupied his own office in the registrant's New York suite. Customer witnesses testified as to dealings with him in Puritan stock. The transactions covered periods from the time of the underwriting in June, 1961 until July, 1962. In several transactions salesmen used Greene to help complete sales.

Michael Pietrangelo, a student, purchased 250 shares of Puritan from registrant on June 5, 1961 at \$1½. Prior thereto he received a telephone call from either Greene or another salesman, Thomas Roche. The caller told Pietrangelo he had been told of the latter's interest in Puritan and that it was a very good stock and it should go up in price. Pietrangelo told the caller that he was a student and under 21 years, but his caller told him that this would not interfere with his purchase of Puritan.

Pietrangelo made a second purchase of 250 shares of Puritan on October 23, 1961 at \$1½. Prior thereto he had received at least four or five telephone calls from Greene in which Greene urged him to buy more Puritan saying the stock was about ready to go up, that Puritan had gotten contracts from several large stores and that Pietrangelo should buy quickly because the stock had already risen and that

Pietrangelo should sell other stock to make a purchase. In these conversations Greene made no mention of any losses which had been sustained by Puritan in its operations. Greene also said that since Pietrangelo would have to pay one-quarter more than his original price, this indicated that the price of the stock was already rising and that Puritan was a good substantial company. Pietrangelo told Greene, in their conversations, that he was a student and did not have much money.

Alexander Rosenblatt made 3 purchases of Puritan. The first one was through Joel Kaplan in June, 1961 and will be discussed later. Rosenblatt made a second purchase of 300 shares of Puritan on September 18, 1961 at $\$1\frac{1}{2}$. Prior to this purchase, Rosenblatt received a telephone call from Greene in which Greene informed him that Kaplan was no longer with the registrant and he was taking over the account. Rosenblatt replied he was not interested in making an additional purchase at that time. Greene called Rosenblatt later and said that that would be a good time for Rosenblatt to increase his holdings of Puritan. He asserted that Puritan was a good company and that Rosenblatt would make money with it and should make a purchase quickly because he might double his money in a short time. Rosenblatt then made a second purchase.

After his second purchase, Rosenblatt continued to receive telephone calls from Greene urging him to make another purchase of Puritan. Rosenblatt estimated that he received a dozen telephone calls from Greene in connection with his purchase. In the course of his calls, Greene told Rosenblatt that he could expect a price rise of 50 to 100% in the stock and urged an immediate purchase. Rosenblatt did make a third purchase of 200 shares of Puritan at $\$1\text{-}5/8$ on December

15, 1961.

In none of his conversations with Greene was he ever told that Puritan had sustained annual losses in its business. No inquiry was made as to his financial situation but, according to Rosenblatt, Kaplan may have known he was the principal of a school.

Withhold Joseph Grygotis, a mechanical engineer, made three purchases of Puritan stock from the registrant. His first contact with the registrant occurred when he received and answered a two-way postcard in June, 1961 stating that the registrant had information on a stock which had a growth potential. Subsequently Grygotis received a telephone call from Joel Kaplan who spoke to him about Puritan. In this and in the ensuing four or five telephone calls prior to the first purchase of Puritan by Grygotis, Kaplan would initiate the conversation and then put Greene on. In the calls prior to the first purchase, Greene or Kaplan, or both of them, stated that Puritan stock had good prospects of appreciation, that this was an over-the-counter stock and over-the-counter stocks had fast price appreciation, Puritan's business was increasing, the president of Puritan was a man of great ability and was putting on a publicity drive, the Puritan stock could be compared to that of another company which had risen in price from \$1 to \$20 per share, that Puritan had a plant in Massachusetts and its plant was growing. Kaplan also stated that it could be expected that Puritan stock would rise to 3 and then gradually to 15 or 20. Grygotis purchased 100 shares of Puritan on July 10, 1961 at \$1½.

Grygotis purchased an additional 400 shares of Puritan on September 15, 1961 at \$1½ after receiving 6 to 12 telephone calls from Greene and

Kaplan. In these telephone calls, Grygotis was told that Puritan's business was increasing and that it was making money, that Esso, A & P and Sears Roebuck were customers of Puritan, that articles dealing with Puritan had appeared in New York newspapers, that the price of Puritan stock had risen a quarter of a point and would continue to rise and he should buy more at that time and should put the Puritan stock away for his children's education. Grygotis made a third purchase after telephone calls from Kaplan. This transaction will be dealt with later.

On cross-examination, Grygotis admitted that he had received a copy of the prospectus and had read sections in it dealing with Puritan's operating deficit and the cautionary language that future operations were speculative. However, in none of these conversations was Grygotis given detailed information on Puritan's current operations nor was he told the size of sales to customers such as Esso and Sears Roebuck.

James J. Feula, a football coach, purchased 100 shares of Puritan from the registrant in late 1961. After he had answered a newspaper advertisement of the registrant he received a telephone call from a woman representative of the registrant. During this conversation, and in several additional calls prior to the purchase, Greene also entered into the conversation. During the conversations, Greene and the woman stated to Feula that there was a tremendous market for Puritan's artificial flowers through business association with chain stores, particularly Sears Roebuck, that Puritan had a wonderful business, and that Feula should sell other stock and use that money to buy Puritan. Greene stated that the current price of Puritan was $1\frac{1}{2}$, he could get stock for Feula at $1\frac{1}{2}$ and he anticipated that at the end of the year Puritan would be selling at $7\frac{1}{2}$.

In none of these conversations was there any mention of Puritan's earnings or its losses or the size of its sales to Sears Roebuck and other concerns. Subsequent to this purchase Feula received additional calls, including calls from Greene in which he was urged to buy additional Puritan stock. Despite his refusal to do so, he received a confirmation for an additional 300 shares of Puritan which he had never ordered. He disregarded the confirmation and nothing was done about it. Feula was never asked about his financial background nor were his investment needs explored in any conversation.

David Kohn, retired, had had some transactions with Greene prior to receiving a long distance call from him in late January, 1962. During this conversation, Greene told Kohn that he had "a very good thing going" and that he would like Kohn to buy some Puritan Chemical stock. He assured Kohn that the stock would go up a few points and that he would make money and recover losses suffered in previous transactions with Greene. Greene assured Kohn that he was doing him a favor, that he wanted him to make money on this transaction, that Kohn should take his word for it, and that he should act quickly. Kohn then agreed to buy 300 shares at \$1½ and sent a check off promptly, as requested. Kohn was not told of Puritan's financial condition, its profits or losses nor was there any discussion of his financial condition or investment needs.

Warren O. Cash, a sales manager, received a letter from registrant describing Puritan. He then received a series of phone calls from Greene urging him to buy Puritan stock. Although he had first disclaimed interest

in such an investment, Greene made a total of about 8 to 10 telephone calls to him in which he told Cash that Puritan was an excellent purchase, it was due for good appreciation and that Cash should get on the bandwagon. Cash agreed to buy 100 shares of Puritan on July 11, 1962 and when he went to registrant's office to pay for the stock, Greene told him that Puritan should double in price within a year and had large contracts in negotiation with a large retail chain for the sale of its artificial flowers. No mention was ever made in any of Greene's remarks to Cash about any losses Puritan had sustained, the size of its contracts with large stores, nor was any inquiry made as to Cash's financial background. Greene did, however, tell Cash in the course of their conversations that there was some risk attached to buying Puritan stock, but gave no details.

Charles Hoffman

Charles Hoffman was employed by the registrant as office manager at the Rockville Centre branch office from January to April, 1962.

Edwin Schwimmer, an attorney, first heard of the Puritan stock around January 15, 1962 when Hoffman telephoned him and said that he had a stock which he thought it would be advisable for Schwimmer to buy. Hoffman stated that the stock he had in mind was Puritan, the company made artificial flowers which it sold throughout the country in markets, the company was negotiating to put flowers in supermarkets throughout the country, that this could be a short range proposition for Schwimmer, the contracts would soon be out, and the stock would double or more and Schwimmer would be in and out of the stock in a few weeks. Among other

things, Hoffman further stated that the prospective contract or contracts would increase Puritan's prospects greatly and as soon as it was announced, the stock would go up. Hoffman assured Schwimmer that he purchased the stock for members of his family.

The next day Hoffman telephoned Schwimmer again and after further discussion, Schwimmer, together with his law partner, bought 500 shares of Puritan at \$1½ per share. His confirmation is dated January 17, 1962.

Approximately three weeks later, Hoffman again telephoned Schwimmer and stated that the news of the contract with the supermarkets was about to be announced and Schwimmer agreed to purchase another 500 shares. This transaction took place on February 8, 1962.

Throughout the conversations Hoffman omitted to make any statements concerning Puritan's losses, that it was a speculative investment, nor did he indicate the size of any contract or prospective contracts it had or might have. Hoffman did not personally know Schwimmer nor had he had any prior business dealings with him. He did not inquire as to his financial background, but according to Schwimmer, he may have had some idea of this from other sources. Schwimmer had indicated to Hoffman that he was interested in a quick appreciation, but Hoffman did not furnish him with any further details on Puritan's financial background other than set forth above. Hoffman did indicate that the company had not had much earnings up to that time, but as previously stated, maintained the price of Puritan would increase quickly and substantially as soon as the alleged contract was signed. Hoffman did not

specify the size of the contract which he stated was about to be entered into but did state that it would result in placing Puritan's artificial flowers in stores around the country and that this would increase the value of the stock.

Louis Tone, a freight forwarder, is related to Hoffman and Philip Waldman, another salesman of registrant who worked in the Rockville Centre office from January to March, 1962. Tone received telephone calls from both Hoffman and Waldman with reference to a purchase of Puritan stock. The first of these calls came from Hoffman in February, 1962. During the course of this conversation, Hoffman stated that he had an interesting thing for Tone which the latter should get into because it was very safe and secure, that the company was Puritan Chemical, which had a contract with Food Fair Stores with possibilities of getting contracts with other stores such as A & P and a furniture chain in Philadelphia. Tone agreed to purchase 200 shares and said they should be sold as soon as a profit could be made.

During the next two or three weeks, Tone received several more telephone calls from Waldman and on one occasion he spoke with both Waldman and Hoffman. Waldman stated that the potential of the contract with A & P was great, that there was a possibility of a merger, that another brokerage firm was interested in the stock at a price higher than that at which Tone had bought. Either Hoffman or Waldman told Tone that the stock should certainly go to \$3 a share because of the great prospects of the items being produced and future items to be developed.

As a result of these conversations, Tone purchased additional stock to round out his holdings to 1,000 shares.

During his conversations with Hoffman and Waldman, Tone was not given any information about any losses sustained by Puritan and the size of its contracts with large stores. Tone was not interested in holding the stock for long-term investment. However, he was not given any details on the speculative nature of the investment in Puritan and testified that it was put to him as "a pretty solid item".

Arnold R. Rosenberg, a business executive, knew Hoffman as a former neighbor. In February, 1962, he received a telephone call from Hoffman in which Hoffman told him of his connection with Howell and that there were some very good companies he was doing business with, that one of them was Puritan Chemical; that he had bought quite a bit of it for his family and friends, and that he thought he would let Rosenberg in on it. Rosenberg said he was interested only in something worth-while. Hoffman said that Puritan was pretty good and agreed to send Rosenberg some written material on the stock. A few days later, in another conversation, when Rosenberg stated that the circular he had received on Puritan did not say very much, Hoffman said he was familiar with the company and its operation, that it had good growth potential, that it had contracts with various companies and it had a profitable item of wide acceptance. He also stated they were selling to Woolworth and other stores and stated that the amount of sales was in the neighborhood of a million dollars or sizeable amounts. Another point that Hoffman mentioned to Rosenberg was that the stock should move considerably

and should go to 5 to 15 within six months or a year, that in addition to its contracts with big stores, Puritan was working on others, and that he had bought a lot of the stock for his wife and family. There was no mention of Puritan's losses in any of these conversations or the speculative nature of an investment in it. Rosenberg's financial condition and investment needs were never explored. As a result of these conversations, Rosenberg made two purchases of Puritan stock, 200 on February 14, 1962 and 100 on the next day, both at $1\frac{1}{2}$.

Mrs. Henrietta Katz, a housewife, had a brother who was working in the Rockville Centre branch of the registrant as a trainee. According to her undenied testimony, the first time she heard of Puritan was when she received a confirmation from Hoffman, acting for the registrant, indicating that she had purchased 500 shares of Puritan on February 6, 1962 at $\$1\frac{1}{2}$. Prior to receiving the confirmation, Mrs. Katz had never heard of Puritan nor had she placed an order for any of its stock, although she had other dealings with Hoffman. Mrs. Katz decided to pay for the securities even though she had not ordered them, in order not to jeopardize the position of her brother.

Benjamin Munzer, an upholsterer, bought 500 shares of Puritan through Hoffman on February 28, 1962 at $\$1\frac{1}{2}$. Prior to his purchase, he heard from two persons that they had purchased Puritan. He spoke to Hoffman by telephone.

Hoffman told Munzer that Puritan was a good stock, that in a short time he would double or triple his money and that he did not have to worry. Nothing was said in this conversation about Puritan's losses.

Hoffman did not know Munzer prior to the telephone call and made no inquiry as to his financial background.

Stephen Negri

Five witnesses testified as to transactions they had with Negri in Puritan stock in January and February, 1962.

Dr. Payson B. Ayres, a physician, had had some dealings with the registrant prior to receiving a call from Negri in February, 1962. Negri told Dr. Ayres that he had an excellent investment opportunity for him, namely, Puritan, that Puritan had a substantial mark-up over cost on its artificial flowers, that Puritan was a growing, expanding business, and that he could expect a good capital gains profit from Puritan stock. He urged Dr. Ayres to purchase 4,000 shares and Dr. Ayres agreed to purchase 1,000 at \$1½, which he did on February 28, 1962. Nothing was said by Negri, in his conversations with Dr. Ayres about any losses by Puritan or the speculative nature of an investment in it. Nor did Negri inquire as to Dr. Ayres' investment needs. Several months later, Dr. Ayres spoke with Greene who stated that Negri was no longer employed by the registrant but assured him that Puritan was all right and that he should not sell his stock.

Harvey F. Rosenberger, a hosiery dyer, received telephone calls in January, 1962 from Negri, with whom he had previously done business, urging him to purchase 2,000 shares of Puritan. In the conversations, Negri stated that he and his boss had investigated Puritan, that it looked like a good deal because it had bona fide orders to sell artificial flowers and that the stock should go up in a very short time.

Mr. Rosenberger purchased 1,000 shares at \$1 and followed Negri's suggestion that he sell other stock in order to make this purchase.

In the conversations no mention was made of Puritan's operating losses or other factors bearing on the speculative nature of an investment in it. Negri may have asked Mr. Rosenberger what stocks he owned, but did not otherwise seek to inquire as to his investment needs.

Herman Ross, a retired person, first heard of Puritan when he received a telephone call from Negri in early 1962. Negri told him that Puritan manufactured artificial flowers which it sold to department stores; and prophesied big gains for the stock, stated it was available at a low price, and urged Ross to make a purchase. Ross purchased 100 shares at \$1½ per share on January 10, 1962.

- About a week later, Ross received another telephone call from Negri in which the latter told him that the stock would go up and that Ross could still buy some at his original price, and urged him to make another purchase. Ross purchased an additional 100 shares.

In none of their conversations did Negri make any mention of Puritan's losses or the size of its sales to customers listed in literature on Puritan which Ross received from the registrant. Negri never made any inquiry as to Ross' financial background and investment needs.

Kurt Gimson, a salesman, had never done business with the registrant or Negri prior to receiving a telephone call from him in January, 1962. They discussed several stocks, including a listed stock. Negri agreed to send Gimson some literature on that company. Instead, he sent

him literature on Puritan. Gimson then received a series of telephone calls from Negri in the course of which Negri stated that an investment in Puritan was a better one than in the listed stock they had discussed, Puritan was in front of a growing industry, the stock was expected to rise, and that Puritan's product was making its way into a food chain. Gimson purchased 100 shares of Puritan at 1½ on January 18, 1962 through Negri.

Several months later Negri again telephoned Gimson and said that a purchase of an additional 100 shares would solidify his position in the stock and that Puritan was a good thing. Gimson did not want to buy any more of the stock. Despite this, he received a confirmation from the registrant for 100 shares at \$1.50. He did not pay for the stock and no effort was made to collect from him.

Negri never made any inquiry as to Gimson's financial background or investment needs nor did he furnish any information on Puritan's losses and the size of its orders from food chains or discuss the speculative nature of an investment in Puritan.

Joseph C. Molinaro, a laborer, first heard of Puritan from Negri in a telephone conversation in January, 1962. He had previously done business with the registrant. During the course of this and another telephone conversation from Negri approximately two days later, Negri stated that he had "something good", namely, Puritan, that it made artificial flowers, that it would sell in food supermarkets, and was an "up and coming thing". He suggested that Molinaro purchase 1,000 shares. Negri also stated that the stock should double in price in a couple of

months and that he would advise Molinaro when to buy and sell. Molinaro agreed to purchase 500 shares at $1\frac{1}{2}$ and sent his check. However, after he received a telephone call from Greene also urging him to buy, he became suspicious and stopped payment on this transaction.

During the course of their conversations, Negri did not mention the size of Puritan's sales, its losses, or the speculative nature of an investment in it. Instead, Negri urged a prompt purchase stating that he expected the stock to double in a short time. Negri made no inquiry as to Molinaro's investment needs other than to state that he would send him a card on which he could list his holdings so that Negri could suggest possible changes.

Philip Waldman

Philip Waldman was employed by the registrant in its Rockville Centre branch office from January to March, 1962. He had no prior experience in the securities business. Four persons testified as to transactions with him in Puritan stock in January and February, 1962.

As previously related, Waldman cooperated with Hoffman in a sale of stock to Louis Tone. In the course of discussions with Tone, Waldman stated that the potential of a certain contract of Puritan with A & P was great, there was a possibility of a merger, and that another brokerage firm was interested in the stock at a price higher than Tone paid for it. Waldman did not tell Tone about any losses sustained by Puritan or the size of its contracts, but either Hoffman or Waldman assured Tone that the stock should certainly go to \$3 a share because of its

great prospects.

Mrs. Kathleen Cincotta, an accountant, knew Waldman from a prior transaction with him wherein he was acting as a fiberglass awning salesman and had come to her home to sell awnings. Waldman telephoned Mrs. Cincotta three times with reference to Puritan. In these conversations he stated that he was selling Puritan, that it was a company making artificial flowers and doing well, had a large business which would continue to grow, that it had large contracts with department stores and supermarkets, that he would guide her in an investment, that the company should double its earnings, that she should buy the stock right away and there was no time to wait, and it was a growing company with a good future. In none of their conversations did Waldman disclose the size of the contracts which he claimed Puritan had, nor did he disclose its continuing annual losses, or the speculative nature of the investment in it. He did not discuss the investment needs of Mrs. Cincotta although from his prior dealings he did know something of Mr. Cincotta's position and salary. Mrs. Cincotta purchased 100 shares of Puritan from Waldman at \$1½ per share on January 19, 1962.

Herman Resnik, a woolen jobber, first heard of Puritan from Waldman in January, 1962 at a weekly card party both attended. They had several discussions concerning Puritan. In the course of the discussion Waldman stated that Puritan was a sure winner and was due to rise very quickly, that he had advised his parents and many friends to

buy Puritan, that Puritan had received a contract from A & P for several million dollars and when the news would hit the market within the next week or ten days, the stock would at least double, that the stock was being manipulated and that as an insider, Waldman had access to information about it and would advise Resnik when to get out of the stock. According to Resnik, Waldman also said the stock would eventually rise to about 7 within approximately six months. In none of these conversations did Waldman advise Resnik about Puritan's profits or losses or the speculative aspects of a Puritan purchase nor did he inquire as to Resnik's financial position and investment needs. Resnik purchased 300 shares of Puritan through Waldman.

Sheldon Weiner, a dispatcher at an airport, first heard of Puritan when he received a call from Waldman, who was a stranger to him. Waldman asked whether he was interested in the stock market and Weiner replied that he would be interested in a growth stock. Waldman, in this and another conversation, recommended Puritan as a growth stock which should reach \$5 or \$6 in six months, asserting that Puritan was one of the largest companies in the artificial flower business and had accounts with important companies, that Waldman was getting his friends and relatives into the stock and buying heavily, that the earnings of the company would be going up and that Weiner should get into the stock as soon as possible because it might go higher the next day. He also said that the earnings of Puritan would double or triple. In neither of the conversations did Waldman supply any exact figures of the size of the contracts, the extent of any losses by Puritan and the speculative

nature of an investment in it. No inquiry was made as to Weiner's financial background. Weiner also received reprints of newspaper articles on Puritan which have already been referred to and a colored brochure issued by Puritan itself. He purchased 200 shares of Puritan from registrant through Waldman on February 1, 1962 at \$1½.

Joel Kaplan

Joel Kaplan was employed as a registered representative by the registrant in its New York office from approximately October, 1960 to approximately early 1962. Three witnesses testified to transactions with him.

Withold Grygotis made three purchases of Puritan stock from the registrant. In his first two purchases he dealt with both Kaplan and Greene and those transactions have been summarized in the prior section of this decision dealing with Greene's activities. Grygotis' third purchase of Puritan stock took place after he had received approximately six telephone calls from Kaplan in the interval between September 15 and October 13, 1961. Kaplan also visited him at his home. In these conversations with Grygotis, Kaplan stated Puritan's business was increasing; its customers were also increasing; it was making money; newspaper stories had appeared about it; Puritan would declare a dividend and that the stock would really rise; that Puritan would rise in price faster than a listed stock which Grygotis held and that he would have a better profit potential if he sold that stock and purchased more Puritan with the profits. Grygotis then agreed to purchase an additional 500 shares which he did on October 13, 1961 at \$1½ per share.

In none of the conversations did Kaplan furnish any details of the sales to larger concerns that he named, such as Esso, A & P and Sears, Roebuck. After the purchases, Grygotis attempted to get more information about Puritan from Greene. He did not receive any definite information except that on one occasion Greene stated that a company on Long Island was interested in purchasing Puritan.

Alexander Rosenblatt made a purchase of 200 shares of Puritan stock at 1½ from registrant on June 7, 1961 after he received a telephone call from Kaplan. Rosenblatt had done business with Kaplan previously. On one occasion when they discussed Puritan, Kaplan told Rosenblatt that Puritan was something on which he could make a profit. Kaplan did not give Rosenblatt any information as to the profit and loss position of Puritan but assured him that it was going to make money. Rosenblatt made two other purchases of Puritan stock but in those transactions he dealt with Greene and those transactions have been summarized in a prior section.

Martin Brager, a photoengraver, bought 500 shares of Puritan from registrant through Kaplan on June 5, 1961. Brager did not know Kaplan prior to receiving a telephone call from him. Brager had at least two telephone conversations with Kaplan before he placed his order. In these conversations, Kaplan stated that Puritan was the buy of the year, that Brager would become a rich man from it, that Puritan was selling its products in department stores, that Puritan was going to have a national campaign in magazines, it was a very good buy, and that Puritan had prospects for a very substantial increase in earnings.

In neither of the conversations did Kaplan mention the size of Puritan's sales, the existence of losses in Puritan's accounts, and the speculative nature of an investment in Puritan; nor did Kaplan inquire as to what type of investment was suitable for Brager. After his purchase, Brager attempted to sell his stock through registrant, but was strongly urged not to do so. He eventually made the sale through another broker.

Edward Vanasco

Peter Menoudakas, then a college student, purchased 200 shares of Puritan from the registrant on June 14, 1961 at \$1½. Menoudakas had met Vanasco at a social gathering several months before he made the purchase. According to Menoudakas, before he made the purchase he received a telephone call from Vanasco in which the latter recommended that he buy Puritan stock stating that it was a new issue, that it was a very good opportunity to make money, and that the stock would go up a few dollars a share in a few months, and that its real value was \$3 or \$4 a share rather than the offering price of \$1.25. Vanasco further stated, Menoudakas testified, that Puritan made artificial flowers, sold to large stores, and had a big deal pending with the A & P stores.

When Menoudakas remained unconvinced that he should invest in Puritan, Vanasco put Greene on the telephone. Greene urged an immediate purchase, stating the stock would go up and that Menoudakas would lose an opportunity for a profit. He also stated that the stock would go up to about \$3 or \$4 a share within a period of three or four

months. Menoudakas then stated that he would buy 100 shares and Greene or Vanasco, or both, urged him to buy more, suggesting that he sell other stock he owned. Menoudakas refused to sell his other stock but did agree to buy 200 shares. Continuing his testimony, he stated that nothing was mentioned about any losses sustained by Puritan nor was an inquiry made as to his actual income although he did tell Vanasco he held some stock and that his uncle was actively investing in the market.

On cross-examination, Menoudakas denied that he had ever received a copy of the prospectus although his confirmation bore a notation "As per enclosed prospectus" and he did answer in the affirmative to a question on a questionnaire sent him by the Commission asking whether he had received a prospectus. He testified that he meant by this answer that he had received certain selling literature from the registrant on Puritan after his purchase. While the answers on his questionnaire and during his examination indicated different periods within which he stated he was told the stock would rise, he was positive in his testimony that he was told that the price of the stock would increase within a short period of time.

Vanasco testified and denied most of Menoudakas' testimony. He agreed that he had first met Menoudakas at a social gathering and he maintained that Menoudakas told him at that time that he invested in speculative stocks, that his family had plenty of money, and that he liked to "roll the dice". He then asked Vanasco if there was any stock that looked good to him and stated that he was interested in new issues.

Vanasco told him that there was a new issue in the process of registration which would come out on the market in the spring or summer at approximately \$1 a share and, according to Vanasco, Menoudakas asked him to send him a confirmation for 200 shares when the stock came out on the market and Vanasco did so. He denied having any further discussion about that stock with Menoudakas prior to the purchase or saying anything about a price rise. Greene never telephoned Menoudakas so far as Vanasco knew. He affirmed that Menoudakas was sent a copy of the prospectus with his confirmation.

Menoudakas asserted, both in his answers to the questionnaire and on the witness stand, that he dealt with Vanasco and Greene in making his purchase. Vanasco denied cooperating with Greene in the sale to Menoudakas. While his testimony contained certain inaccuracies in detail, the testimony of Menoudakas impressed the undersigned as a careful effort to relate the circumstances under which he made his purchase. In the general outline of what was said to him, Menoudakas' testimony was consistent. On the other hand, Vanasco's testimony, both on the stand and certain portions of investigation transcript received in evidence, impressed the undersigned as evasive. The undersigned credits Menoudakas' testimony that he dealt with both Vanasco and Greene in his purchase of Puritan stock and that representations as to its present worth and future prospects and price appreciation were made to him as set forth above.^{2/} In any event, it is evident,

^{2/} Underhill Securities Corporation, Sec. Exch. Act Rel. No. 7668, p. 5 (Aug. 3, 1965).

even from Vanasco's testimony, that he made no effort to bring to Menoudakas' attention the operating losses that had been sustained by Puritan and the problems that it faced to achieve success in its operations, but instead left it to Memoudakas to get this information from the prospectus which may or may not have reached him. Even if Menoudakas had received a prospectus, this did not excuse Vanasco from his obligation to see to it that his customer had a true picture of the nature of an investment in Puritan.^{3/} Nor would any interest of Menoudakas in a speculative stock furnish a basis for giving him incomplete or misleading information.^{4/}

5. Conclusions

It is most significant that the evidence establishes that there is great similarity in the representations made to customers by all the salesmen named in these proceedings. All the salesmen made some or all of the following representations:

Puritan was described as a good sound company, making money, and doing a wonderful business; substantial contracts had been concluded with large businesses; and Puritan was a safe and secure investment.

^{3/} Aircraft Dynamics International Corp., Sec. Exch. Act Rel. No. 7113, p. 4 (Aug. 8, 1963).

^{4/} S.E.C. v. F. S. Johns & Co., 207 F. Supp. 566 (D. C., N. J. 1962).

Customers were told that the stock would increase in price; in some instances definite figures were given, such as \$3 a share, \$5 a share or \$7 a share, within a relatively short time. These representations were incomplete, false, and misleading. There is no evidence that any salesmen ever told a prospective investor that Puritan had sustained, and was sustaining, operating losses; or that sales by Puritan to large firms were not substantial and, in the case of some concerns mentioned, were nonexistent; or the speculative nature of an investment in Puritan.^{5/}

Basic to the relationship between a broker or dealer and his customers is the representation that the latter will be dealt with fairly in accordance with the standards of the profession.^{6/}

This obligation also is applicable to securities salesmen.^{7/} Outright false statements are, of course, expressly prohibited by the Securities Acts and are inconsistent with the duty of fair dealing. In addition, as the Commission has pointed out, the making of representations to prospective purchasers without a reasonable basis, couched in terms of opinion or fact and designed to induce purchases,

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- ^{5/} The Commission has held that in general, information on operating losses is material and should be disclosed to investors as part of any sales presentation. N. Pinsker & Co., Inc., 40 S.E.C. 285 (1960).
- ^{6/} Mac Robbins & Co., Inc., Sec. Exch. Act Rel. No. 6846, July 11, 1962, aff'd sub nom. Berko v. S.E.C., 316 F. 2d 137 (2d Cir. 1963). Duker v. Duker, 6 S.E.C. 386, 388-89 (1939). Cohen & Rabin, "Broker-Dealer Selling Practice Standards: The Importance of Administrative Adjudication In Their Development", in "Law and Contemporary Problems", Summer 1964, pp. 703-708.
- ^{7/} A. J. Caradean & Co., Sec. Exch. Act Rel. 6903, p. 2 (Oct. 1, 1962); Lawrence Securities, Inc., Sec. Exch. Act Rel. 7146 (Sept. 23, 1963).

is contrary to the obligation of fair dealing assumed by those who engage in the sale of securities to the public.^{8/}

Another aspect of the standard of fair dealing is the prohibition against concealment by a person engaged in the securities business of material facts of an adverse nature, the disclosure of which is necessary to render statements made not misleading.

As was observed in the case of Leonard Burton Corporation^{9/} "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 make such a prediction dangerous and unreliable." Easily ascertainable facts bearing upon the justification for the representations must be disclosed.^{10/}

It is argued on behalf of the respondents that Shinberg had discussed the financial condition of Puritan with LaMarca from time to time and Shinberg had told him of sales to certain large concerns and negotiations with others, such as A & F; that highly optimistic information about the industry and Puritan's prospects had been furnished to the press by Shinberg; and that LaMarca had asked Shinberg

^{8/} Mac Robbins & Co., Inc., *supra*; Ross Securities, Inc., Sec. Exch. Act Rel. 7069 (April 30, 1963).

^{9/} 39 S.E.C. 211, 214 (1959).

^{10/} Best Securities, Inc., 39 S.E.C. 931; Barnett & Co., Inc., 40 S.E.C. 1, 521 (1960, 1961); D. F. Bernheimer & Co., Inc., Sec. Exch. Act Rel. 7000 (Jan. 23, 1963).

for a financial statement on many occasions (Tr. 657, 600); and that Shinberg had testified that Puritan had moved to larger quarters because of increased business and that he might have told that to LaMarca. The latter, in any event, saw the new quarters.

Financial statements for 1961 and 1962, as prepared by accountants for Puritan, were never printed and distributed to brokers nor were they sent to the registrant (Tr. 540-542). There is evidence that these statements were the subject of a conference attended by Shinberg and LaMarca, but these conferences occurred long after the sales of Puritan stock by the registrant, discussed above, had taken place. There is evidence that an interim report of some sort was in existence in the fall of 1961 showing that the registrant had made a profit of \$7,000 in its operations over a certain period. This report was not produced at the hearing and the accountant for the company, who testified, did not have any knowledge of it. It therefore appears that from the period commencing in June, 1961, when the registrant became co-underwriter of the Puritan stock, through February, 1962, by which time it had completed most of its sales activities in that stock, the registrant had available to it and its salesmen as source material on Puritan the registration statement and prospectus, interim statement of some sort prepared in the fall of 1961, and certain newspaper articles published in the fall and winter of 1961, plus information gathered from Shinberg in conversations as to the progress of the company. The prospectus

clearly set forth the history of operating losses and other problems of the company which certainly should have alerted any registrant and its salesmen to the need of very careful scrutiny before any unqualified recommendation of Puritan stock could be made in the future. Under these circumstances, the result of current operations of Puritan was a most important factor to be considered. Even though LaMarca may have made efforts to obtain financial statements from Puritan, the fact remains that neither he nor his salesmen had anything of that nature in their possession when purchases of Puritan were being recommended. It is significant that LaMarca was unable to obtain one from Shinberg.

The newspaper articles were in fact promotional releases which should have been recognized as such by a person holding himself out as able to advise customers in securities matters, such as LaMarca.^{11/} In any event, the concrete dollars and cents figures contained in these releases dealt primarily with forecasts of volume that might be attained by the industry itself rather than Puritan. While Shinberg did tell LaMarca of the customers with whom he was dealing, he denied telling him the actual volume of the sales and there was no evidence to the contrary.

Puritan was engaging in a field of operations in 1961 which was new to it. Its past history, as well as this factor, made an

11/ D. F. Bernheimer & Co., Inc., Sec. Exch. Act Rel. No. 7000 (Jan. 23, 1963). "An over-the-counter firm which actively solicits customers and then sells them securities . . . holds itself out as competent to advise in the premises . . ." Charles Hughes & Co., Inc. v. S.E.C., 139 F. 2d 434, 436-7 (1943).

investment in it highly speculative. Despite this fact and the paucity of any definite information on Puritan the salesmen named in the order for these proceedings recommended the stock enthusiastically and without reservation. The Commission has repeatedly stated that predictions of substantial price rises in specified amounts within stated periods with respect to promotional and speculative securities cannot possibly be justified.^{12/} Under the circumstances which existed here, their obligation to their customers required more investigation on their part of Puritan's operations than was done by them.^{13/} The undersigned concludes that the highly optimistic picture painted by the salesmen for their customers of the business being done by Puritan and the forecast of quick appreciation in the stock were not based on any reasonable foundation of fact and that their failure to furnish customers with information on the actual results of current operations and the adverse information set forth previously made their statements, incomplete, false and misleading within the meaning of the anti-fraud provisions of the Securities Acts.^{14/}

^{12/} Idaho Acceptance Corp., Sec. Exch. Act Rel. No. 7383 (August 7, 1964); A. H. Davis Co. Sec. Exch. Act Rel. No. 7654 (July 23, 1965); Alexander Reid & Co., Inc., 40 S.E.C. 986, 991 (1962); Best Securities, Inc., supra, at p. 934.

^{13/} Mac Robbins & Co., Inc., supra; Ross Securities, Inc., supra; B. Fennekohl & Co., Sec. Exch. Act Rel. 6898 (Sept. 18, 1962); Harold Grill, Sec. Exch. Act Rel. No. 6989 (January 8, 1963).

^{14/} It was stipulated that the mails were used in the registrant's transactions with customers.

^{15/}
The violations were willful.

The evidence further establishes that in the sales of Puritan stock the registrant, LaMarca and its salesmen employed practices which had been condemned as violative of the fiduciary obligations owed by a broker and his salesmen to customers. Salesmen were employed who had no prior experience, training or qualifications as securities salesmen. These salesmen were not given any training or indoctrination in the standards of conduct required of securities salesmen. Thus, a condition was created where there was strong likelihood of the violation of applicable laws and regulations by these salesmen ^{16/} Waldman, Kaplan and Vanasco were in the group which had no prior securities or experience before being employed by the registrant.

Salesmen often telephoned prospects with whom they had no prior acquaintance and failed to determine their investment needs before urging them to purchase Puritan. Repeated telephone calls were made to prospects urging purchases of Puritan, often stressing the need for a quick decision. Greene was used by salesmen to help close sales where they were encountering difficulty. ^{17/} Investors were advised to sell their securities to buy Puritan stock. Those who bought

^{15/} Harry Marks, 25 S.E.C. 208, 220 (1947); George W. Chilian, 37 S.E.C. 384 (1956); E. W. Hughes & Company, 27 S.E.C. 629 (1948); Hughes v. S.E.C., 174 F. 2d 969 (C.A.D.C. 1949); Shuck & Co., 38 S.E.C. 69 (1957); Carl M. Loeb, Rhoades & Co., 38 S.E.C. 843 (1959); Ira Haupt & Company, 23 S.E.C. 589, 606 (1946); Van Alstyne, Noel & Co., 22 S.E.C. 176 (1946); Thompson Ross Securities Co., 6 S.E.C. 1111, 1122 (1940); Churchill Securities Corp., 38 S.E.C. 856 (1959).

^{16/} S.E.C. v. Rapp, 304 F. 2d 786, 790 (2d Cir. 1962).

^{17/} Kaplan and Vanasco used Greene and are responsible for the statements he made to their customers. Ross Securities, Inc., Sec. Exch. ActRel. No. 7069, p. 7 (Apr. 30, 1963).

Puritan were repeatedly urged to buy more. Confirmations were sent customers who had not placed orders.^{18/} All these tactics were inconsistent with and contrary to the fiduciary obligations owed by brokers and their salesmen to customers.^{19/}

The record is full of evidence that salesmen made fraudulent misrepresentations and omissions of material information concerning Puritan. Registrant and LaMarca, the person in control of its operations, had the obligation to see to it that fraudulent practices by salesmen did not occur.^{20/} The evidence clearly establishes a failure in that duty. What was said by the Commission in the Best case, supra, applies with equal force here:

"Moreover, the fact that identical misrepresentations were employed by the two salesmen named in the order in selling to various members of the public, raises the inference that they were employing an agreed upon sales 'pitch,' which could hardly have occurred without the knowledge of responsible persons in the firm and the firm was clearly chargeable with such knowledge and the responsibility for the misrepresentations."

(p. 934)

^{18/} R. A. Holman & Co., Inc., Sec. Exch. Act Rel. No. 7770, p. 10 (Dec. 15, 1965).

^{19/} Mac Robbins & Co., Inc., supra; Midland Securities, Inc., 40 S.E.C. 635 (1960); Thompson & Sloan, Inc., 40 S.E.C. 451, 454 (1961); Adams & Co., Sec. Exch. Act Rel. No. 7072 (Apr. 30, 1963); A. J. Caradean & Co., Inc., supra; B. Fennekohl & Co., supra.

^{20/} Best Securities, Inc., 39 S.E.C. 931, 934 (1960).

The record is also replete with evidence of sharp practices used in the Puritan selling campaign.

It is concluded that the registrant was responsible for the conduct of its salesmen and that it willfully violated the anti-fraud provisions of the Securities Acts and that LaMarca, the person in control of the registrant, willfully violated or abetted in the violations found.^{21/}

The registrant and the individual respondents, in the sale of a speculative security of an unseasoned company, engaged in a high-pressure sales campaign which featured the recurring use of the same basic fraudulent representations and predictions, and thus engaged in a scheme to defraud and in transactions which would and did operate as a fraud and deceit upon investors.^{22/}

Violations of the Net Capital Provisions of the Exchange Act

It is alleged in the order for these proceedings that the registrant willfully violated the net capital provisions of the Exchange Act and applicable rules thereunder during the period from June 10

21/ Aldrich, Scott & Co., Inc., 40 S.E.C. 775 (1961); Lucyle Hollander Feigin, 40 S.E.C. 594 (1961); Floyd A. Allen & Co., Inc., 35 S.E.C. 176 (1953); Charles E. Bailey & Co., 35 S.E.C. 33 (1953); W. M. Bell & Co., Inc., 29 S.E.C. 790 (1949).

22/ U. S. v. Ross and Gordon, 321 F. 2d 61 (C.A. 2, 1963), cert. den. 375 U. S. 894 (1963); Hamilton Waters & Co., Inc., Sec. Exch. Act. Rel. 7725, p. 5 (Oct. 18, 1965).

to approximately June 24, 1960, and LaMarca aided and abetted in such violations.^{23/}

On January 17, 1963, a Judgment of Permanent Injunction was entered in the United States District Court for the District of New Jersey, after a trial, permanently enjoining registrant and LaMarca from violating applicable net capital provisions (Div. Ex. 1).

The Injunction was based on findings that from June 10, 1960 to approximately June 24, 1960, registrant was in violation of the net capital rule. As of June 10, 1960, registrant required additional capital of \$4,144.23, and as of June 24, 1960, it required additional capital of \$282.32 to be in compliance with the net capital rule. On May 11, 1964, the U. S. Court of Appeals for the Third Circuit affirmed the aforementioned Judgment. (Div. Ex. 2).

^{23/} Every broker or dealer, with certain exceptions not applicable here, pursuant to the provisions of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder cannot use the mails or instrumentalities of interstate commerce to effect transactions in and to induce the purchase and sale of securities, otherwise than on a national securities exchange, at a time when its aggregate indebtedness to all other persons exceeds two thousand (2,000) percentum of its net capital, as defined.

III. Concluding Findings; Public Interest

The Commission, pursuant to the provisions of Section 15(b) of the Exchange Act, so far as it is material herein, is required to censure, suspend, or revoke the registration of any broker or dealer if it finds that such action is in the public interest, and such broker or dealer subsequent to becoming such or any person associated with such broker or dealer, has willfully violated any provisions of the Securities Acts or any rule or regulation thereunder or is permanently or temporarily enjoined by any court from continuing any conduct or practice in connection with activity as a broker or dealer, or in connection with the purchase or sale of any security. It has been found that the registrant and the individual respondents, persons associated with it, have willfully violated the Securities Acts and applicable rules in the sale of common stock of Puritan. The registrant and LaMarca also have been enjoined from further violations of the net capital rule.

It is urged on behalf of the respondents that no sanctions should be imposed. It is argued that the Division was in error in seeking to apply the appellation "boiler room" to the registrant and its activities. Regardless of what term might properly be used, it has been found that the respondents engaged in activities which have been condemned as violative of the fiduciary obligations owed customers by brokers and their salesmen.

It is pointed out that since Greene and Kaplan were not served and did not appear the respondents were deprived of the right to either cross-examine them or use their testimony and that investor witness testimony as to sales made by them should not be used against the other respondents. The evidence received as to Greene and Kaplan dealt with their sales activities for registrant within the scope of their authority. In any event, the violations by Greene and Kaplan, while substantial, duplicated those committed by the other salesmen. Even if the evidence of their activities were disregarded the ultimate findings herein would not be changed.

The injunction, it is asserted, should not be used as a basis for revocation. While this argument is rejected by the undersigned, the injunction has not been relied on for the determination of the sanction to be directed since, in the opinion of the undersigned, the other violations found are much more serious.

On LaMarca's behalf, it is pointed out that he sold no Puritan stock, relied on Shinberg for information, and was not guilty of "actual willfulness". This argument disregards LaMarca's key role in the marketing of the Puritan stock. What occurred here was an intensive sales campaign to dispose of the shares of an unseasoned company by high-pressure methods wherein salesmen, some of whom with no training in the duties and obligations of securities salesmen, sold Puritan stock by means of extravagant statements about its current operations and future prospects with no basis in actual fact. No effort was made to temper misrepresentations with adverse financial

information nor was the lack of knowledge of the results of current operations of Puritan revealed. The investment needs of investors were not explored and the stock was sold to people in many walks of life.

As to Vanasco it is urged that the testimony of one witness should not be used to deprive him of the opportunity of continuing in the security business. In Ross Securities, Inc.,^{24/} where the Commission found violations similar to those found here, it made the following comments as to arguments similar to those advanced on behalf of Vanasco:

"Some of the salesmen have sought to excuse their conduct by asserting that they were young and inexperienced; that they themselves purchased Tamarac stock, thus evidencing their good faith; that customers knew that Tamarac stock was speculative; and that only one or a few customers testified with respect to certain salesmen. They urged that they not be banned from future employment in the securities business or be found causes of any action against registrant. These facts do not detract from the gravity of the violations revealed in the record of these proceedings. On the basis of this record we do not believe that the investing public should be exposed to further risks of such conduct by respondents who have demonstrated their gross indifference to the basic duty of fair dealing required of those engaged in the securities business.^{10/}

^{10/} A determination that future securities activities by the salesmen would be consistent with the public interest should be made on the basis of a showing of the nature of the proposed activity and the conduct of the salesman in question prior to and subsequent to the misconduct here found."

Under all the circumstances, the undersigned concludes that it is in the public interest to revoke the registration of the registrant, and pursuant to Section 15A of the Exchange Act, to expel it from membership in the National Association of Securities Dealers, Inc. It is also concluded that the individual respondents Michael LaMarca, Charles Hoffman, Stephen Negri, Philip Waldman, and Edward Vanasco, pursuant to Section 15(b)(7) of the Exchange Act, should be barred from being associated with any broker or dealer.

Benjamin Greene and Joel Kaplan violated the Securities Acts and aided and abetted violations which form the basis of the conclusions of the undersigned that sanctions should be imposed on the registrant. However since they were not served and did not appear, no bar order as such will be entered against them.^{25/} However, provisions of the Exchange Act should prevent their re-employment in the securities business without prior approval from the Commission.)

Accordingly, effective as of the date that the Commission issues an order pursuant to this initial decision as provided by Rule 17 of the Rules of Practice (17 CFR 203.17), and subject to the provisions for review afforded by that rule,

IT IS ORDERED that the registration as a broker and dealer of J. P. Howell & Co., Inc., be revoked and that it is expelled from membership in the National Association of Securities Dealers, Inc.;

25/ Valley State Brokerage, Inc., 39 S.E.C. 596, 599-600 (1959);
Haydon Securities, Inc., 40 S.E.C. 551 (1961).

FURTHER ORDERED, that Michael LaMarca, Charles Hoffman, Stephen Negri, Philip Waldman, and Edward Vanasco are barred from being associated with a broker or dealer.^{26/}

Sidney L. Feiler

Sidney L. Feiler
Hearing Examiner

Washington, D.C.
December 22, 1965

^{26/} All contentions and proposed findings submitted by the parties have been carefully considered. This Initial Decision incorporates those which have been accepted and found necessary for incorporation therein.