UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matters of	:
CHRISTOPHER & CO., INC. (8-9380)	:
JOSEPH CANNISTRACI	:
PETER LOBKOWICZ, a/k/a LEBLOVIC	
ALFRED MILLER	:
THEODORE SOTELL	
WILLIAM V. SIMONE	:
IRVING SHERER	
BERNARD FREIMARK	:
SALVATORE J. AMBROSINO	
THOMAS SOURAN	:

INITIAL DECISION

Washington, D. C.
January 4, 1966

Irving Schiller
Hearing Examiner

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BEFORE: Irving Schiller, Hearing Examiner

APPEARANCES: Joseph C. Daley, Joel Leifer, Roberta Karmel and Gerald H. Goldsholle, Esqs., for the Division of Trading and Markets.

Samuel Segal, Esq., for Respondent Alfred Miller.

Irwin F. Deutsch and Joel M. Handel, Esqs., for Respondent Theodore Sotell.

James V. Hallisey, Esq., for Respondent Bernard Freimark.

Windels, Merritt & Ingraham, Esqs., for Respondent Thomas C. Souran.

Thomas J. Mazza for Respondent Peter Lobkowicz a/k/a Leblovic.

William V. Simone, pro se.

Irving Sherer, pro se.

This is the third of the consolidated proceedings[1/] instituted by the Commission pursuant to Section 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act) to determine whether Christopher & Co., Inc. (registrant), Joseph Cannistraci (Cannistraci), Peter Lobkowicz, a/k/a Leblovic (Lobkowicz), Alfred Miller (Miller), Theodore Sotell (Sotell), William V. Simone (Simone), Irving Sherer (Sherer), Bernard Freimark (Freimark), Salvatore J. Ambrosino (Ambrosino) and Thomas Souran (Souran), singly and in concert, willfully violated and aided and abetted in willful violation of Section 17(a) of the Securities Act of 1933 (Securities Act) and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder; whether registrant aided and abetted by Souran, Sotell and Simone willfully violated Section 15(b) of the Exchange Act and Rule 15b-1 thereunder and whether registrant aided and abetted by Souran, Cannistraci, Lobkowicz, Miller, Sotell and Simone willfully violated Section 15(b) of the Exchange Act and Rule 15b-2[2/]; whether registrant aided and abetted by Harvey Fenichel

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1/ Consolidated proceedings were simultaneously ordered by the Commission in the instant case, and in the matters of Harris Clare & Co., Inc. et al (File No. 8-10474) and in J. E. Marken & Co., Inc. (File No. 8-10657) as to common questions of law and fact. An initial decision was filed by the hearing examiner in the Clare case on October 15, 1965 and in the Marken case on November 15, 1965.

2/ Rules 15b-1 and 15b-2 have been renumbered to Rule 15b-1-1 and Rule 15b3-1, respectively. (See Release 7700 under the Exchange Act, September 10, 1965. Since the order for proceeding refers to Rules 15b-1 and 15b-2 such numerical references will be used throughout this decision.

(Fenichel) and Simone willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder and whether any remedial action is appropriate in the public interest pursuant to Sections 15(b) and 15A of the Exchange Act.[3/]

The order for proceedings alleges in substance that during the period April through October 1963 registrant, Cannistraci, Lobkowicz, Miller, Sotell, Simone, Sherer, Freimark and Ambrosino, singly and in concert, willfully violated and aided and abetted registrant's willful violation of Sections 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act[4/] and the

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3/ Section 15(b) of the Exchange Act as applicable here, provides that the Commission shall censure, suspend for a period not exceeding 12 months or revoke the registration of a broker-dealer if it finds that it is in the public interest and that such broker or dealer or any person associated with such broker-dealer has willfully violated any provisions of that Act or of the Securities Act of 1933 or any rule thereunder.

Section 15A(1)(2) of the Exchange Act provides for suspension for a maximum of 12 months or the expulsion from a registered securities association of any member, or for suspension for a maximum period of 12 months or barring any person from being associated with a member thereof if the Commission finds that such member or person has violated any provision of the Exchange Act or rule or regulation thereunder or has willfully violated any provision of the Securities Act of 1933, as amended, or any rule or regulation thereunder.

4/ 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 and sale of any security by means of a device to defraud, an untrue and misleading statement of a material fact, or any act, practice, or course of business which operates or would operate as a fraud or deceit upon a customer or by means of any other manipulative or fraudulent device.

respective rules thereunder, in the offer and sale of the common stock of Alaska International Corporation (Alaska). The order further alleges that registrant aided and abetted by Souran, Sotell, Simone, Cannistraci and Miller willfully violated Section 15(b) of the Exchange Act and Rules 15b-1 and 15b-2 thereunder in failing to set forth accurately the beneficial ownership of registrant's securities and failing to promptly file amendments to its registration application as a broker-dealer to report certain changes in registrant's management and ownership of its equity securities. The order also alleges that during the period December 1963 to approximately January 10, 1964 registrant willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder in that it engaged in business when its aggregate indebtedness exceeded 2000 per cent of its net capital as computed under the Rule and that Fenichel and Simone aided and abetted in such violation.

After appropriate notice, hearings were held before the undersigned hearing examiner. Proposed findings of fact and conclusions of law and briefs in support thereof were filed by the Division of Trading and Markets and by respondents Miller, Sotell, Freimark and Souran. Sherer, who appeared pro se, submitted a statement in writing on his own behalf which, though not in the form of proposed findings and conclusions, will nevertheless be

considered as such by the hearing examiner.[5/]

The following findings and conclusions are based on the record, the documents and exhibits therein and the hearing examiner's observation of the various witnesses.

Fraudulent Sale of Alaska Stock

The record shows that commencing April 1963 and for a period of approximately six months thereafter respondents Miller, Sotell, Simone, Sherer and Freimark engaged in a campaign to sell the common stock of Alaska by means of untrue statements of material facts and omission to state material facts and engaged in acts, practices and a course of business which operated as a fraud and deceit upon purchasers and prospective purchasers of the said securities in willful violation of the anti-fraud provisions of the

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5/ Registrant and Cannistraci failed to file answers and failed to appear at the hearings held herein. On July 27, 1965 the Commission rendered its Findings, Opinion and Order noting that the foregoing respondents were deemed in default under Rule 17 CFR 201.6(e) and 7(e) and on the basis of the allegations in the order for proceedings relating to said two respondents, entered an order revoking registrant's registration as a broker and dealer and barring Cannistraci from being associated with a broker and dealer. Securities and Exchange Act Release No. 7659.

Ambrosino died prior to the commencement of the instant hearings.

Though Lobkowicz and Simone appeared at the hearing they failed to file proposed findings and conclusions.

Securities Act and the Exchange Act.[6/] An examination of Alaska's financial condition and the results of its operations immediately prior to and during the period each of the aforesaid respondents sold that company's stock will not only demonstrate the falsity of the representations made by them but will additionally illuminate the complete absence of any reasonable basis for the representations and predictions made.

Alaska was incorporated in 1957. It was a diversified holding company engaged in the exploration and development of mineral and mining properties and owned or had an interest in developed and undeveloped real estate. By the latter part of 1960 Alaska was in a very weak financial position and unable to meet its obligations. On or about April 1, 1961 control of the company was sold to a group which, in light of the dire need for cash, loaned Alaska some money and the company embarked on a program of acquiring leases and other property by issuing its own 3-cent par value common stock which it arbitrarily valued at $1 per share. As at July 31, 1961 Alaska had

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6/ The anti-fraud provisions referred to are Sections 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules thereunder. (See Footnote 4.)

issued and outstanding 6,234,058 shares of its common stock and by July 31, 1962 there were 8,806,288 such shares outstanding.

It is clear from the evidence that from at least 1959 Alaska had no operating profits but sustained losses. For the fiscal year ended July 31, 1960 Alaska had a total income of $10,702 and a loss of $273,797. As at the same period it had an accumulated loss of $1,781,522. For the fiscal year ended July 31, 1961 Alaska's total income amounted to $32,459 (income from the sale of oil and gas amounted to $20,079 and a refund of prior charges amounted to $12,380) and its expenses amounted to $1,013,855. Included in these expenses was a write-off of the cost of exploration and development on expired leases amounting to $107,133, the cost of expired mineral leases and permits amounting to $760,788 and the cost of operations on abandoned leases amounting to $14,748. The total loss for the fiscal year ended July 31, 1961 amounted to $981,395. As at the same period Alaska's total accumulated loss amounted to $2,762,917.

Alaska's operations during the following fiscal year continued their unfavorable trend and neither the existing projects nor the properties acquired during the said year resulted in any operating profit. 7/ In fact, Alaska's accumulated loss substantially

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7/ Alaska's chief executive officer responsible for the company's operations for the period August 1, 1961 through July 31, 1962 testified that the company set up its operations as projects, all of which incurred expenses far exceeding any income which any project may have had and each of which resulted in an operating loss. Many of the leases were dropped as commercially unfeasible or abandoned as worthless. Alaska's "prime project" was the R-Gold Project located outside Phoenix, Arizona. During 1961 and early 1962 Alaska conducted a pilot gold mining operation. In the fall of 1962 Alaska learned its properties had been "salted." No (Cont'd next page.)

increased. For the fiscal year ended July 31, 1962 Alaska's gross income amounted to $3,427 and its expenses amounted to $239,065. Expenses included a write-off of the abandoned mineral leases amounting

gold had ever been produced commercially. Alaska's loss on this operation was approximately $60,000. Its next largest project was called the Beryllium Project. The ore mined in this beryllium operation failed to meet the requirements of Alaska's purchaser. Moreover, Alaska needed milling facilities which it was unable to obtain and it was unable to erect its own facilities since it lacked adequate financial means. At any rate it is clear that after May 1962 there was no possibility of commercial production of beryllium by Alaska and the project was dropped with a $25,000 loss. The third largest project related to an oil and gas concession in Queensland, Australia in which Alaska owned a 10% stock interest. Alaska had no money to meet its requirements or pay rentals. No drilling was ever conducted on this project, no oil was ever discovered and no income ever received from operations.

Similarly, other projects either had no income or very little income and all of them necessitated expenditures for development or other operations and each of them resulted in losses by Alaska for the year ended July 31, 1962. Alaska's books reflect that the following projects, which constituted its major operations, were either abandoned or determined to be worthless and written off as losses.

Name of Project	Loss
Big Bug Placer - No commercial operation - abandoned	$ 36,641
Frenchman's Gulch - Investment abandoned as worthless	21,529
Plaza Hospital Center and Heritage Home - Research and exploration on both properties which were abandoned	2,666
Equitable Development - Management determined that its investment was worthless	90,342
Centennial Beryllium - Project abandoned December 1961	91,982
Cinco Petroleum Write-off of investment	134,156
National Growth Corporation	
Loss on investment -	159,259
Loss in value of securities -	191,109
Two oil and gas leases in Alaska and research of oil property in Ohio -	18,446
Banner Oil Corp. - Determined by management to be worthless	7,000
Partridge Canadian, Ltd. - Determination by management that stock was worthless	26,291

to $88,500, the cost of exploration and development on abandoned leases amounting to $67,713 and the cost of expired oil and gas leases of $71,100. The total loss for the fiscal year ended July 31, 1962 amounted to $418,489. In addition, Alaska sustained long-term capital losses amounting to $202,714 and short-term capital losses amounting to $6,899. As at July 31, 1962 Alaska's accumulated loss amounted to $3,131,291.

Alaska's then president testified that in 1962 it issued 500,000 shares of its stock to acquire assets of the Silvair Luscombe airplane plant in Ft. Collins, Colorado. Alaska's secretary-treasurer testified that what Alaska actually received was a large stock of airplane parts and two prototype aircraft, one of which was a plastic mock-up and the other lacked landing gears, doors and an engine. Apparently all it had was a fuselage with wings. In early 1963 Alaska reversed the transaction when the Securities and Exchange Commission raised questions concerning the amount of stock being issued for its properties. During the period Alaska operated the airplane plant its expenses exceeded its income.

Alaska's secretary-treasurer further testified that for the period August 1, 1962 to October 1963 Alaska's expenses continued to exceed its income. The record establishes that at July 31, 1963 Alaska's monthly expenditures, including funds set aside for the payment of promissory notes, totalled over $5,500, that projected regular monthly receipts amounted to $2,700, resulting in a monthly deficit of $2,800. It further appears that as at the same date Alaska could not afford to continue carrying its main office overhead and the

company's management made efforts to close such office and move its operations in the hope of reducing its heavy expenses. He further testified that for the period ended July 31, 1963 Alaska's bookkeeping records were incomplete, that it had been unable to pay its accountants and that Alaska did not have sufficient funds to pay his salary for the entire period from August 1, 1962 to July 31, 1963.

Notwithstanding mounting losses prior to April 1963 when registrant's salesmen first started offering Alaska stock and continuing throughout the period such offers were being made, each of the salesmen named above represented that the price of Alaska stock would increase and made other unwarrented representations relating to the company's business, its mergers or imminent mergers and its future prospects. Simone represented to one customer that Alaska's stock would increase to $1 or $2 a share in a few months, that Alaska had earnings and that there would be mergers. To a second customer Simone represented that Alaska had been selling at $3 a share and looked like it would come back to that price, that Alaska was very prosperous and that it was drilling for oil in Alaska. Nothing was said to the investor about the risks involved in the purchase nor was any mention made of any losses suffered by Alaska in 1961 or 1962. Simone represented to a third customer that Alaska would double or triple in two or three months, that it was going up and up, and that Alaska had something to do with minerals. Nothing was said of Alaska's losses in 1961 and 1962.

Sherer told one customer that Alaska was going up to 45¢ or

or 50¢ a share, that he could make money on the stock and that Alaska had previously had a substantial increase in price. No mention was made that the company suffered losses in 1961 and 1962. Sherer made no effort to determine the investor's aims or objectives and apparently was satisfied that the investor wanted to make a quick few dollars. To a second customer, to whom he sold on four different occasions, Sherer represented that the stock might go up to $1 within a six-month period, that there were going to be some mergers in Alaska, that registrant was a heavy buyer in the stock and Sherer would inform the investor when registrant would be doing the heavy buying so that the investor would know that it was the right time to buy and that he could not lose any money on the transaction. Nothing was told to the investor about Alaska's prior losses nor of the risks involved in the purchase of the said stock. To a third customer, Sherer represented that Alaska would increase to 60¢ or 70¢ a share in a few weeks, and that mergers were due. Nothing was said of Alaska's prior losses nor of the risk involved in such purchase. Sherer made no effort to ascertain the customer's investment aims or objectives. To a fourth customer Sherer represented that the price of Alaska had dropped but that it would go up to 50¢ or 60¢ a share, that registrant was helping to push the price up, that registrant was maintaining the level of the market in Alaska at 34¢ a share, suggested that Alaska should be purchased as quickly as possible since the price of the stock was expected to rise quickly and that Alaska was merging

or taking over some other companies in mining or oil or "some industry like that." Nothing was said about the risks involved, no effort was made to determine the investor's financial situation or his investment objectives and nothing was said of Alaska's losses. Sherer knew nothing of the investor's investment objectives.

Sotell represented to one customer that he saw a gain coming in Alaska stock, that he expected that the stock would go up to between 50¢ and 80¢ a share and that when it went up a few points he would sell it for the customer. Sotell represented to such customer that Alaska was not doing anything at the time, that it was about to be taken over by new management and that the company would be mining graphite. Nothing was said of Alaska's losses during the years 1961 and 1962 nor that such losses were continuing at the time the stock was being offered to such customer. Sotell made three or four phone calls to a second customer stating the first time that the stock was selling at approximately 32¢ or 33¢ and by the last phone call urged her to buy stating that the stock had already risen to 35¢ a share. Sotell also told her that Alaska had mica deposits, that they had sold 160,000 tons and had received a $10,000 down payment, that Alaska had an oil company in Texas in which it had invested $1,000,000 and that it had the largest stone quarry in the country.[8/] When the investor requested a financial statement Sotell stated that he could not give such a statement

8/ The credibility of this witness' testimony was established by the written notes she made during such telephone conversation.

because there were heavy negotiations going on for the sale of the company's products and he was not permitted to divulge any further information. Nothing was said about possible risks involved in the purchase of the said stock nor was anything said of Alaska's losses during the years 1961 and 1962 or the continuing losses in 1963. The investor further testified that she put her trust in what Sotell said about Alaska. To a third witness Sotell represented that Alaska would probably move up, that the company had sustained losses the previous year but that negotiations were in progress to merge a graphite company with Alaska, that such merger would increase the company's profit and the stock would probably move up. The following month Sotell again urged the investor to make another purchase of the said stock telling him that the stock had already gone up to 34¢ a share, that the merger was about to be culminated and that the stock was continuing to rise. There is no evidence that Sotell made any effort to determine the customer's financial condition or his investment objectives. To a fourth witness Sotell represented that the stock would go up in the near future and three weeks later sold the same customer additional shares representing that the stock was down a little but that it would go up when certain changes occurred. Sotell told the customer that Alaska had increased its holdings either by merger or acquisition, that the company was operating at a slight loss but due to the changes that were being made this loss would be corrected and that the stock should go up. There is no evidence that Sotell made any effort to determine the investor's financial condition or his invest-

ment objectives. To a fifth witness Sotell represented that by purchasing Alaska there was a chance of making money and that the said stock would go up to $1 or $1.50 by the end of the year. Sotell told this customer that Alaska had a large tract of land in Alaska which was to be developed as a real estate development. Nothing was said to the investor about Alaska's losses in 1961 and 1962 nor were the risks of such investment explained to the customer.

Miller represented to one customer that the stock had already risen and would appreciate further in price, that Alaska was rapidly paying off $1,000,000 in liabilities, that some financial genius had taken over Alaska and was reorganizing it, that Alaska was taking over an oil company, there were some other mergers contemplated and mentioned something about Alaska acquiring graphite properties. Miller also informed the customer that Alaska had real potential, that the company was doing well, that it was coming to the fore, that the stock was rising fairly rapidly, that it had been going up for several weeks and it was expected that it would continue to go up rapidly. Nothing was said of Alaska's losses in 1961 and 1962 or that such losses were continuing. The customer placed reliance on Miller's representations and had faith in his judgment. To a second customer Miller represented that Alaska would increase to $5 or $6 a share and that Alaska had something to do with oil holdings. Nothing was said concerning the risks involved in such purchase nor were any statements made concerning Alaska's losses.

Freimark represented to one customer that the price of the

stock would probably rise fairly quickly in the near future, that Alaska was a mining company and that the reason that the company would improve was because of the discovery of graphite. Nothing was said concerning Alaska's prior or continuing losses. To a second customer Freimark represented that Alaska would go up in price within several months, that the customer would make a profit on the transaction, and that a possible merger between two mining companies would cause the stock to go up eventually. Nothing was said about the risks involved in the purchase of Alaska stock nor was anything said about Alaska's losses in 1961 or 1962. There is no evidence in the record that Freimark inquired about the customer's financial condition or her investment objectives. To a third customer Freimark represented that the customer could more than double her money in three or four weeks and that he would then sell the customer stock at the same time he sold his own holdings. Nothing was said about Alaska's losses during the years 1961 and 1962 nor of the continuing losses during 1963. There is no evidence in the record that Freimark had any information concerning the investor's financial condition or her investment objectives.

The record clearly shows that during the period the above-mentioned salesmen represented to their customers that the price of Alaska stock would increase such statements were wholly without basis particularly in light of the substantial losses sustained by Alaska during the years 1961 and 1962 and continuing during 1963. The

failure by each of these salesmen to inform their customers of the aforementioned losses constituted an omission of a material fact. During the course of the hearings and in their briefs the salesmen argued that they had obtained information regarding Alaska at sales meetings and from literature furnished to them by their superiors. However, an examination of these assertions makes it evident that each of them knew that registrant had embarked on a sales campaign to sell Alaska and willingly joined therein notwithstanding they had no current financial or other reliable information which would furnish any reasonable basis for the representations they made.

The campaign to sell Alaska stock commenced in April 1963. At least two sales meetings were held at which salesmen were urged to put Alaska into the hands of all of their customers. At the first meeting on April 28, 1963 Cannistraci told all of registrant's salesmen that Alaska would merge with Canada Graphite Mines (Canada) which had recently discovered graphite of an extremely high purity and that the merger would increase the value of Alaska stock. During such meeting a document was furnished to each of the salesmen entitled "Research Department - Christopher & Co., Inc. for inter-office only" so that salesmen could pass the information therein to their customers. Miller prepared such statement from information purportedly furnished to him by Cannistraci. The document stated that Alaska was presently carrying on negotiations to add new industries to Alaska and stated, among other things, that

negotiations were presently taking place by Alaska to acquire control of National Growth, that Luscomb Aircraft had two prototype aircraft being used for experimentation, that Alaska owns the largest granite quarries west of the Mississippi, that negotiations are in the advance states with a Texas oil company whose assets were valued at $1,000,000 and that negotiations were taking place to acquire a Canadian company having extensive graphite deposits. The document also stated that registrant's president had visited Alaska and discussed the company's present assets and plans for future growth and concluded with registrant's recommendation that Alaska was a low-priced speculation.

Both the oral and written statements were either utterly false or completely misleading and wholly unsupported by known or early ascertainable facts. Alaska's president testified that Miller and Cannistraci in fact came to Alaska's offices in the latter part of April 1963, made an offer to acquire control of Alaska for a nominal amount of cash and stock of Canada, which proposal was considered by the Board of Directors of Alaska over a week-end and summarily rejected as unfeasible, that he immediately communicated such rejection to Cannistraci, that Alaska never owned stock in or otherwise considered merging with a graphite company, it never owned the largest granite quarry west of the Mississippi, that the operations of the quarry it owned culminated in losses, that Alaska never negotiated to acquire control of National Growth, that Luscomb

never had two prototype aircraft being used for experimentation purposes and that it never had a million dollars invested in a Texas oil company. Of utmost significance is Alaska's president's testimony, which is unchallenged and credited by the hearing examiner, that during this visit Alaska's books and records, including tax returns, were made available to Cannistraci and Miller who were urged to study them so they would know of Alaska's financial condition. There is no evidence that such offer was accepted or that either of them ever made any effort to examine any books, records nor acquire any information concerning the financial condition of Alaska or in fact of any of its unsuccessful operations.

In June or July of 1963 registrant had a second sales meeting in which all of its salesmen including those mentioned above were again urged to recommend Alaska to their customers. At this meeting a representative of Canada brought samples of graphite which were displayed to the salesmen. Cannistraci, notwithstanding he had been told Alaska had rejected his offer to acquire Canada, informed the salesmen that a merger was imminent between Alaska and Canada, that merger negotiations were also taking place with National Growth and that possibly all three companies would be merged. At neither of the two sales meetings was any current financial information made available concerning Alaska. There is no evidence that Sotell, Miller, Simone, Freimark or Sherer either had or made any effort independently to acquire any current financial or other information

regarding Alaska. They were obviously all carried away by the enthusiasm engendered at both of these sales meetings and each of them willingly joined in the campaign to sell Alaska and as the record shows made strikingly similar types of misleading representations relating to imminent but nonexisting mergers and unwarranted price increases. Each of the salesmen were obviously influenced by the fact that Alaska was a low-priced stock, impressed this fact upon their customers representing to them in one form or another that they could realize a gain on their investment.

Other evidence in the record amply demonstrates that each of the above-named salesmen knew or should have known they were engaging in a high-pressure sales campaign and were being furnished with unreliable material both orally and in writing. Several former salesmen of registrant testified that registrant's securities analyst, one John P. Cosgrove, who was in fact the only employee in the so-called "research department," was requested to prepare a report on Alaska and refused to do so because the financial statements available at registrant's office were uncertified, were more than a year and a half old, showed that Alaska had few assets and was almost a bankrupt company and because the other material furnished was wholly insufficient for purposes of preparing a report. The record shows it was common knowledge among the salesmen that Cosgrove had refused to prepare a report on Alaska. Sherer and Sotell admitted they were aware that Cosgrove had refused to prepare the so-called research

report on Alaska and Miller testified that at the time he prepared the report he was aware of the fact that Cosgrove had refused to do so. When several of the salesmen inquired of Cosgrove as to his opinion concerning Alaska he informed them that he did not believe it was a good investment and would not recommend it even as a speculation.

The Commission has consistently stated and the Courts have held that unfounded predictions as to future price levels or price increases unsupported by any reasonable basis of fact are a "hallmark of fraud." Mac Robbins & Co., Inc., Exchange Act Release No. 6846, July 11, 1962, p. 15, affirmed sub nom Berko v. Securities and Exchange Commission, 316 F. 2d 137 (C.A. 2, 1963); Alexander Reid & Co., Inc., 40 S.E.C. 986 (February 8, 1962). Sotell, Miller, Freimark and Sherer urged that the investor witnesses who testified were not defrauded or mislead since they knew or were told by the salesmen that their investment in Alaska was a speculation. Such argument is without merit. The element of speculation is inherent in stock investments but the investor is entitled to have the opportunity to evaluate the risk of loss, as against the hope of lucrative return, from true statements of the financial status of the corporate enterprise in which he is acquiring an interest.[9/] Moreover, the Commission has held that the fact that customers may have been seeking

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9/ S.E.C. v. F. S. John & Co., 207 Fed Supp 566 (1962).

speculative securities does not detract from the fraudulent nature of the representations made to them. 10/

The aforementioned four salesmen additionally urge that they acted on information furnished to them by their superiors and Sotell further argues that from the information furnished to him there was no basis for concluding that Alaska was not suitable for customers in appropriate circumstances. All such arguments are rejected. We have already noted that salesmen knew that a high-pressure telephone sales operation was in progress. The salesmen sat in one room, each with his own desk and telephone, and could not have been unaware of the representations being made by each other. In fact, Sherer testified that he overheard salesmen saying that Alaska would go up to $1 a share.

The above-named salesmen, in the sale of a speculative security such as Alaska by means of a high-pressure sales campaign and the recurring use of the same basic fraudulent representations and predictions, engaged in a scheme to defraud and in transactions and a course of business which would and did operate as a fraud and deceit upon customers. 11/ In the context of such boiler room

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10/ Wright, Myers & Bessell, Inc., Securities Exchange Act Release No. 7415, p. 4 (September 8, 1964).

11/ See Kaufman v. U.S., 163 F. 2d 404, 407-8 (C.A. 6, 1947), cert denied 333 U.S. 857; Baker v. U.S., 156 F. 2d 386, 391, 392 (C.A.5, 1946), cert. denied 329 U.S. 763; U.S. v. Cohen, 145 F. 2d 82 (C.A. 2, 1944), cert. denied 323 U.S. 799; Oliver v. U.S., 121 F. 2d 245 (C.A. 10, 1941), cert. denied 314 U.S. 66; Jarvis v. U.S., 90 F. 2d 243 (C.A. 1, 1937), cert. denied 302 U.S. 705.

techniques the salesmen had an obligation to deal fairly with customers which required a particularly high degree of inquiry and disclosure 12/ with respect to the information supplied by registrant's management concerning the nature of Alaska's business and its possible mergers. The use of the false material available in the light of Cosgrove's refusal to prepare a report or recommend the stock should have been sufficient to raise a warning signal that further inquiry was required or at least that current financial information was essential. Certainly the highly colored descriptions contained in the literature was no substitute for financial data and other reliable factual information essential to a reasonable evaluation of Alaska's future prospects. It is evident that the representations by each of the salesmen as to a price increase were calculated to deceive prospective investors into believing their investment would be profitable. The hearing examiner finds that such conduct constitutes a reckless indifference as to whether such representations are true or false and each of the salesmen is chargeable as if he had knowledge of the falsity. Irvin v. United States, 338 F. 2d 770 (C.A. 9, 1964). The hearing examiner concludes that Miller, Sotell, Simone, Sherer and Freimark willfully violated and aided and abetted registrant in willfully violating Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5

12/ B. Fennekohl & Co., Securities Exchange Act Release No. 6898 (September 18, 1962).

and 15c1-2 thereunder. 13/

Findings as to Lobkowicz

There is no evidence in the record that Lobkowicz sold Alaska stock to customers or directly made any of the representations referred to above. Lobkowicz' violation of the anti-fraud provisions of the Securities Act is predicated on the theory that he had responsibility for the management of registrant and the conduct of its salesmen. The record shows that when Cannistraci acquired control of registrant in April 1963 he and Cannistraci each owned 50% of Hull-Dunbarry Industries, Inc. (Hull-Dunbarry), that in May or June of 1963 registrant's offices were moved to space immediately adjoining offices occupied by Hull-Dunbarry, that Lobkowicz attended the sales meetings at which salesmen were urged to sell Alaska stock and at such meetings was introduced as a partner of Cannistraci, that on a number of occasions Lobkowicz was consulted by registrant's cashier with respect to financing for registrant, particularly with respect to registrant's net capital position, that Lobkowicz was frequently in registrant's office and that he was consulted by registrant's employees either alone or with Cannistraci regarding the conduct of registrant's business. There is evidence that in June of 1963 Lobkowicz, in conference with Sotell, Simone, Miller and others, stated that he would stand behind registrant and would

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13/ The evidence shows that the mails were used in connection with the offer and sale of Alaska stock.

finance and support it financially. On another occasion in June of 1963 when registrant's cashier discovered that certain stock was missing from its safe Lobkowicz, who was then in Denver, informed the cashier by telephone that he would replace such stock. Thus, the evidence establishes and the hearing examiner finds that Lobkowicz was a partner of Cannistraci, who had acquired controlling interest in registrant, took an active part in registrant's business, knew of the campaign to sell Alaska stock, was continually consulted by registrant's salesmen who were looking to him for advice and guidance and advised registrant from time to time concerning financial and other matters relating to its business. Lobkowicz did not testify in the instant proceeding and the facts stated above relating to his participation in the affairs of registrant are uncontroverted. It is well settled that, in a non-criminal case, the failure of party to testify in explanation of suspicious facts and circumstances peculiarly within his knowledge fairly warrants the inference that his testimony, as produced, would have been adverse.[14/] It is evident that Lobkowicz had managerial responsibilities with respect to registrant's operations. In exercising his responsibilities Lobkowicz though aware of registrant's sales campaign failed to supervise the salesmen in a manner to prevent their fraudulent unwarranted representations which he knew or should have known were completely without foundation. Registrant employed boiler room techniques in

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14/ N. Sims Organ & Co., Inc. v. S.E.C., 293 F. 2d 78, 80-81 (C.A. 3, 1961) Cert. denied 82 S Ct. 440.

the sale of Alaska stock. Lobkowicz became a knowing participant in such operation and a willful violator of the aforementioned anti-fraud provisions of the Securities Acts.[15/] We have previously noted that each of the salesmen who sold Alaska stock engaged in a scheme to defraud. The Courts have held where proof of a scheme has been established one who aids and abets is as responsible as if he committed the act directly.[16/] Accordingly, the hearing examiner finds that Lobkowicz willfully violated and aided and abetted registrant in willfully violating 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 thereunder.

Violations of Section 15(b)

The order for proceedings alleges that registrant, aided and abetted by Souran, Sotell and Simone, willfully violated Section 15(b) of the Exchange Act and Rule 15b-1 thereunder in that the application filed on March 12, 1961 by registrant for registration as a broker-dealer incorrectly stated the percentage ownership of its securities and failed to reflect that, at the time of such filing, George Bergleitner (Bergleitner) was the beneficial owner of 10% or more of the equity securities of registrant. The order further alleges additional willful violation by registrant, aided and abetted by certain named individuals, in failing to cause registrant to promptly file amendments to its registration application,

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15/ Haydon Securities, Inc., 40 S.E.C. 551, 555 (1961).

16/ Nye & Nissen v. U. S., 168 F. 2d 846, 852 (9th Cir. 1948); See also Blumenthal v. U. S., 332 U.S. 539 (1947).

to report changes in the ownership of 10% or more of its equity securities and the persons directly and indirectly in control of its business.

The record shows that shortly prior to March 9, 1961 Souran, Sotell, Simone, Bergleitner and Merton Carusos (Carusos) discussed the formation of registrant. After two or three meetings all of them agreed that they would form registrant and would have equal ownership in the stock of registrant except that Souran was to be issued an additional 10 shares of stock. The broker-dealer registration application which was filed with the Commission stated that Souran, Carusos, Sotell and Simone each owned 25% of the outstanding common stock of the registrant. There is no dispute and the hearing examiner finds that the original filing incorrectly set forth the percentage ownership of registrant's stock at least to the extent that Souran acquired 10 shares more than any of the other named individuals. With respect to Bergleitner's interest in registrant Souran contends that arrangements with him were not finalized until some time after the registrant was organized. The record discloses that the registrant's application was dated March 9, 1961 and was filed with the Commission on March 13, 1961. The record further discloses that on March 15 or two days after the application for registration was filed registrant issued the following shares: 30 shares to Souran, 20 shares to Carusos, Sotell and Simone, 10 shares to Bergleitner and 5 shares to Howard Spedick (Spedick). Accepting Souran's version that Bergleitner's interest in registrant was not

fixed until after the registration application was filed there is no adequate explanation for not filing an appropriate amendment immediately thereafter to correctly set forth Bergleitner's interest in registrant. Accordingly, the hearing examiner finds that the registration application filed by registrant on March 13, 1961 failed to accurately reflect the percentage ownership of the stock of registrant and that from at least March 15, 1961 registrant failed to file an appropriate amendment to reflect Bergleitner's interest in registrant.

The record shows and none of the named respondents controvert that thereafter, and up to approximately April 2, 1963, the following changes occurred in registrant's offices and directors and beneficial ownership of its securities and no amendments were filed to reflect such changes:

On February 14, 1962 an additional 10 shares of registrant's stock was issued to Bergleitner.

On March 6, 1962, 38 shares of registrant's stock were issued to Norman Lev (Lev).

On March 14, 1962 Simone resigned as director and Carusos resigned as executive vice president and director. On the same date Lev became a member of registrant's Board of Directors.

On March 15, 1962 Lev was elected executive vice president and Carusos was elected vice president.

On September 6, 1962, 20 shares of registrant's stock were issued to Miller who was elected vice president. On the same date Lev resigned as director and executive vice president.

On November 5, 1962 Carusos resigned as vice president of registrant and Spedick was elected a director.

On February 15, 1963 Joseph Giaimo (Giaimo) acquired 44 shares of registrant and became vice president.

Souran was president and director and principal executive officer and a controlling stockholder of the registrant from its inception until April 2, 1963. As such, it was his prime responsibility to see that accurate information was reflected in the broker-dealer application that was filed and that appropriate amendments were filed thereafter to accurately reflect the changes in management and ownership of the equity securities of registrant. Souran asserts in essence that he was unaware of the fact that amendments were required to be filed to effect such changes until he was in the process of selling his stock in registrant shortly before April 2, 1963 and that he relied on counsel to comply with the requirements under the Securities Acts. Souran admitted that the broker-dealer registration application did not correctly set forth the percentage ownership of each of the principals involved in registrant's business. There appears to be no excuse for such failure. The Commission has held that reliance upon the advice of counsel does not preclude a finding of willfulness within the meaning of Section 15(b) of the Exchange Act and

that such a finding does not require an intention to violate the law.[17] It is sufficient that "the person charged with the duty knows what he is doing."[18] It is clear from the record that Souran knew or should have known that the percentages listed in the broker-dealer application were incorrect and that no subsequent amendments were filed to reflect the accurate percentages of ownership of registrant's securities. Souran also was well aware that no amendments were filed to reflect the changes occurring thereafter and up to April 3, 1963 in registrant's management and ownership of its equity securities. Souran's purported reliance upon advice of counsel is pertinent in determining whether a sanction should be imposed in the public interest and is discussed below. Accordingly, the hearing examiner finds that from March 1961 to April 2, 1963 Souran aided and abetted registrant's willful violation of Rule 15b-2 prescribed under Section 15(b) of the Exchange Act.

The record discloses that on or about April 2, 1963 and thereafter, the following changes took place in registrant's management and ownership of its securities which were not reported by amendment to registrant's broker-dealer registration:

> On or about April 2, 1963 Cannistraci acquired the controlling interest in registrant's equity securities from Souran and Sotell and Hull-

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17/ Peoples Securities Company, 39 S.E.C. 641, 645 (1960)

18/ Hughes v. S.E.C., 174 F. 2d 969, 977 (C.A.D.C. 1949)

Dunbarry acquired Giamo's stock in registrant for a 25% interest in Hull Dunbarry Associates, Inc., a company which was to be formed by Hull-Dunbarry.

Between approximately April 2 and May 27, 1963 Miller was president of registrant.

On May 27, 1963 Miller resigned as president and Sotell accepted the presidency of registrant. Simone and Spedick became vice presidents and the latter became a director of registrant.

In June 1963 Sotell resigned as president and Simone became president of registrant. As at August 23, 1963, Simone had acquired a 20% interest in the equity securities of registrant. As at the same date Michael Boylan (Boylan) was secretary-treasurer and a director and Cannistraci a director of registrant.

Miller urges that he had no duties and responsibilities regarding filing of amendments to the broker-dealer registration application, that he was appointed as president by Cannistraci and Lobkowicz but that he in fact was never in charge of registrant's office or its operation, was not permitted to supervise and whatever duties he performed were at the specific request and direction of Cannistraci. These arguments however are insufficient to exculpate Miller from the responsibility, as president, for compliance with the

requirements of the Exchange Act and the rules thereunder. Miller accepted the title of president and director and thereby assumed responsibility for the proper conduct of registrant's affairs which he cannot escape by pleading ignorance, inexperience or naivete. The principal officer, director and a controlling stockholder of a registered broker-dealer has at least the duty to keep himself informed of registrant's activities and to take those steps necessary to insure compliance with the Exchange Act.[19/] Miller's failure to perform the duties required of a chief officer of a registered broker-dealer or his lack of knowledge of the filing requirements under the Exchange Act constituted such negligence as to amount to willfulness.[20/] Accordingly, the hearing examiner finds that for the period April through May 27, 1963 Miller aided and abetted registrant's willful violation of Rule 15b-2 and Section 15(b) of the Exchange Act.

Sotell urges that the responsibility for filing with the Commission and other details of corporate housekeeping were assumed by Cannistraci in April of 1963 and continued during the period Sotell was president of registrant. He also urges that he had no substantive functions or responsibilities as president, that he never was invited to attend meetings of the Board of Directors and that the day following his purported assumption of the title of president he sought to decline the office but admittedly did not submit

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19/ Aldrich, Scott & Co., Inc., 40 S.E.C. 775, 778 (1961).

20/ Sterling Securities Company, 39 S.E.C. 487, 495 (1959)

his resignation until the following month. The duties and responsibilities of a person who assumes the presidency of a broker-dealer have been set forth above and are equally applicable to Sotell. Sotell's protestations of innocence are insufficient to relieve him of the responsibilities he assumed and he must bear the consequence of his failure to properly exercise such functions of his office as would assure compliance with the filing requirements of the Exchange Act and the Rules thereunder. Accordingly, the hearing Examiner finds that for the period May 27 to June 1963 Sotell aided and abetted registrant's willful violation of Rule 15b-2 and Section 15(b) of the Exchange Act.

Similarly and on the basis heretofore set forth above Simone, who was president from June 1963 to at least the end of August 1963, should be held responsible for the failure to file appropriate amendments to reflect the changes during his stewardship of registrant. The hearing examiner finds that for the period June through at least August 23, 1963 Simone aided and abetted registrant's willful violation of Rule 15b-2 and Section 15(b) of the Exchange Act.[21/]

Violation of Section 15(c)(3) of the Exchange Act

The order for proceedings alleges that registrant aided and abetted by Fenichel and Simone willfully violated Section 15(c)(3)

21/ In this connection it should be noted that the Commission has already determined that Cannistraci aided and abetted registrant's willful violation of Section 15(b) and Rule 15b-2 thereunder. (See Footnote 5, supra.)

and Rule 15c3-1 thereunder. The record discloses that on January 17, 1964 registrant, Simone and Fenichel consented to the entry of a permanent injunction against them. On the same date the Hon. Dudley B. Bonsal, United States District Judge for the Southern District of New York, signed a final judgment permanently enjoining registrant Simone and Fenichel from making use of the mails or means and instrumentalities of interstate commerce for the purchase or sale of any security at a time when registrant's aggregate indebtedness to all other persons exceeds two thousand (2000) per centum of its net capital, as defined by Rule 17 CFR 240.15c1-1 under the Exchange Act and enjoined Simone and Fenichel from directly and indirectly aiding and abetting registrant in further violations of the above-mentioned net capital Rule. The Court also appointed a receiver for registrant's assets and property.[22/] Accordingly, the hearing examiner finds that during the period December 1963 - January 1964 registrant aided and abetted by Simone willfully violated Section 15(c)(3) of the Exchange Act and Rule 17 CFR 240.15c3-1 thereunder in that it engaged in business when its aggregate indebtedness exceeded 2000 per cent of its net capital as computed under the Rule.[23/]

Other Matters

The Division urges that the direct testimony of respondent

22/ Civil Action File No. 175.

23/ Since Fenichel was not named as a respondent in the instant proceedings nor did the order for proceedings require that he be served therewith no findings are made as to him.

Sotell be stricken from the record. Sotell is charged with aiding and abetting registrant's willful violation of Section 15(b) of the Exchange Act and Rules 15b-1 and 2 thereunder in causing registrant to incorrectly report the beneficial ownership of its securities at the time it filed its broker-dealer registration application and in failing to file appropriate amendments to reflect changes in the management and ownership of registrant's securities. In addition, Sotell is charged with willfully violating the anti-fraud provisions of the Securities Act in connection with his sales of stock of Alaska. Sotell assumed the stand voluntarily in his own defense and testified on direct examination as to matters relating solely to the alleged violation of Section 15 of the Exchange Act and the rules thereunder. Upon cross-examination the Division, after completion of its questioning concerning the aforesaid alleged violation, sought to examine Sotell as to matters relating to his sale of Alaska stock. Sotell refused to answer such questions invoking, among other things, his privilege under the First, Fourth, Fifth and Sixth Amendments of the Constitution of the United States. The hearing examiner sustained Sotell's refusal to answer. The Division thereupon moved to strike Sotell's direct examination from the record on the ground that the Division was thwarted in its cross-examination. The question to be considered is whether the assertion of the privilege against self-incrimination by Sotell during cross-examination so limited the Division's right to cross-examination that his testimony should be stricken. Cross-examination of a witness is a matter of

right (Alford v. United States of America, 282 U. S. 687). Where a witness by invoking the privilege granted him by the Constitution precludes inquiry into the details of his direct testimony there may be substantial danger of prejudice because of the deprivation of the right to test the truth of the direct testimony and such witness' testimony should be stricken in whole or in part (Montgomery v. United States, 5 Cir. 1953, 203 F. 2d 887). However, not every refusal to answer by a witness claiming his Constitutional right against self-incrimination requires the striking of his testimony or a part thereof. (United States v. Cardillo, 316 F. 2d 606, 613 (1963)). The Court in the Cardillo case stated that in determining whether testimony should be stricken consideration must be given as to whether the answers were so closely related to the commission of the crime that the entire testimony should be stricken, whether the testimony was connected solely with one phase of the case in which event a partial striking might suffice or whether what is being sought relates to collateral matters or accumulative testimony concerning creditibility which would not require the striking of the testimony. In the first two categories the decision to strike the testimony depends upon the discretion of the Trial Court exercised in the light of the particular circumstances. Where a privilege has been invoked as to purely collateral matters there is little danger of prejudice and no need to strike the testimony. 24/ In the

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24/ Cf. United States v. Kravitz, 3 Cir. 1960, 281 F. 2d 581; Hamer v. United States, 259 F. 2d 274 F. 2d 274.

instant case it is clear from the record that Sotell testified on direct examination solely with respect to the alleged violation of Section 15(b) of the Exchange Act and the rules thereunder and it is equally clear that the Division fully cross-examined with respect to such matters. When the Division attempted to examine Sotell concerning matters relating to a distinctly different violation the hearing examiner stated that such examination would be permitted since it purportedly related to charges made in the Commission's order for proceedings and that with respect to such matters the Division was making Sotell its own witness. As noted earlier, Sotell thereupon invoked his constitutional privileges. The matters which the Division sought to inquire about were in no way directly or indirectly related to Sotell's direct testimony. The Division's contention that it was thwarted in its cross-examination must therefore be rejected. The situation is no different than if the Division had in the first instance called Sotell to the stand and sought to examine him with respect to the violations of the anti-fraud provisions of the Securities Act. The thrust of the Division's examination relating to the sale of Alaska stock had no relation to the subject matter of the direct examination. The Division was thus not prejudiced by Sotell's assertion of his privilege or thwarted in its cross-examination with respect to the matters testified by him on direct examination. Accordingly, there appears to be no need to strike Sotell's testimony, and the Division's motion is denied.

The Division moved to dismiss the instant proceedings as

against Ambrosino. The record discloses that Ambrosino died on September 20, 1964. No proof was adduced during the course of these proceedings regarding his activities. Accordingly, the Division's motion is granted. The hearing examiner concludes that it is in the public interest to dismiss the instant proceedings as against respondent Ambrosino.

Public Interest

The remaining question is whether public interest requires the imposition of any sanctions. The hearing examiner has previously detailed the false and misleading statements made to customers by Sotell, Miller, Simone, Sherer and Freimark and their failure to disclose essential information known to or reasonably ascertainable by them and has determined they engaged in a course of conduct which amounted to a scheme to defraud and which operated as a fraud and deceit on the public in violation of the anti-fraud provisions of the securities acts. During the period April to October 1963 Sotell sold 39,050 shares of Alaska stock to 55 customers, Miller sold 5,800 of such shares to 7 customers, Sherer sold 7,200 shares to 13 customers, Simone sold 7,450 to 9 customers and Freimark sold 1,550 shares to 9 customers. The investor witnesses who testified were all contacted by telephone and in each instance representations were made that the price of Alaska stock would appreciate. At the time each of these respondents undertook to offer Alaska stock to their customers they had no current financial informa-

tion concerning Alaska nor did they know precisely the nature of Alaska's business or the status of its current operations. Each of them had attended at least one or two sales meetings at which they were informed that Alaska had or was about to merge with another company and that such merger would cause Alaska stock to rise in price. None of them made any greater effort to ascertain the financial condition of the companies with which Alaska purportedly was to be merged nor why such merger, if consummated, would result in an appreciation of Alaska stock than they made to determine Alaska's financial condition. At the sales meeting these respondents were exhorted to place Alaska stock in the hands of their customers in a manner which should have made them aware that they were participating in a fraudulent high-pressure sales campaign to push Alaska stock.[25/] It is clear that prospective investors were never explained the inherent risks involved in the purchase of a speculative stock such as Alaska. Finally, it is evident that none of the foregoing respondents made any effort to determine the investment aims or objectives of their prospective customers or indeed if they had any. The sales techniques used by each of above-mentioned respondents were those commonly employed in a "boiler room" involving a concerted high-pressure

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25/ Cf. United States v. Ross, 321 F. 2d 61 (C.A. 2, July 5, 1963) Cert. denied 375 U.S. 894.

effort by telephone to sell a large volume of a speculative or promotional security without concern for the suitability of such security in the light of the customers' needs and objectives and in disregard of basic standards of fair and honest dealings with customers. 26/

A course of conduct by a salesman who undertakes to offer a speculative security by means of false and misleading statements and fails to disclose reasonably ascertainable adverse material information concerning such security evinces a complete disregard of the customer's best interest and constitutes a violation of the fiduciary obligations to persons who had been induced to place their trust and confidence in such salesmen. By making the kind of unwarranted representations referred to above each of the foregoing respondents implied that adequate financial and other information supported the extravagant claims made. The Commission has frequently emphasized that inherent in the relationship of every broker-dealer with his customer is the implied vital representations that the customer will be dealt with fairly and honestly. 27/ In the instant case the hearing examiner finds the customers were not dealt with fairly.

Consideration is also given by the hearing examiner to the fact that Sotell, Miller and Simone at various times assumed the

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26/ Alexander Reid & Co., 40 S.E.C. 986 (1962).

27/ N. Pinsker & Co., Inc., 40 S.E.C. 285 (1960).

presidency of registrant but were derelict in their duties and remiss in the responsibilities required of a chief executive of a broker-dealer firm. The hearing examiner finds they failed reasonably to supervise the salesmen during the period each of them was president with a view to preventing the type of false and misleading statements that were made to prospective investors and failed to establish procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, violations of the anti-fraud provisions of the Securities Acts.

Sotell urges in defense that there is a proper role in the securities markets for the financing of marginal quality companies and that there is no provision in the Federal securities laws which precludes an investor from purchasing a highly speculative security in the exercise of his judgment. Such argument is rejected. The record clearly demonstrates that the Alaska stock was not sold to customers for purposes of financing that company. Speculative securities may be a medium for investment without running afoul of the Securities Acts if offered under appropriate circumstances in which a salesman appraises such customer's financial situation and his investment objectives, takes into consideration the suitability of such type of investment for a particular customer, and discloses true and pertinent facts concerning the security he is offering together with an explanation of the inherent risks involved in purchasing a highly speculative security. However, the record is barren of proof that Sotell considered any of these factors. Miller denies that he told

his customers Alaska would increase in price. The hearing examiner credits the testimony of the investment witnesses. In believing their testimony the hearing examiner cannot help but note that Miller's representations concerning Alaska's price appreciation bears a striking similarity to the representations testified to by the other investor witnesses whose securities were sold to them by Simone, Scherer, Freimark and Sotell. Miller urges that he had full faith and confidence in Cannistraci and believed everything the latter told him to such an extent that he induced his family to invest $30,000 with Hull-Dunbarry in Alaska and Canada stock. Miller further urges that he was appointed president by Cannistraci and Lobkowicz, which title was a meaningless one, since registrant was being managed and operated by Cannistraci and Lobkowicz whom he characterizes as "cunning, deceitful, conjurers and swindlers par excellence." The hearing examiner has given consideration to these arguments but in his opinion they furnish no justification for the groundless representations made by Miller to his customers that Alaska was doing well, that it was taking over an oil company and that Alaska would increase in price. Nor does Miller's asserted naivete in believing everything Cannistraci told him exculpate his preparation of a false and misleading memorandum concerning Alaska's operations which he knew was to be furnished to salesmen to assist them in their sales of Alaska stock. Miller knew registrant's security analyst refused the preparation of such a memorandum and knew or should have known, as apparently many other salesmen knew, that such refusal was because of a lack of current financial and other information con-

cerning Alaska and that such analyst would not recommend Alaska to salesmen even as a speculation. Miller made no effort himself to determine whether the information he was passing on to the other salesmen was true or accurate or had any basis whatsoever. Assuming arguendo Miller believed Alaska would succeed he had no basis for the extravagant representations he made. The Commission has held that faith in the ultimate success of a business enterprise is not the measure of responsibility under the Federal securities laws and it is inconsistent with the principles of fair dealing and violative of the securities laws for a broker-dealer to induce purchasers of securities by means of representations unsupported by a reasonable factual basis and without disclosure of known or reasonably available information necessary to provide the investor with a fair picture of the securities being offered.[28/] In addition, the Courts have held that honest belief that an enterprise would eventually succeed cannot excuse willful misrepresentation by which investors' funds are obtained. United States v. Painter, 314 F. 2d 939 (C.A. 4, 1963). Under all of the circumstances including Miller's fraudulent activities and the other violations found the imposition of a sanction is required.

Freimark urges that the witnesses who testified against him did not believe that he deliberately made any false statements to them. However, at least one of those witnesses testified that

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28/ D. F. Bernheimer & Co., Inc., Securities Exchange Act Release No. 7000 (January 23, 1963).

she was not told anything of Alaska's prior losses and believed she would have been mislead if she had not obtained all of the facts before she determined whether or not to buy Alaska. Freimark offered no proof that he had any basis for predicting that Alaska stock would appreciate in value. Sherer urges that any information he furnished to his customers was obtained from the Research Department of registrant and he tried never to misinform anyone concerning their purchases of Alaska stock. It is evident from the record, however, that Sherer made no independent effort to determine for himself the facts relating to Alaska and willingly joined in registrant's campaign to sell Alaska and made unwarranted representations to his customer similar to those made by the other respondents in the instant proceeding.

The hearing examiner believes that the investing public should not be exposed to further risk of fraudulent conduct by individuals such as Sotell, Miller, Simone, Sherer and Freimark who have demonstrated gross indifference to basic duty of fair dealing required of securities salesmen. Nor should the investing public be exposed to further risk of fraudulent conduct by Lobkowicz who the hearing examiner found to be a willful violator of the anti-fraud provisions of the securities acts. Under all of the circumstances the hearing examiner concludes that it is in the public interest to bar Sotell, Miller, Simone, Sherer, Freimark and Lobkowicz from being associated with a broker or dealer.

Souran is charged only with failing to file an accurate report of the beneficial owners of registrant's securities and appropriate amendments to reflect changes in management and ownership of registrant's securities. By way of mitigation Souran asserts that

he relied on counsel for the registrant for compliance with the filing requirements. The evidence shows that registrant retained counsel at the time it was organized who in fact prepared and filed the registration application with this Commission.[29/] Shortly after registrant's application as a broker-dealer became effective registrant retained other counsel who maintained the corporate books and records and furnished legal advice to both Souran and registrant. Souran testified that he was unaware of the necessity for filing amendments until March 1962 when Lev acquired stock in registrant, at which time he learned that when a new partner comes in "there has to be forms of some kind filed with SEC," that he spoke to registrant's counsel on a number of occasions who confirmed the necessity for filing and said it would be taken care of "as we go along." Counsel for registrant in a sworn statement filed in these proceedings admits he talked to Souran in March 1962 about the necessity for filing amendments to registrant's broker-dealer application to reflect changes which occurred in the management and ownership of registrant's securities but states he was never furnished with the information necessary for preparation of the appropriate forms. It is thus evident from the record that from at least March of 1962 Souran was aware of the necessity for filing appropriate amendments with this Commission to reflect changes in the management and ownership of

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29/ The record shows the original application was signed on behalf of registrant by Simone as secretary-treasurer.

registrant's securities, consulted with counsel regarding such filing and admittedly failed to take necessary action to assure himself that the required forms were in fact filed. As chief executive officer and controlling stockholder Souran's responsibilities required him to make certain that registrant complied with all the requirements of the securities acts.[30/] The hearing examiner finds that at least from March 1962 to April 2, 1963 when Souran resigned he was careless in his duties relating to compliance with the filing requirements of the Exchange Act and the rules thereunder. The record does establish that Souran in fact retained counsel on behalf of registrant, consulted with and relied on such counsel's advice. While such factors do not excuse the violation found they suggest at least some token effort towards compliance. The hearing examiner believes that some sanction should be imposed on Souran for his derelictions but under the circumstances public interest does not require that he be permanently barred from association with a registered broker-dealer. Accordingly, the hearing examiner finds that it is in the public interest that Souran be barred from being associated with any broker or dealer for a period of four months and

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30/ See C. Gilman Johnston, Securities Exchange Act Release No. 7390, p. 5 (August 14, 1964).