ADMINISTRATIVE PROCEEDING
FILE NO. 3-2056

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
MANNEY & COMPANY, INC. (8-1772)
IRVING MANNEY

INITIAL DECISION

Sidney Gross
Hearing Examiner

Washington, D. C.
September 2, 1969

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Before: Sidney Gross, Hearing Examiner

Appearances: William M. Hamilton and G. Michael Boswell of Akin, Vial, Hamilton, Koch and Tubb for Manney & Company, Inc. and Irving Manney

Cecil Mathis and D. J. Silman for the Division of Trading and Markets

The sole issue now before the Hearing Examiner in these proceedings, brought under Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act"), is whether it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration as a broker and dealer of Manney & Company, Inc. ("registrant"), pending final determination of the issues presented by the order for proceedings. 1/

These are public proceedings instituted by the order of the Securities and Exchange Commission ("Commission") dated July 9, 1969, to determine what, if any, remedial action is appropriate in the public interest as a result of alleged willful violations of the securities laws by registrant and Irving Manney ("Manney"), its president and principal stockholder, during the period from approximately January 1967 through January 1969 ("the relevant period"). The order for proceedings alleges that during the relevant period registrant and Manney wilfully violated and wilfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") in the offer and sale of the common stock of Computronic Industries Corporation ("Computronic"), United Australia Oil ("UAO"), W.I.D.E. Inc. and Continental American

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1/ Section 15(b)(6) of the Exchange Act provides, with respect to suspension of registration as a broker or dealer:

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

Royalty ("CAR") when no registration statements were filed or in effect as to such securities;[2/] that during the relevant period registrant and Manney wilfully violated and wilfully aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-6 thereunder[3/] in that while participating in the distribution of the securities referred to above, they bid for and purchased such securities for accounts in which they had a beneficial interest and induced other persons to purchase such securities prior to completing said distributions; that during the relevant period registrant and Manney together with other persons, singly and in concert, wilfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder[4/] through failure to disclose (1) that the

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2/ Sections 5(a) and 5(c) of the Securities Act, as applicable here, make it unlawful to use the mails or interstate facilities to sell or deliver a security unless a registration statement is in effect as to such security.

3/ As relevant here, Section 10(b) of the Exchange Act makes it unlawful for any person to use and employ, in the purchase or sale of any security, any manipulative or deceptive device or contrivance in contravention of the Commission's rules and regulations. Rule 10b-6 declares it to be a manipulative device for a broker or dealer who is participating in a distribution to bid for or purchase for its own account any security which is the subject of such distribution.

4/ The composite effect of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, as applicable to this case, is to make unlawful the use of the mails or means of interstate commerce in connection with the purchase or sale of any security by the use of a device to defraud, an untrue or misleading statement of material fact or any act, practice, or course of business which operates or would operate as a fraud or deceit upon a customer, or by the use of any other manipulative, deceptive or fraudulent device.

above-named securities were unregistered, (2) that they bid for and purchased such securities during a distribution and (3) that they effected the purchase of said unregistered securities at prices below the then prevailing market prices and the prices at which they were quoting such securities and thereafter offered and sold said securities to brokers, dealers and other persons at the then prevailing market prices for such securities.

The order for proceedings provides that a hearing be held first to consider whether pending final determination of the issues presented by the order it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant and that after final determination of the question of suspension, the hearing be reconvened to take additional evidence on the remaining issues.

During the course of the hearing on suspension the Division of Trading and Markets ("Division") stated that it was reserving for the hearing on the remaining issues proof in respect of the alleged violation of Section 5(a) and 5(c) of the Securities Act in the offer and sale of the stock of W.I.D.E., Inc. and proof in respect of that portion of Section II, Paragraph C of the order for proceeding alleging excessive markups.

The respondents were represented by counsel. Proposed findings of fact and conclusions of law and briefs have been filed by the Division and on behalf of the respondents.

On the basis of the record in the proceeding, including the documentary evidence, the testimony of the witnesses and the proposed findings of fact, conclusions of law and briefs, the Hearing Examiner makes the following findings and conclusions:

Manney & Company, Inc. is a corporation organized in the State of Texas having its principal place of business in Dallas. Its predecessor, Industrial Securities Corporation had been registered with the Commission as a broker-dealer since 1953. It changed its name to Manney & Company, Inc. by a B-D Amendment filed September 12, 1955. Manney is the President, a director and principal stockholder of registrant and the person who manages and directs its activities.

Registrant made use of the mails in the offer and sale of the securities of Computronic, UAO and CAR.

Computronic 5/

Between March 12, 1968 and April 29, 1968 registrant purchased a total of 35,200 shares of Computronic common stock from Herbert L. Wiggs ("Wiggs") for its own account. Wiggs had been President of Computronic until about January or February 1968. Wiggs informed Manney, early in March 1968, that he had resigned as President of Computronic. Manney did not inquire of Wiggs when the latter had received the stock registrant purchased or the nature of the consideration Wiggs had paid

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5/ Computronic had been known as Western Reserve Corporation. Its name was changed in April, 1968. Hereafter, the name "Computronic" will be used to designate the corporation both before and after the change of name.

for it. Registrant resold the stock to brokers including brokers in states other than Texas.

In April, 1968, Computronic offered to sell to those of its stockholders residing in Texas one share of its stock, at $1.00 per share, for each share then owned by the stockholder. Manney spoke with Kevin B. Halter ("Halter"), President of Computronic, about the number of shares registrant could purchase. Halter informed him, "I will give you what you want." Between April 23, 1968 and April 29, 1968 registrant purchased 46,000 shares of Computronic stock from the issuer for its own account and resold those shares between April 23, 1968 and April 29, 1968 to brokers in Massachusetts, Oklahoma, New York, New Jersey and Tennessee.

UAO

Between March 13, 1968 and August 13, 1968 registrant purchased 185,000 shares of UAO stock from Ross Scott ("Scott"). Between May 15, 1968 and August 5, 1968 registrant purchased 202,000 shares of UAO stock from E. O. Blakeway ("Blakeway") and between March 21, 1968 and August 1, 1968 registrant purchased 246,000 shares of UAO stock from Ken Mjaaland ("Mjaaland"). Registrant resold the stock it had purchased from Scott, Blakeway and Mjaaland to broker-dealers in eight or ten states.

Manney's testimony given on February 24, 1969, during the Division's investigation of UAO, discloses that having decided to make a market in UAO stock, registrant commenced placing quotations in the National Daily Quotation Service ("NDQS"). Shortly thereafter he telephoned H. B. Todd

("Todd"), UAO's President, and asked Todd to direct business in UAO stock to registrant. Scott, Blakeway and Mjaaland were referred to registrant by Todd. After the first transaction with each of them Manney initiated all other transactions with them.

Scott's first call to Manney resulted in registrant's purchase from Scott of 25,000 shares of UAO stock at 22 cents per share on March 13, 1968. Manney testified, further, that after registrant had made a second purchase of 10,000 shares of UAO stock from Scott on March 25, 1968, and before ~~he~~ it made any purchases from Blakeway or Mjaaland, he telephoned Todd and requested that Todd furnish a restricted stock list. 6/ Todd did not supply such a list. Instead, he advised Manney to call a Mrs. Jackson of UAO whenever Manney had any doubt about a certificate. Manney responded in the affirmative to a question whether registrant made it a practice to call UAO thereafter "in connection with the transactions of purchases from individuals such as Mjaaland and Blakeway."

Manney's testimony regarding his knowledge of the relationship of Scott, Blakeway and Mjaaland to UAO and the background of the UAO stock registrant purchased from them presents serious contradictions. At the hearing in this matter Manney testified he didn't ask ~~either~~ any of them

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6/ The record of registrant's trading in UAO stock discloses a purchase of 5,000 shares of UAO stock from Mjaaland on March 21, 1968, prior to the second purchase from Scott.

how their stock had been acquired.[7/] However, Manney also testified with respect to this matter on two previous occasions. At the trial of an injunction action against registrant and Manney,[8/] the latter stated he had been told by Blakeway and Mjaaland that they had obtained the stock in exchange for assets they had transferred to UAO.[9/] During the course of the Commission's investigation, on February 24, 1969, Manney testified that he had asked Scott whether he had a position in UAO and received a negative response; that he asked Scott how he obtained the stock and Scott replied that he had purchased it; that he asked Blakeway whether he was an officer of registrant to which Blakeway replied in the negative and that Blakeway informed Manney he had traded mining property in Colorado for the stock. Manney also asked Mjaaland how he had obtained his stock and was informed that he and Blakeway were partners in the mining property that had been traded for UAO stock.

CAR

Between March 22, 1967 and October 5, 1967 registrant purchased, for its own account, 9,300 shares of CAR stock from Paul Cash,

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7/ He testified he was told by UAO that the stock was transferable.

8/ SEC v. Computronic Industries Corp., et al., Civil Action 3-2690 (USDC, North. Dist. of Texas). The Court's final order, dated January 2, 1969, permanently enjoined registrant and Manney from the sale of any unregistered securities through use of the mails.

9/ Although Manney denied any recollection of this testimony, the Special Counsel to the Fort Worth Regional Office who was present at the trial so testified. The testimony taken at the trial has not been transcribed.

President of CAR.[10/] Registrant resold these shares to brokers in states other than Texas.

The certified statements prepared by the appropriate office of the Commission and received in evidence establish that no registration statements were in effect as to ~~either~~ Computronic, UAO or CAR. Nor does the record present any attempt by registrant to claim the benefit of an exemption from registration for ~~either~~ any of these securities.[11/]

Rule 10b-6 of the Rules and Regulations under the Exchange Act declares it to be a manipulative device for a broker-dealer who is participating in a distribution by use of the mails "to bid for or purchase for any account in which he has a beneficial interest, any security which is the subject of such distribution * * *." Registrant's purchases of the securities of Computronic, UAO and CAR referred to above were for its own account. Admittedly, registrant placed bids in the NDQS for each of these securities. It remains only to determine, therefore, whether registrant was engaged in distributions in respect of these securities.

10/ CAR had advised Manney that the stock he sold registrant was exempt from registration under Rule 154 of the General Rules and Regulations under the Securities Act which would exempt a transaction involving approximately 1% of the total outstanding shares of the issuer. However, that exemption applies only where the broker acts as agent for the seller but not where, as here, the broker purchases for his own account.

11/ A dealer or person claiming the benefit of an exemption from registration has the burden of proving entitlement to it; S.E.C. v. Ralston Purina Co., 346 U.S. 119 (1953); Gilligan Will & Co. v. S.E.C., 267 F. 2d 461 (C.A. 2, 1959), cert den. 361 U.S. 896; Strathmore Securities, Inc., Securities Exchange Act Release No. 8207 (November 13, 1967).

The record is clear that registrant purchased 46,000 shares of Computronic stock directly from the issuer for its own account under an offering which clearly contemplated an intra-state distribution within the State of Texas and that registrant forthwith sold these shares to broker-dealers in other states. Further, registrant purchased 9,300 shares of the stock of CAR from the president of the corporation and resold those shares to a broker-dealer in San Francisco. It is readily apparent that at least in respect of the aforementioned shares registrant was an underwriter 12/ engaged in a distribution. 13/ Moreover, even absent acquisition by registrant of shares from an issuer or control person, 14/ the magnitude of registrant's transactions in UAO and Computronic would, in the light of the purposes of Rule 10b-6, require imposition of

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12/ Section 2(11) of the Securities Act defines "underwriter" to mean "any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking:"
For purposes of this section the term "issuer" includes "any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer."

13/ A dealer may become a participant in a distribution regardless of any contractual relationship or privity with an issuer if he, in fact, engaged in steps necessary to such a distribution. Securities and Exchange Commission v. Culpepper, 270 F. 2d 241, 246 (C.A. 2, 1959); Securities Act Release No. 4445 (February 2, 1962).

14/ In addition, the opinion of the Court in S.E.C. v. Computronic, supra, found that at the time of registrant's purchases of Computronic stock from Wiggs, the latter was Chairman of the Board of Directors of Computronic.

the restrictions of the Rule upon registrant's open market purchases in order to prevent manipulative practices.[15/]

Registrant admits it failed to advise the persons to whom it sold the stock of Computronic, UAO and CAR that the stock was unregistered and that it was engaged in bidding and purchases prohibited by Rule 10b-6. Under Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, it is unlawful for any person to make any untrue statement of a material fact or to omit to state a material fact. It needs no extended discussion to establish that lack of registration of these securities constituted a material fact. Moreover, the Commission has held that engaging in bidding and purchases prohibited by Rule 10b-6 constitutes a material fact that should have been disclosed.[16/]

Public Interest

Registrant contends that it is not necessary or appropriate in the public interest or for the protection of investors to suspend its registration pending final determination of the issues herein. Registrant urges that it believed the Computronic securities it purchased were legally resaleable; that it believed that the CAR shares purchased from Cash were exempt from registration under Rule 154 and that the shares

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15/ J. H. Goddard & Co., Inc., 41 S.E.C. 964, 968 (1964); Gob Shops of America, Inc., 39 S.E.C. 92, 103 n.25 (1959); Bruns, Nordeman & Company, 40 S.E.C. 652, 660 (1961).

16/ Lums Inc., Securities Act Release No. 5850 (December 21, 1960) p.8.

of UAO purchased from Scott, Mjaaland and Blakeway were approved for transfer by the Company's transfer agent, an employee of the company; that it was unaware that it was participating in distributions under Rule 10b-6; that it had no knowledge that the securities of Computronic, UAO and CAB were not exempt from registration; that its misconduct was neither knowing nor willful; that the vast majority of the unregistered shares were sold only to broker-dealers who were supposedly sophisticated and well informed and that it voluntarily contacted the Commission and advised it of its sales of the stock it had purchased from Computronic.

Manney knew or should have known that the offering by Computronic was an intra-state offering and that the shares registrant purchased from the issuer could not be sold outside Texas. The offering was sufficiently clear and required no further elucidiation. As to the CAR transaction with Cash, it is manifest that the latter's statement to Manney that the stock was exempt under Rule 154 does not absolve registrant. Moreover, it was not sufficient for registrant to merely accept the self-serving statements of UAO or Computronic as to the transferability of their securities "without reasonably exploring the possibility of contrary facts."[17-18/] Further, registrant's conduct in respect of the Scott, Blakeway and Mjaaland transactions in UAO stock fell far short of the "searching inquiry" a dealer would be expected to make under

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17-18/ Securities Act Release No. 4445, supra, at p. 2. This document was sent to registrant by the Commission's Fort Worth Regional Office with a covering letter dated October 31, 1963.

such circumstances.[19] The fact that Manney telephoned the Commission's Fort Worth office regarding the Computronic offering was, obviously, a matter involving a business problem Computronic created for registrant by its refusal to sell to registrant stock without a legend on it rather than the altruistic act implied in registrant's brief.

In addition to Manney's contradictory testimony regarding his inquiries of Scott, Blakeway, Mjaaland as to their relationship to UAO and the source of their stock which registrant purchased and resold, Manney's testimony as to whether or when, if ever, he read the securities laws presents a mass of conflicting statements. Indeed, it is plain that Manney's testimony in this respect varied as he deemed the occasion to require and his responses were those he thought most propitious without regard to the truth. And apart from the question of credibility, Manney's testimony demonstrates grave misconduct. To have been aware of the securities laws and ignored them in the situations presented here would constitute deliberate fraud. To have been unaware of them would constitute a severely reprehensible breach of his responsibility to his customers.

In A. G. Bellin Securities Corp.[20] the Commission defined the

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19/ "When a dealer is offered a substantial block of a little-known security, either by persons who appear reluctant to disclose exactly where the securities came from, or where the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for." Securities Act Release No. 4445, supra, at p. 2.

20/ 39 S.E.C. 178, 185 (1959).

standards applicable to suspension:

> "The suspension provision in Section 15(b) of the Exchange Act indicates recognition by the Congress that where it is preliminary shown that a registered broker-dealer has engaged in serious misconduct, proper protection of investors and the securities markets requires that the statutory permission to engage in interstate securities transactions with others which is conferred by his registration be withdrawn pending further hearings on the revocation issue. Under that provision, we are only directed to inquire into the question of whether the public interest or the protection of investors warrants suspension, and there is no requirement that suspension be based upon findings of willful violations or the other grounds specified with respect to revocation. The pattern of Section 15(b) thus shows that in balancing the interests of the registrant on the one hand and of investors on the other, Congress viewed the interest of investors in being protected from such a broker or dealer as outweighing his interest in continuing to have full access to investors. Nor is it necessary, as urged by registrant, that the record show imminent danger to the public interest in connection with the particular securities involved. In our opinion we are required in the public interest or for the protection of investors to suspend registration where the record before us on the suspension issue contains a sufficient showing of misconduct to indicate the likelihood that after hearings on the revocation issue registrant will be found to have committed willful violations or any of the other grounds prescribed with respect to revocation in Section 15(b) will be established, and that revocation will be required in the public interest." 21/

The main thrust of registrant's defense lies in the substance of its plea, in the public interest, that Manney did not know the law; that during the many years it and Manney had been engaged in the securities business, no prior disciplinary action has ever been taken against either of them other than the permanent injunction referred to above which arose out of facts which are the subject matter of this proceeding and that

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21/ See also Peerless-New York, Incorporated, 39 S.E.C. 712, 715 (1962); Biltmore Securities Corp., 40 S.E.C. 273, 277 (1960).

registrant has introduced new office procedures designed to prevent "any unknowing violation of Section 5 of the Securities Act of 1933," in the form of written information and questionnaires to be furnished and signed by all individuals selling securities to registrant.

Undoubtedly, registrant's misconduct, as set forth above, is serious. In addition, registrant's cause is not aided by the evasiveness and lack of candor demonstrated by Manney's testimony. Moreover, it is eminently clear that Manney's new office procedures were stimulated by the institution of these proceedings rather than by Manney's desire to conform his activities to existing law and regulation. The questions directed to Manney during his examination on February 24, 1969, regarding his stock transactions with Scott, Blakeway and Mjaaland, the circumstances under which that stock would have become transferable, whether he thought he had a duty to inquire, together with the flat statement by counsel for the Division who was questioning Manney that "I do not believe you when you state that you did not know this stock was coming from the company * * *" certainly should have been enough to put Manney on notice that his procedures were woefully inadequate, if he was not already aware of it. Obviously, despite such notice, he took no steps to correct that situation until he had retained counsel to defend this proceeding two weeks before the hearing which was held on August 14, 1969. Counsel then prepared the information and questionnaire forms which, at the time of the hearing, had not yet been put to use.

This record presents a striking example of either Manney's utter ignorance or total disregard of his duties and responsibilities. The

fact that he was engaged in the securities business for over 40 years aggravates rather than reduces the gravity of his misconduct if it resulted from ignorance. If deliberate, it constitutes a flagrant breach of his responsibility for fair dealing. Further, Manney has demonstrated a complete lack of sincerity in his testimony and an unconscionable disinterest in adopting procedures and guidelines which would enable him to adhere to the rules and regulations governing his profession.

It is unnecessary to make ultimate findings respecting the willful violations charged in the order for proceedings at this time. It is concluded, however, that the present record establishes a sufficient showing of misconduct to indicate the likelihood of revocation of registrant's registration after the hearings on the revocation issue, the standard held by the Commission in A. G. Bellin Securities Corp., supra, to require suspension of a registrant's registration. In reaching this result the Hearing Examiner has taken into consideration the fact that registrant is a "one man shop" managed and operated by Manney.[22/]

This conclusion is not to be construed as a determination whether registration should be revoked; that issue is not now before the Hearing Examiner.[23/]

22/ Registrant has no employees other than Manney and his wife who is in charge of the back office.

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

Accordingly, IT IS ORDERED that the registration as a broker and dealer of Manney & Company, Inc. be, and it hereby is, suspended pending final determination of whether such registration should be revoked.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice as modified by Rule 19.

Pursuant to Rule 19(c) of the Commission's Rules of Practice a party may file a petition for Commission's review within three days after receipt of the initial decision. Pursuant to Rule 17(f) this initial decision shall become the final decision of the Commission as to each party unless he files a petition to review pursuant to Rule 19(c). If a party timely files a petition to review, this initial decision shall not become final as to that party.

Sidney Gross
Hearing Examiner

Washington, D. C.
September 2, 1969