ADMINISTRATIVE PROCEEDING
FILE NO. 3-1372

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
CALIFORNIA SECURITIES CORPORATION	INITIAL DECISION
SCOTT DOUGLAS KELLOGG	(Private Proceeding)
8-12587	

March 21, 1969
Washington, D.C.

David J. Markun
Hearing Examiner

C O N T E N T S

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APPEARANCES: Norman R. Cohen of the San Francisco Regional Office, for the Division of Trading and Markets.

Howard Coit Ellis, San Francisco, California and Scott Douglas Kellogg, Oakland, California, for respondent California Securities Corporation.

Howard Coit Ellis for respondent Scott Douglas Kellogg.

BEFORE: David J. Markun, Hearing Examiner

THE PROCEEDING

This private proceeding was instituted by an order of the Commission dated December 11, 1967, pursuant to Section 15(b) and Section 15A of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether each respondent willfully violated, or willfully aided and abetted violations of the Exchange Act and rules thereunder as alleged by the Division of Trading and Markets ("Division") and the remedial action, if any, that might be appropriate in the public interest.[1/] [1a/]

Under the order the Division alleges violations of the anti-fraud provisions of Sections 10(b), 15(c)(1), and 15(c)(2) of the Exchange Act and Rules 10b-5, 15c1-2, and 15c2-1(a) thereunder through the unlawful and fraudulent hypothecation of customers' securities.[1b/] [1c/] During the course of the hearing[1d/] the order was amended by the Hearing Examiner on motion of the Division over respondents' objections by adding to the order a new paragraph IID which alleges violations of Section 15(c)(2) of the Exchange Act and Rule 15c2-1(f) thereunder through failure to give the pledgee of hypothecated customers' securities written notice that the securities pledged were carried for the accounts of customers and that the hypothecation did not contravene any provision of Rule 15c2-1. In addition, the order alleges violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder[1e/] [1f/] through failure to maintain and keep current a securities

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1/ 15 U.S.C. 78 o.

1a/ 15 U.S.C. 78o-3.
1b/ 15 U.S.C. 78j, 78o.
1c/ 17 CFR 240.10b-5, 240.15c1-2, 240.15c2-1(a).
1d/ R. p. 200-4.
1e/ 15 U.S.C. 78q.
1f/ 17 CFR 240.17a-3.

record or ledger and a record in respect of each cash and margin account with a broker or dealer. The period during which the violations are alleged to have occurred is approximately July 20, 1967 to October 15, 1967.

Respondents appeared and filed an answer. An evidentiary hearing was held in San Francisco, California on March 26, 27, and 28, 1968, and was concluded on April 24, 1968, the hearing having been adjourned to this last date to enable respondents to present an expert witness. At the conclusion of the hearing counsel for respondents filed a motion for judgment of non-suit, which was taken under advisement for disposition in the initial decision.

The Division filed its proposed findings and conclusions and supporting brief in due course but before respondents could do likewise respondent Kellogg died. 2/ As a consequence, respondents have not

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2/ Kellogg's death, on June 26, 1968, resulted in a considerable period of indecision as to whether findings and conclusions and supporting brief would be filed on behalf of respondents. By letter of December 5, 1968, the Division advised respondents' counsel that unless they were filed by January 10, 1969, the Division would move that respondents be deemed to have waived their right to file proposed findings, conclusions and brief. Respondents did not file, and on January 22, 1969, the Division made its motion, moving at the same time, at the suggestion of counsel for respondents, that the proceeding be declared abated as to respondent Kellogg. By order of February 4, 1969, the Hearing Examiner found that the time for respondents to file proposed findings, conclusions, and brief had expired without the same having been filed and ordered the record served upon him for preparation of an initial decision.

filed proposed findings and conclusions and supporting brief, and the Division has moved that this proceeding be declared abated as to respondent Kellogg. 2/ Respondents' seven-page motion for judgment of non-suit, mentioned above, reflects respondents' general view of the evidence and law.

The findings and conclusions herein are based upon the record and upon observation of the various witnesses.

FINDINGS OF FACT AND LAW

The Respondents

Respondent California Securities Corporation (generally hereafter referred to as "registrant") has been registered with the Commission as a broker-dealer since October 24, 1965, and is a member of the National Association of Securities Dealers, Inc. 2a/

Respondent Scott Douglas Kellogg (hereafter generally referred to as "Kellogg"), a practicing attorney in Oakland, California, was, during the times material to this proceeding, president, a director,

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2a/ The Commission has jurisdiction to conduct this proceeding under Section 15(b) and 15A of the Exchange Act. Since registrant is a registered broker-dealer and Kellogg was acting on behalf of it, use of the mails or a means or instrumentality of interstate commerce is not a jurisdictional requisite in view of the provisions of Section 15(b)(4) of the Act. Counsel for respondents indicated (Tr. p. 429-432) he would challenge the Commission's jurisdiction on the theory that the Federal Reserve Board has exclusive jurisdiction in matters involving loans to broker-dealers, but the point was never developed since respondents did not file a brief. (see footnote 2 above). It is concluded that the contention is without merit.

2/ See note on preceeding page.

and owner of some 75 to 80% of the stock of registrant. His wife, Mary Marvine Parker Kellogg, was vice-president, assistant secretary-treasurer and a director. Kellogg's law associates of some 20 years' standing, Marquam C. George, was also a director, and Kellogg clearly dominated and controlled the board and the registrant.

Although registrant held itself out as, and was, engaged in the general securities business, it never had more than five to ten customers, virtually all of whom were law-clients of Kellogg. The business of the registrant was conducted from the law offices of Kellogg and George, utilizing law-office personnel, the registrant having no full-time employees of its own.

Fraudulent and Unlawful Hypothecation of Customers' Securities

The order as amended charges that during the period charged (approximately July 20, 1967 to October 15, 1967) the respondents:

1. caused securities belonging to two estates and a guardianship that respondent Kellogg represented as attorney to be deposited with registrant for safekeeping and thereafter converted the securities to the personal use and benefit of respondent Kellogg by pledging the securities as collateral for the personal indebtedness of respondent Kellogg;

2. permitted the commingling and hypothecation of securities carried for the account of one customer with securities carried for the accounts of other customers without first obtaining

the written consent of each customer to the commingling and hypothecation;

3. permitted the commingling and hypothecation of securities carried for the accounts of customers with securities carried for its own account under a lien for a loan made to registrant;

4. permitted securities carried for the accounts of customers to be hypothecated and subjected to the liens and claims of the pledgee for a sum exceeding the aggregate indebtedness of all such customers in respect to securities carried for their account;

5. failed to record the charged hypothecation on the books and records of registrant;

6. failed to disclose to customers the charged hypothecation; and

7. failed to give the pledgee written notice that the securities pledged were carried for the accounts of customers and that their hypothecation would not contravene Rule 15c2-1. 3/

Prior to the beginning of the period during which violations are charged the registrant had acquired a number of "customers" who had become such because they were law-clients of respondent Kellogg. These included the estate of Bernard Feldman, of which the widow, Annette

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3/ The conduct charged is alleged to have resulted in violations of Sections 10(b), 15(c)(1), and 15(c)(2) of the Exchange Act and Rules 10b-5, 15c1-2, 15c2-1(a) and 15c2-1(f) thereunder.

Feldman Hervin, was administratrix; Marilyn Feldman, a minor, and Maurice Feldman, a minor, each represented by Annette Feldman Hervin, their mother and guardian; Annette Feldman Hervin, who owned a small amount of securities in her own right; and the estate of Abraham S. Sullivan, of which Marquam C. George, step-son of the deceased and a law associate of Kellogg, is executor.

Over the period June 1966 to March 1967 registrant deposited securities belonging to the five mentioned customers, together with a single share of stock in the Standard Oil Company of California belonging to registrant, in a "cash" account it opened with the Oakland, California branch of E.F. Hutton & Company ("Hutton"), a registered broker-dealer. The securities were deposited with stock powers attached, making them fully negotiable. Hutton held the securities in "street name" and the account was treated as an account of the registrant insofar as Hutton was concerned. Kellogg testified that he had obtained stock powers in order to facilitate sale of the stock and distribution of the proceeds at the proper time. His stated reason for registrant's establishing the account with Hutton instead of holding the securities itself was that the monthly account statements from Hutton would assist registrant in keeping track of its customers stock dividends and that Hutton would in a sense be "keeping the books for us." 4/

4/ R. p. 196, 340, 341.

The total dollar values of the respective securities thus deposited by registrant in its account with Hutton, as calculated for July 19, 1967, were as follows: 5/

Annette Feldman Hervin	$ 57.38
Estate of Bernard Feldman	134,716.35
Marilyn Feldman	3,997.12
Maurice Feldman	535.50
Estate of Abraham S. Sullivan	91,477.50
Calif. Securities Corp. (registrant)	57.38
	$ 230,841.23

All of the securities put into the registrant's account with Hutton were fully paid for securities. 5a/

About the end of May, 1967, Kellogg called at Hutton's office in Oakland, where he talked to Richard G. McDermed ("McDermed") the then manager of that office, about the procedures for registrant's obtaining a loan of $30,000 to $35,000 using securities in its account as collateral. Kellogg talked in terms of a non-purpose loan but McDermed suggested that changing the account into a margin account would be a more convenient way of arranging for the desired funds. McDermed told Kellogg he would check with Mr. Walter McCaffery ("McCaffery"), the San Francisco regional office manager of Hutton & Co., to ascertain whether there was any impediment to making the desired funds available on the basis of a margin account. McDermed did check

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5/ The securities involved are shown in Division's Exh. 2. Figures are based on market values as of July 19, 1967 (the day before the hypothecation occurred) as determined from the Standard and Poor's Corporation monthly stock guide and daily quotation of over-the-counter securities issued by the National Quotation Service.

5a/ So far as appears in the record this was also true of any customer's securities not placed by registrant into its account with Hutton. In any event, the quantity of securities not put into the Hutton account is *di minimus* in terms of its affecting any issue in this proceeding.

with McCaffery and was advised that the equity in a margin account would be sufficient to allow a withdrawal of funds in the amount desired. McDermed informed Kellogg that the matter could be handled by means of a margin account.

Thereafter, on or about July 20, 1967, Hutton transferred certain of the securities in registrant's account from "cash" to "margin" status. 6/ The ownership of the securities thus placed into a margin account and the total value of each owner's securities so transferred were as follows: 6a/

Annette Feldman Hervin	$ 57.38
Estate of Bernard Feldman	44,520.75
Marilyn Feldman	3,997.12
Maurice Feldman	535.50
Estate of Abraham S. Sullivan	61,699.50
California Securities Corp. (registrant)	57.38
	$ 110,867.63

The size of the margin account gave it a "borrowing power" of approximately $35,000. On July 20, 1967, registrant borrowed from Hutton $15,000 on the strength of the margin account, and Hutton's check in that amount was deposited in registrant's account.

Either at the time of their conversation late in May or at the time of the $15,000 loan on July 20, McDermed gave Kellogg a margin agreement form for execution and return, but registrant never executed or returned the form and Hutton evidently overlooked following up on the matter.

6/ The specific securities transferred to margin status appear in Hutton's monthly statements of account, Division's Exhibit 4.

6a/ Division's Exhibit 2.

Respondents were fully aware that Hutton had placed certain of the securities in registrant's account into a margin status and that it was these margin-account securities that were pledged as collateral for the $15,000 loan because registrant had been receiving, and it continued to receive, monthly statements[7/] of its account from Hutton, on which the action taken by Hutton was made clearly apparent in the shift in symbols from account-type #1, "cash", to account-type #2, "margin", as to the securities placed into "margin" status.

Some six weeks later, registrant, on September 1, 1967, obtained from Hutton a second loan, this one in the sum of $20,000, on the strength of the margined securities.

The proceeds of both of the loans were paid over by the registrant to Kellogg or at his direction for his personal purposes.

The customers' securities described above continued under hypothecation until October 12, 1967, on which date Kellogg, at the insistence of the Regional Administrator of the Commission's Regional Office of San Francisco, 8/ repaid the loan and had the securities returned to "cash" account status.

The record establishes, and respondents concede, that they did not obtain consent, written or oral, for pledging, in any manner, the securities belonging to the Sullivan estate, Marilyn Feldman,

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8/ Commission personnel inquired into the matter of a loan secured by customers' securities as a result of registrant's inclusion of an item "Loan Collateralized by Customers' Securities" on its monthly trial balances as of July 31 and August 31, 1967. (Registrant had been submitting monthly trial balances since January 31, 1967, because it had been operating with close to the minimum of capital required.

7/ Division's Exhibits 3, 4, 5.

Maurice Feldman, or Annette Feldman Hervin. 9/ Nor did the respondents advise any of such persons or their representatives that their securities had been pledged to secure a loan to the registrant.

In these circumstances it is clear that respondents willfully 10/ converted the securities described above to the personal use and benefit of respondents by pledging them as collateral for the personal indebtedness of respondents for the benefit of Kellogg.

The unauthorized use of customers' securities as pledges for a registrant's borrowings constitutes a practice which operates as a fraud upon customers within the meaning and in violation of Section 15(c)(1) of the Exchange Act and Rule 15c1-2 thereunder. Investment Registry of America, Inc., 21 SEC 745, 751 (1946). See Jansen and Company, 6 SEC 391 (1939).

The record further establishes, and respondents concede, that they did not obtain written 11/ consent from any customer whose securities

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9/ Respondents' contention that as to the estate of Bernard Feldman they had the oral consent of the administratrix is treated at a later point below.

10/ Under Section 15(b) of the Exchange Act it is held that willfullness means "'no more than that the person charged with the duty knows what he is doing. It does not mean that in addition, he must suppose that he is breaking the law'". Hughes v. SEC, 174 F.2d 969, 977 (1949).

11/ For that matter, no oral consent was obtained either.

were pledged to the commingling of his securities with securities of any other customer under an hypothecation of securities. The record thus clearly establishes a willful violation of Rule 15c2-1(a)(1).

In addition, respondents violated Rule 15c2-1(a)(2) by commingling the hypothecated securities of its customers with a single share of stock belonging to the registrant. Further, hypothecation was in clear violation of Rule 15c2-1(a)(3), which provides that customers' securities may not be subjected to a lien in excess of the aggregate indebtedness of all customers since, as already noted above, the customers' securities of the registrant were all fully-paid securities and there was thus no customers' indebtedness to the registrant. The violations discussed in this paragraph cannot be regarded as other than willful.

Finally, respondents willfully violated Rule 15c2-1(f) by failing to give the pledgee (Hutton) written notice that securities pledged were carried for the account of registrant's customers and that their hypothecation would not contravene any provision of Rule 15c2-1. 12/

Where, as here, the registrant, through its president, has misappropriated securities belonging to customers by hypothecating and commingling them without permission and subjected them to the lien of a pledgee exceeding the aggregate indebtedness of the customers to the registrant, allowed its president to apply the loan proceeds to his

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12/ Of course, respondents could not properly have given notice that the hypothecation did not contravene the Rule, since it plainly did, but this provision of the Rule is also relevant in connection with respondents' contention discussed at a later point that a different kind of loan, i.e. a non-purpose loan predicated on the securities in the Feldman estate, was intended.

personal use, failed to disclose to its customers and to the pledgee its actions, and failed to disclose its acts by failing to keep accurately certain required books and records, 13/ violations of Sections 10(b), 15(c)(1) and 15(c)(2) of the Exchange Act and the rules thereunder are clearly established. W.F. Coley and Co., Inc., 31 SEC 722 (1950); Strouse, Thomas and Whelan, Inc., 29 SEC 297 (1949).

In their motion for judgment of non-suit respondents contend that these violations resulted from an unfortunate misunderstanding between registrant and Hutton as to the kind of loan that registrant desired from Hutton, which error the registrant was unable to rectify during all the weeks that the securities remained hypothecated because of the illness and absence from Hutton's Oakland office of McDermed, with whom Kellogg had negotiated the loan. What was intended, respondents contend, was a $35,000 non-purpose loan secured only by securities in the estate of Bernard Feldman. The Feldman estate, it is contended, owed Kellogg $35,000 on account for legal services rendered the estate to date, and he and Annette Feldman Hervin concurred in the view that instead of liquidating securities at that time to pay him the sum it would be better to make the payment by obtaining a non-purpose loan with the Feldman-estate securities as collateral.

On the basis of the entire record it is concluded that this contention does not square with the evidence and that it represents merely

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13/ See pp. 16-18 below.

an ex post facto effort to rationalize and legitimize what registrant had done.

Respondents' Exhibit A is an affidavit of Annette Feldman Hervin in which she swore on January 2, 1968, inter alia, that she had given Kellogg authority to obtain such a loan. The affidavit had been prepared by Kellogg after these proceedings had been initiated and he and his wife flew to Los Angeles where, after several hours' discussion, the affidavit was executed. Testifying at the hearing in this proceeding, Mrs. Hervin unequivocally repudiated this portion of her affidavit. 13a/ Considering all the circumstances, including the demeanor and interest of the witnesses, it is concluded that Mrs. Hervin's testimony that she never authorized Kellogg to obtain a loan with the Feldman-estate securities as collateral must be credited notwithstanding her contrary statement in the affidavit and the contrary testimony of Kellogg and his wife.

However, even if it were concluded that respondents had gotten Mrs. Hervin's consent to hypothecation of the Feldman-estate securities for a non-purpose loan such a fact would not serve to wash away the violations found herein to have been committed by registrant. A non-purpose loan was never obtained, whereas a margin loan was obtained. Respondents cannot enjoy the fruits of a margin loan and

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13a/ Whether Mrs. Hervin's motivation for signing the affidavit which she later repudiated was a desire to help her attorney avoid legal difficulties or a hope that her legal fees might thereby be reduced is not clear. She testified that Kellogg told her to tell the SEC that the legal fees were $35,000 but that in fact they would be less; at the same meeting at which she executed the affidavit, she signed checks for $20,000 for legal fees to Kellogg.

later protest it should have been something else. Not only was the July 20, 1967 loan of $15,000 known by respondents to have been collateralized by the securities of multiple customers, but respondents came back a second time, on September 1, to get the second loan, this one for $20,000 without in the meantime having corrected the alleged error. 13b/ The contention that McDermed's illness prevented correction of the situation is utterly without merit since both the Oakland and San Francisco offices of Hutton & Co. had officers in charge who could easily have initiated steps to remedy the alleged mistake. Instead, respondents sat back and did nothing, and meanwhile enjoyed the use of the proceeds of the loan. Their evident expectation was that if the unauthorized hypothecation got picked up and challenged they'd pay back the loan and all would be forgiven and forgotten. Their conduct after the loan was challenged by Commission personnel is consistent with such an attitude.

Another defense urged in respondents' motion for judgment of non-suit is predicated upon their assertion of lack of jurisdiction on the theory that the record does not establish any offer or sale of securities in connection with the violations charged. This defense fails for a variety of reasons. First, it is established that registrant held itself out as, and was, engaged in the general securities business (though the number of customers was low as was the volume of transactions). Second, the record discloses that registrant had a

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13b/ At no time did respondents ever attempt to designate the securities that were supposed to have been pledged or to get the consents of the customers whose securities had in fact been pledged.

number of transactions in its account with Hutton. 13c/ Paragraph XXXIII of respondents' answer admits that there were purchases and sales of stock for customers.

Third, obtaining a loan under a margin agreement could itself be regarded as involving a transaction in, or the purchase or sale of a security within the meaning of the relevant statutes. 13d/

Violations of Record-Keeping Provisions

The evidence establishes a number of record-keeping violations.

As of October 4, 1967, when an inspection of registrant's books and records was made by a Commission investigator, the position record or securities record did not reflect the long and short positions of customers' accounts, did not indicate the location of customers' securities, and did not indicate the ownership of particular securities. These lapses under the circumstances here present constituted willful violations of the specific requirements of Rule 17a-3(a)(5).

In addition, the inspection mentioned above also disclosed that registrant's records of its customer accounts, required to be kept under Rule 17a-3(a)(9), were deficient in that they failed to reflect

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13c/ Division's Exhibits 3, 4.

13d/ The Supreme Court said recently respecting the "in connection with" language in Section 10(b) of the Exchange Act that in determining whether the alleged conduct is "in connection with the purchase or sale of any security" the question to be asked is whether the conduct is "the type of fraudulent behavior which was meant to be forbidden by the statute and the rule." SEC v. National Securities, Inc., 37 U.S.L.W. 4101 (January 27, 1969).

the hypothecation of customers' securities that has been discussed above. 14/ Since registrant through its president knew that the securities had in fact been hypothecated, this violation was willful.

Respondents urge, in defense and/or mitigation, that they had no intention of hiding the fact that they had hypothecated certain customers' securities. They point out, in this connection, that registrant's daily blotter did bear a notation referring to a margin loan. 15/ Respondents further point out that the net capital computations for July and August, 1967, that they submitted to the Commission's staff included an item "Loan Collateralized by Customers' Securities."

But this argument of the respondents ignores the point that the real thrust of the allegation of record-keeping violations is that certain required records (deemed by the Commission to be of sufficient importance that specific provisions of a rule require them to be kept) were not properly maintained, and not that the registrant was thereby attempting to deceive the Commission.

The Commission has held repeatedly that the requirement that books and records be kept current and in proper form is a keystone of

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14/ The requirement that records be kept embodies the requirement that they be true and correct. Kilgrim Securities, Inc. 39 SEC 172, 173 n. 4 (1959).

15/ Registrant's blotter bore notations referring to "margin" loans. After the loans had been questioned by Commission personnel, Kellogg "corrected" these notations by writing over them the language "non-purpose Feldman loan." See, inter alia, Answer, Par. XXXI.

the regulatory process and that registrants cannot be permitted to decide for themselves that in their own particular circumstances compliance with particular requirements is not necessary. 16/

Secondly, respondents contend that the reason registrant's records were not made to reflect the hypothecation of customers' securities as respects all relevant records was that registrant had not intended to place customers' securities into a margin account with Hutton but to obtain a non-purpose loan from Hutton based on the securities in the Feldman estate as collateral. 17/

The short answer to this contention is simply that the function of records is to reflect the reality of what registrant did and was doing and not what it may have intended to do.

CONCLUSIONS

In general summary of the foregoing, the following conclusions of law are reached:

(1) During the period from approximately July 20, 1967 to October 15, 1967, registrant wilfully violated and respondent Kellogg willfully aided and abetted registrant's violations of Sections 10(b), 15(c)(1), and 15(c)(2) of the Exchange Act and Rules 10b-5, 15c1-2, 15c2-1(a) and 15c2-1(f) thereunder by causing and permitting securities belonging to customers

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16/ Midland Securities, Inc. et al., 40 S.E.C. 333, 339 (1960).

17/ See discussion above at p. 13-15.

to be converted to the personal use of respondent Kellogg by causing such securities to be, and to remain, pledged as collateral for the personal indebtedness of respondent Kellogg; by permitting the commingling and hypothecation of securities carried for the account of one customer with securities carried for the accounts of other customers without first obtaining the written consent of each customer to the commingling and hypothecation; by permitting the commingling and hypothecation of securities carried for the accounts of customers with securities carried for the account of registrant under a lien for a loan made to the registrant; by permitting securities carried for the accounts of customers to be hypothecated and subjected to the liens and claims of the pledgee for a sum exceeding the aggregate indebtedness of all such customers in respect to securities carried for their accounts; by failing to record and reflect the hypothecation in the customer-account ledgers or the security-position records of the registrant; by failing to disclose the hypothecation to the customers involved; and by failing to give the pledgee written notice that the pledged securities were carried for the accounts of customers and that their hypothecation would not contravene Rule 15c2-1.

(2) During the period from approximately July 20, 1967, to October 15, 1967, registrant willfully violated and respondent Kellogg willfully aided and abetted registrant's violations of Section 17(a) of the Exchange Act and Rule 17a-3 through

failure to keep a complete and accurate securities record and complete and accurate customer-account records.

PUBLIC INTEREST

The violations disclosed by this record are serious in character and persisted over a substantial period of time. They involve a flagrant breach of the broker-dealer's obligation to deal with its customers fairly. This breach is the more striking here where the customers of whom advantage was taken had become such by virtue of the fiduciary relationship that registrant's president had to such customers as their lawyer. This fact, plus the fact that the accounts involved estates and guardianships rather than experienced investors, made these customers particularly susceptible to being taken advantage of. While customers sustained no ultimate financial losses, they were improperly subjected to the risk of loss of substantial sums over a considerable period.

In addition, the violations respecting record keeping reflect on registrant's part a lack of awareness of the importance of the record-keeping functions.

It is concluded that the public interest requires that the registration of California Securities Corporation be revoked. 18/

18/ Had registrant filed proposed findings and conclusions and a brief it is possible that it might have urged that in lieu of revocation the appropriate action would be cancellation under Section 15(b)(6) of the Exchange Act. In view of the dominant role that Kellogg played in the affairs of registrant it is possible that with his death registrant will no longer be active. However, there is nothing in the record on this point. Moreover, it is concluded that registrant's violations here were of such a nature that revocation of registration would be required in the public interest irrespective of the present activity or lack of it of the registrant.

In view of the death of respondent Kellogg subsequent to the conclusion of the evidentiary hearing, the proceeding as to him must be found to have abated. 19/

ORDER

Accordingly, IT IS ORDERED as follows:

Respondents' motion for judgment of non-suit is denied.

The registration as a broker-dealer of California Securities Corporation is revoked and the company is expelled from membership in the National Association of Securities Dealers, Inc.

The proceeding is dismissed as against respondent Scott Douglas Kellogg, it having abated, as to him, by virtue of his death.

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

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

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19/ W.H. Bell & Co., Inc., 29 SEC 709, 723 (1949).

a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party. 20/

David J. Markun
Hearing Examiner

March 21, 1969
Washington, D.C.

20/ To the extent that the proposed findings and conclusions submitted by the parties expressly or by implication are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the issues presented.