ADMINISTRATIVE PROCEEDING
FILE NO. 3-43

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

| In the Matter of | |
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| VAN HOOZER & COMPANY, INC. | (8-6810) |
| THOMAS H. VAN HOOZER | |



# INITIAL DECISION

Samuel Binder
Hearing Examiner

Washington, D. C.
April 25, 1966

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Before the
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| In the Matter of<br><br>VAN HOOZER & COMPANY, INC. (8-6810)<br>THOMAS H. VAN HOOZER<br><br>Administrative Proceeding<br>File No.: 3-43 | INITIAL DECISION |

Before: Samuel Binder, Hearing Examiner

Appearances: Thomas B. Hart, Esq., William D. Goldsberry, Esq., and Harry O. Moline, Jr., Esq. on behalf of the Chicago Regional Office of the Securities and Exchange Commission

Albert Thomson, Esq., for Van Hoozer & Company, Inc., and Thomas H. Van Hoozer

These are private proceedings under Section 15(b) and Section 15A of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether to take remedial action with respect to Van Hoozer and Company, Inc. ("registrant"), registered as a broker-dealer and Thomas H. Van Hoozer ("Van Hoozer"), its president, secretary, a director and beneficial owner of 90% of registrant's common stock. 1/

The order for proceedings alleges among other things that during the period from about May 31, 1964, to and including December 31, 1964, registrant aided and abetted by Van Hoozer, violated the net capital requirements in that it effected securities transactions when its aggregate indebtedness exceeded 2,000% of its net capital in wilful violation of Section 15(c)(3) of the Exchange Act and Rule 15c3-1

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1/ Section 15(b) of the Exchange Act provides that the Commission may revoke the registration of a broker or dealer or take other appropriate action of a specified character if it finds that it is in the public interest and that such broker or dealer, or any officer, director or controlling or controlled person of such broker or dealer, has wilfully violated any of the provisions of the Securities Act of 1933 or the Exchange Act or any rule thereunder.

Section 15A(1)(2) of the Exchange Act provides, among other things, for the suspension for a maximum of 12 months or the expulsion from a registered securities association of any member thereof who has violated any provision of the Securities Act of 1933 or Exchange Act or rule thereunder, if the Commission finds such action to be in the public interest for the protection of investors.

Under Section 15A(b)(4) of the Exchange Act, in the absence of Commission approval or direction, no broker or dealer may be admitted to or continued in membership in a national securities association if the broker or dealer or any officer or director of, or any person controlling or controlled by, such broker or dealer, was a cause of any order of revocation, suspension or expulsion which is in effect:

(17 CFR 240 15c3-1) thereunder;[2/] wilfully violated the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder; and wilfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-2 thereunder.[3/]

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2/ Section 15(c)(3) of the Exchange Act prohibits the use of the mails or interstate facilities by a broker or dealer to effect any transaction in any security, otherwise than on a national securities exchange, in contravention of the Commission's rules prescribed thereunder providing safeguards with respect to the financial responsibility of brokers and dealers. Rule 15c3-1 provides that no broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 2,000% of his net capital and for purposes of determining such ratio, the rule defines net capital and aggregate indebtedness.

3/ In Securities Exchange Act Release No. 7325 (May 27, 1964) in announcing the adoption of Rule 15c3-2 the Commission pointed out that, "As adopted, Rule 15c3-2 prohibits any broker or dealer from using in his business any funds arising out of any free credit balance carried for the account of any customer unless he has established adequate procedures pursuant to which each such customer will be given or sent, together with or as a part of the customer's statement of account, whenever sent, but not less frequently than once every three months, a written statement informing the customer of the amount due, and containing a written notice that such funds are not segregated and may be used in the operation of the business of the broker-dealer and that such funds are payable on demand...." The Commission noted: "Free credit balances generally arise when a customer gives cash to a broker-dealer to hold pending receipt of instructions to purchase securities; or when free securities are sold and the proceeds are held pending further investment or further instructions from the customer; or from interest or dividends on the customer's being held by the broker-dealer."

The Special Study Report pointed out that customers with free credit balances are generally not aware that funds which they have a right to withdraw are customarily commingled by the broker-dealer with other assets used in the operation of the business, the relationship between the broker-dealer and customer being merely, in this context, that of debtor and creditor. Special Study Report Pt. 1, Ch. III, p. 402.

The respondents filed answers in which they denied the allegations of the order charging them with violations of the Securities Acts.

Pursuant to Commission order a private hearing was held in Kansas City, Missouri.

Registrant and Van Hoozer appeared at the hearing and contested the allegations of the order.

Timely filings of proposed findings, conclusions and briefs were made by counsel for registrant and counsel for the Division of Trading and Markets ("Division").

The following findings and conclusions are based upon the record and upon observation of the witnesses at the hearing.

The registrant, a Missouri corporation with a principal place of business at 1016 Baltimore Avenue, Kansas City, Missouri, became registered with the Commission as a broker and dealer on September 17, 1958, and is a member of the National Association of Securities Dealers, Inc.

Van Hoozer during the period May 31, 1964, to December 31, 1964, and throughout the hearings held herein was president, secretary, a director and beneficial owner of 90% of the registrant's common stock, and registrant was under his sole control.

The Violations of the Commission's Net Capital Rule

During the period from May 31, 1964, to December 31, 1964, registrant had from time to time in its investment and inventory accounts, securities of the following issuers: Bigelow Farms, Inc.; Granco, Inc.; Missouri Union Corporation; Peru Development Corporation, PEI Wood Brick, also known as Pinkham Enterprises, Inc.; Nassco Marine; and Hsu Industries. During this period there were no published market quotations in the

National Daily Quotation Sheets for any of these securities. An official of the National Association of Securities Dealers also testified that, in his experience, he had never known of any market for these securities, other than Granco, and that the market for Granco existed only for a period prior to the time involved in this proceeding.[4/] On each of the fifteen days during this period when the registrant had transactions in non-exempt securities with customers, its aggregated indebtedness when computed in accordance with Rule 15c3-1 (i.e., without ascribing any value to these securities) exceeded 2,000 per centum of its adjusted net capital,[5/] in 1964, as follows:

| | Allowable Assets | Aggregate Indebtedness | Adjusted Net Capital (Deficit) | Capital Required to Carry Aggregate Indebtedness | Capital Required Under Rule |
|---|---|---|---|---|---|
| June 26 | $ 478.60 | $4,098.66 | $(3,620.06) | $204.98 | $(3,825.04) |
| October 14 | 1,266.53 | 2,186.75 | ( 920.22) | 109.34 | (1,029.56) |
| October 15 | 2,164.07 | 3,068.75 | ( 904.68) | 153.43 | (1,058.11) |
| November 11 | 3,491.26 | 4,722.74 | (1,231.48) | 236.14 | (1,467.62) |
| November 17 | 3,635.69 | 4,722.74 | (1,087.05) | 236.14 | (1,323.19) |
| November 27 | 2,108.90 | 5,944.61 | (3,835.71) | 297.23 | (4,132.94) |
| December 2 | 3,379.43 | 7,169.61 | (3,790.18) | 358.48 | (4,148.66) |
| December 3 | 3,559.43 | 7,341.35 | (3,781.92) | 367.06 | (4,148.98) |
| December 14 | 1,961.92 | 5,836.46 | (3,874.54) | 291.82 | (4,166.36) |
| December 15 | 1,961.92 | 5,836.46 | (3,874.54) | 291.82 | (4,166.36) |
| December 16 | 1,961.92 | 5,842.96 | (3,881.04) | 292.14 | (4,173.18) |
| December 21 | 505.57 | 4,731.10 | (4,225.53) | 236.55 | (4,462.08) |
| December 22 | 505.57 | 4,736.10 | (4,230.53) | 236.80 | (4,467.33) |
| December 24 | 351.38 | 4,739.10 | (4,387.72) | 236.95 | (4,624.67) |
| December 28 | 351.38 | 4,740.10 | (4,388.72) | 237.00 | (4,625.72) |

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4/ This official also testified that in 1964 Granco appeared in the National Daily Quotation Sheets and in a local list appearing in the Kansas City Star but that such security was not quoted in either publication after February 7, 1964.

5/ Various adjustments were made in computing registrant's net capital as required by Rule 15c3-1 but such adjustments are not at issue in this proceeding, except for the exclusion of the securities discussed in the text hereinabove.

During the hearing the respondents contended that the above computations of registrant's net capital position for each of the above dates, reflecting the capital deficiency and the amount of capital required, were erroneous, particularly because in making such computations no value was attributed to the securities of Hsu Industries, Inc., Pinkham Enterprises, Inc. (also known as PEI Wood Brick) and Bigelow Farms, Inc.

The inventory and investment accounts of registrant reflected that Hsu Industries was carried at $825.00 as at October 14 and 15, 1964, and at $10,825.00 thereafter, that Pinkham Enterprises (also known as PEI Wood Brick) was carried at $41,713.67 throughout the period under consideration and Bigelow Farms was carried at $5,184.00 as at June 26, 1964. 6/

In its brief, the registrant, while referring generally to its contention that all securities held by it should be included in the computation of net capital, limited its discussion on this point to a claim that the securities of Pinkham Enterprises were an includible item in determining its net capital. As the registrant put it, "The only question is whether under the rules, the stock [of Pinkham Enterprises] is or is not includable." 7/

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6/ The securities of Bigelow Farms were disposed of by registrant at or about the end of July, 1964, and only have relevance to the transaction of June 26, 1964.

7/ See registrant's brief at page 2. Apparently, registrant claims that the securities of Pinkham Enterprises (also known as PEI Wood Brick), Hsu Industries, Inc., and Bigelow Farms, Inc., were erroneously excluded in computing its net capital, and this contention will be fully considered.

Paragraph (c)(2) of Rule 15c3-1 provides, in pertinent part, that the term "net capital" shall be deemed to mean the net worth of a broker or dealer, that is the excess of total assets over total liabilities adjusted by, among other things, the deduction of assets "which cannot be readily converted into cash...."

The securities held by registrant were excluded in computing net capital because they were not readily convertible into cash within the meaning of the net capital rule.

The registrant and Van Hoozer claim that the stock of Pinkham Enterprises was readily convertible into cash because a bank in Kansas City expressed willingness in letters dated September 28, 1962, and July 25, 1963, addressed "TO WHOM IT MAY CONCERN" to make a "loan on collateral of Pinkham Enterprises, Inc., on the basis of $5.00 per share."

These letters cover a period of time prior to that under consideration in this case and do not support respondent's position as to registrant's net capital position during the period involved in this case.

Shortly after Christmas 1963, Van Hoozer was informed by the bank that it would not lend registrant any money on collateral of Pinkham Enterprises stock.

Van Hoozer has been president of Pinkham since 1962 or 1963, but could not recall whether or not a profit and loss statement had been prepared for the company in 1963, but he knew that none had been prepared in 1964 and that the company had not done any business in well over a year.

The uncontradicted evidence is that Pinkham was insolvent in May or June 1964, and that registrant purchased $6,000, face amount Pinkham debentures, at 50¢ per $1000, face amount, and that on December 24, 1964, registrant purchased 200 shares of Pinkham at 1¢ per share.

To support its contentions concerning Pinkham, registrant relies on the Commission's findings and opinion in the Matter of John W. Yeaman, Inc., Securities Exchange Act Release No. 7525 (February 10, 1965).

Its reliance on this case is misplaced. The facts in the Yeaman case are readily distinguishable from those in the instant case. The securities which the registrant in Yeaman urged as being includible appeared to be those of a solvent and prosperous corporation and not an insolvent one as in the case at bar. Even though the evidence in the Yeaman case reflected that two local banks would have been willing to accept the excluded stocks as collateral for loans in substantial amounts, the Commission held that it did not necessarily follow that such stocks were includible as assets for net capital purposes. The Commission pointed out in Yeaman that "Banks are in the business of lending money to make money and they voluntarily assume certain business risks for that purpose. Their large and diversified loan portfolios enable them to minimize the adverse impact of a delay or default in repayment. Investors who deal with brokers and dealers, on the other hand, do not undertake to assume the risk that the broker with whom they deal will find himself in an illiquid position that precludes him from meeting his obligations with dispatch, and the net capital rule is designed to assure that liquid assets will be available for their protection."

Pinkham Enterprises is not listed on any securities exchange, there is no over-the-counter market in the securities of such company, it is insolvent, and its securities are not readily convertible into cash and they were properly excluded in computing registrant's net capital. 8/

Hsu Industries, as does Pinkham, maintains its office in registrant's place of business. Van Hoozer is executive vice president and treasurer of Hsu Industries. According to Van Hoozer, the company was incorporated in Missouri in 1961. Van Hoozer testified that Hsu Industries has interests in Peru; that it is a closely held corporation, with "somewhere in the nature of 1100 shares" outstanding held by "possibly 15 or 16 people, maybe 17"; that the company does not have as part of its accounting records any journal and its books and records consist of "nothing more than a record of expenditures and receipts", in the form of vouchers.

There is no market for the securities of Hsu Industries. Its securities cannot reasonably under Rule 15c3-1 be considered assets readily convertible into cash. These securities cannot under the Rule be included at any value in computing registrant's net capital position.

Bigelow Farms owns property which is used as a duck club. The president of the Baltimore Bank of Kansas City testified that he considered

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8/ The Commission also pointed out in Yeaman (supra) that "We have had prior occasion to refer to the legislative history of the Act which shows that Congress, in including provisions with respect to financial responsibility of brokers and dealers, was concerned over the need of brokers and dealers for 'immediate resources' and intended that brokers should not be permitted to continue operations unless they had on hand cash or liquid assets in the required ratio to aggregate indebtedness. In keeping with the statutory purposes we have excluded from assets in computing net capital securities for which there was no ready exchange or over-the-counter market." (Footnotes omitted.)

that Bigelow stock is "worth about $100 a share based upon the appraisal of its land," and that he would as an officer of the bank be willing to make a loan secured by Bigelow Farms stock as collateral. However, the fact is that there is no market for the stock.

It is not an asset which is readily convertible into cash, within the meaning of Rule 15c3-1 [9/] and is not includible in computing registrant's net capital position.

The table on page 4 of this initial decision correctly sets forth, among other things, registrant's net capital deficiency under Rule 15c3-1 as of June 26, October 14 and 15, November 11, 17, and 27, December 2, 3, 14, 15, 16, 21, 22, 24, and 28, 1964, when registrant effected transactions, in non-exempt securities with customers. [10/] The mails and the means and instruments of interstate commerce were employed by registrant and Van Hoozer in effecting these transactions.

The registrant wilfully violated Section 15(c)3 of the Securities Exchange Act of 1934 and Rule 17 CFR 240.15c3-1 thereunder and Thomas H. Van Hoozer wilfully aided and abetted such violations. [11/]

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9/ In the Matter of John W. Yeaman, Inc., Securities Exchange Act Release No. 7525 (February 10, 1965).

10/ The registrant had a net capital deficiency on December 31, 1964, but there is no evidence that it executed any transaction on that day or thereafter.

11/ S.E.C. v. C. H. Abraham & Co., Inc., 187 F. Supp. 19 (S.D.N.Y., 1960); S.E.C. v. Peerless-New York, Inc. (S.D.N.Y., 1958); In the Matter of Pioneer Enterprises, Inc., 36 S.E.C. 199 (1955).

Fraud in the Sale of Securities

On November 11, 1964, the registrant purchased 796 shares of Tri-State Motors from Edward J. and Lena Renken ("the Renkens") for a net price of $3432.28, which it retained as a free credit balance until December 15, 1964. Between November 11, 1964, and December 15, 1964, Van Hoozer recommended to the Renkens that they invest these funds in the stock of a corporation named Redwood Brick Industries. On December 15, 1964, the Renkens agreed to purchase 1700 shares of Redwood Brick Industries stock at $2.00 per share, making a total of $3400.00 received by registrant. In this connection, registrant mailed a confirmation to the Renkens showing the trade date as December 15, 1964, and the settlement date as December 21, 1964. The confirmation mailed to the Renkens bore a legend stating "An officer and/or partner of this firm is a director and/or officer of the issuer of the securities involved in this transaction."

At the time of the sale of this stock to the Renkens and apparently for some time thereafter, Van Hoozer was operating, as an individual enterprise, an unincorporated business which he called Redwood Brick Industries and no corporation of this name existed or ever came into existence, but neither the registrant nor Van Hoozer informed the Renkens of such facts.

Van Hoozer claimed at first, when questioned about the matter, during the course of the hearing, that Redwood Brick Industries had opened a corporate account at the Baltimore Bank in Kansas City, Missouri, but later, when questioned further about this statement, Van Hoozer admitted that there was no corporate account in the bank in the name of Redwood Brick Industries. He further testified that he was the only person authorized to sign checks for Redwood Brick Industries and that this entity had no books or records such as are normally maintained by business corporations to reflect their transactions. He added that the business records of Redwood Brick Industries consisted only of check books and invoices.

Among the few records produced at the hearing by Van Hoozer was an invoice headed "Redwood Brick Industries" dated July 17, 1964. This invoice was in the amount of $4284.50 and was for redwood brick sold to Del Monte Builders, Inc. This invoice and and a ledger maintained by registrant reflected the existence of Redwood Brick Industries as an unincorporated entity.

When asked to produce a document which would show the financial condition of Redwood Brick Industries as at December 15, 1964, or shortly prior thereto, the registrant produced an undated document labeled "Accounts Receivable, Redwood Brick Ind." 12/ reflecting obligations to it from two customers amounting to $6,265.83. Van Hoozer first testified that he did not know when this document was prepared. Shortly thereafter he conceded the document had been prepared during the week of the hearing or the week prior thereto.

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12/ See Division's Exhibit 5.

An attorney, obviously friendly to Van Hoozer, was called by the respondents to testify as a witness in this proceeding. He conceded that no corporation called Redwood Brick Industries had ever come into existence and stated that his law firm had been requested to prepare articles of incorporation for a corporation of similar name to be called Redwood Brick, Inc. There was never any intention to incorporate a company to be called Redwood Brick Industries. He described the business status of Redwood Brick Industries as follows: "Well, it would probably have been, oh, as close as anything, if you could give it a name, it would be perhaps a joint venture, a partnership with the idea of getting it into a corporation."

Neither the registrant nor Van Hoozer, however, purported to be selling a partnership interest or an interest in a joint venture to the Renkens nor did the Renkens purchase such an interest in Redwood Brick Industries.

This witness also testified that the articles of incorporation of a company to be called Redwood Brick, Inc., were signed by Van Hoozer and others on November 24, 1964, i.e., approximately three weeks before the trade date set forth in the confirmation mailed to the Renkens. Although only a comparatively short time had elapsed between the date the articles of incorporation had been signed for the corporation bearing a name similar to that whose stock had been sold to the Renkens, neither the registrant nor Van Hoozer made any effort to find out whether Redwood Brick Industries or any other company had actually been incorporated or

not and whether or not any corporate minute had been adopted authorizing the issuance of stock. In fact, Redwood Brick, Inc., never was incorporated, the articles of incorporation of such company having been retained in the files of Van Hoozer's attorneys until June 1964, and in July 1964 these articles were returned to Van Hoozer's attorneys by the Secretary of State of Missouri because its name was similar to a company already incorporated.

As a registered dealer the registrant was required, as a trade custom, to consummate his transaction with the Renkens promptly. A dealer makes an implied representation that this will be done by the mere fact that he engages in business.[13/] Failure to consummate transactions promptly in accordance with trade custom constitutes a course of business which operates as a fraud and deceit upon customers.[14/] It is a violation of the anti-fraud provisions for a dealer to accept an order and payment for a security without filling the order promptly, and to divert the proceeds of payment to some other business activity.[15/]

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13/ Securities Exchange Act Release No. 6778, April 16, 1962; Vincent Associates Ltd., Securities Exchange Act Release No. 6806, May 16, 1962, p. 1.; Carl J. Bliedung, 38 S.E.C. 518, 521 (1958); Batkin & Co., 38 S.E.C. 436, 446 (1958); Bryan Halbert Kyger Jr., 38 S.E.C. 433, 434 (1958).

14/ See Securities Exchange Act Release No. 6778 (April 16, 1962).

15/ See Gabriel Sanders, 37 S.E.C. 165, 166 (1956); C. J. Montague, Inc., 38 S.E.C. 462, 463 (1958); William Rex Cromwell, 38 S.E.C. 913, 915 (1958); Sills and Company, 38 S.E.C. 931, 933 (1959); Arkansas Securities Corporation, 39 S.E.C. 536, 538 (1959); T. J. Campbell Investment Company, Inc., 39 S.E.C. 940, 942 (1960); Filosa Securities Company, 39 S.E.C. 896, 898 (1960); Frank S. Kelly, 32 S.E.C. 636, 637-8 (1951); Sam Belofsky, 36 S.E.C. 214, 215 (1955).

Here, the registrant took the Renkens' money but never delivered any of the stock of Redwood Brick Industries which it had purportedly sold to the customers. Nor did registrant deliver any other security to the Renkens until about two weeks before the hearing began. At that point registrant delivered stock of Wood Brick Homes, Inc. These were securities of a company which had come into existence long after the sale of stock of Redwood Brick Industries to the Renkens.

The sale of Redwood Brick Industries stock[16/] to the Renkens was effected by gross misrepresentation by Van Hoozer on behalf of the registrant. In addition, after getting the money from the Renkens, the registrant did not deposit any of the money received from the Renkens in any corporate account of Redwood Brick Industries, there being no such account. While Van Hoozer claimed that he had not committed any fraud, he never explained what he did with the money. However, even assuming, arguendo, that Van Hoozer and the registrant were acting under a misapprehension at the time of the sale and believed that Redwood Brick Industries had been incorporated when they sold its stock to the Renkens, it is clear that they did not act with reasonable diligence thereafter to protect the interests of their customers. In this connection, as has been noted, the registrant was under an obligation to deliver the stock of the company they were selling to the Renkens promptly and it never even attempted to obtain such stock

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16/ There appears to have been a violation of Section 5 of the Securities Act of 1933 but the Commission's order makes no charge of such violation and no finding of such violation is made herein. See S.E.C. v. Ralston Purina Co. 346 U.S. 119.

to make such delivery. Had the respondents exercised reasonable diligence or had made any attempt to make delivery of the stock, they would have ascertained quickly that no corporation had ever come into existence at the time of the sale of Redwood Brick Industries and that consequently the stock of such company could not have been delivered to the Renkens. The registrant and Van Hoozer kept the Renkens' money, never notified them that they sold them non-existent stock in a non-existent corporation, and never offered the Renkens the opportunity to rescind the contract of sale. The registrant and Van Hoozer did nothing until long after the Commission had instituted this proceeding and then, two weeks before the hearing commenced, they caused the formation of a newly organized corporation named Wood Brick Homes, Inc., and thereafter delivered 1700 shares of stock of such company to the Renkens.

Specifically, the facts in this connection were as follows:

After the articles of incorporation were signed for Redwood Brick, Inc., on November 24, 1964, Van Hoozer's attorneys did not mail them to the Secretary of State of Missouri until June 29, 1965, which was approximately six months after the sale of Redwood Brick Industries stock to the Renkens. In July 1965 the Secretary of State returned the articles of incorporation to Van Hoozer's attorneys "because of similarity of the name to another name already licensed." Accordingly, no corporation by the name of Redwood Brick, Inc., ever came into existence and there were no shares of stock which could be delivered to the Renkens.

In the latter part of August 1965, Van Hoozer's attorneys mailed articles of incorporation to the Secretary of State of Missouri for a corporation to be called Wood Brick Homes, Inc. This company came into existence on August 31, 1965, more than eight months after stock of Redwood Brick Industries had been sold to the Renkens and about five months after this proceeding was instituted. Wood Brick Homes, Inc., came into existence only two weeks before the hearing began. The Renkens apparently received 1700 shares of stock of Wood Brick Homes, Inc.

Van Hoozer testified that he fixed the price of Redwood Brick Industries which he sold to the Renkens in December 1964 at $2.00 per share because it was under its "book value." He computed the "book value" of the stock at $2.25 or $2.30 per share based "on our inventory, accounts receivable and cash, etc." He did not produce any of the computations he said he had made when he fixed the price at $2.00 per share. In this connection, it may be pointed out that there could be no book value for these securities because the registrant had sold non-existent stock in a non-existent corporation. Further, there were no books or records of any corporation in existence at the time of the sale upon which any book value of stock could be computed. However, Van Hoozer attempted to make a computation based apparently upon the assets and liabilities of the unincorporated entity, Redwood Brick Industries.

Van Hoozer's statements as to how he arrived at a price of $2.00

per share were without any basis in fact. The price of $2.00 per share was arbitrarily fixed by Van Hoozer and had no relationship to "book value." Neither the registrant nor Van Hoozer informed the Renkens as to the basis upon which the price of the stock was fixed by them.

Van Hoozer also represented to the Renkens that Redwood Brick Industries was going to carry on the same business as a company called Pinkham Enterprises but he omitted to inform them that the latter company was insolvent and that he had been its president since 1962 or 1963. Where a business is organized for the purpose of carrying on the business of another corporation, it is material to the exercise of an informed judgment that persons offered stock of such company be advised that the company whose business is to be continued became insolvent and that the president of the insolvent corporation was to become president of the new company. The respondents' omission to inform the Renkens of the facts regarding Pinkham's insolvency and its management was misleading.

In its brief, the registrant refers to the fact that the Renkens were hostile to the Division and friendly to the respondents. While this is correct, it is wholly immaterial to a determination of the issues in this proceeding.

The evidence that Van Hoozer and the registrant wilfully violated the anti-fraud provisions of the Securities Acts is very substantial.

The registrant and Van Hoozer wilfully violated Section 17(a) of the Securities Act of 1933, and Sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934 and Rules 17 CFR 240.10B and 17 CFR 240.15c1-2, and Van Hoozer aided and abetted the registrant in the

commission of such violations.[17/]

Registrant's Violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-2 Thereunder 18/

Rule 15c3-2 provides that a broker-dealer may not use in his business any funds arising out of any free credit balance[19/] carried for the account of any customer unless he has established adequate procedures pursuant to which each customer for whom a credit balance is carried will be given or sent, together with, or as part of the customer's statement of account, whenever sent but not less frequently than once every three months, a written statement informing such customer of the amount due to the customer by the broker-dealer on the date of such statement and containing a written notice that (1) such funds are not segregated and may be used in the operation of such broker-dealer business and (2) such funds are payable on the demand of the customer.

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17/ It has been uniformly held that the term "wilfully" in the context of the anti-fraud provisions of the Securities Acts means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the Rules or Acts. See Hughes v. S.E.C. 85 U.S. App. D.C. 56, 64, 174 F. 2d 969, 977 (1949); Schuck v. S.E.C., 105 U.S. App. D.C. 72, 264 F. 2d 358 (1959); Norris & Hirschberg v. S.E.C., 85 U.S. App. D.C. 268, 177 F. 2d 228 (1949); Tager v. S.E.C., 2 Cir., 344 F. 2d 5 (1965); Gilligan, Will & Co. v. S.E.C., 2 Cir. 267 F. 2d 461; Thompson Ross Securities Co., 6 S.E.C. 1111, 1122-23 (1940); Van Alstyne Noel & Co., 22 S.E.C. 176 (1946); The Whitehall Corporation, 38 S.E.C. 259, 270 (1938); Gearhart & Otis, Inc., et al v. S.E.C. et al, 348 F. 2d 798 (1965).

18/ See footnotes 2 and 3, supra.

19/ Free credit balances are those amounts of cash owed by broker-dealers to customers which the customers have an immediate right to withdraw.

The registrant stipulated that it had received Exchange Act Release No. 7325 at the time of its issuance on May 27, 1964, setting forth the provisions of Rule 15c3-2 and stating that the Commission had adopted such rule.

The registrant in its brief conceded that "It is true that Registrant did not establish a procedure for notification as required by the rules." Van Hoozer admitted that he used a part of the free credit balances in the registrant's business.

The period during which the registrant violated the provisions of Rule 15c3-2 was between August 3, 1964, and December 31, 1964. The registrant, although conceding that it had not established a procedure for notification as required by the Rule, nevertheless contended that it had not wilfully[20/] violated Section 15(c)(3) of the Exchange Act or Rule 15c3-2 thereunder. Apparently as an excuse or reason for not complying with Rule 15c3-2, of which it was fully aware, registrant asserts that it had only one customer (the Renkens) who had a free credit balance at the time that it was in violation of the rule and that the Renkens were fully aware of what was occurring and they were fully satisfied. Contrary to this statement, the registrant had four customers in the period August 3, 1964, through December 31, 1964. While the Renkens are friendly to Van Hoozer, there is no evidence in this record that the Renkens or any of the other customers of the registrant were aware that the free credit balances were being used

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20/ See footnote 17, supra.

in registrant's business.

The registrant wilfully violated Section 15(c)(3) of the Securities Exchange Act of 1934 and Rule 17 CFR 240.15c3-2 thereunder and Thomas H. Van Hoozer wilfully aided and abetted such violations.

Public Interest

By letter dated March 31, 1966, counsel for registrant and Van Hoozer requested that Van Hoozer "be permitted to resign as a registered broker-dealer and as a member of the N.A.S.D." In this connection, counsel for the respondents stated that "The corporation is inactive and Mr. Van Hoozer does not contemplate returning to the brokerage business."

This letter will be considered in part as an application for withdrawal of registrant's registration as a broker-dealer.[21/]

In view of the findings herein of wilful violations of the anti-fraud provisions of the Securities Acts, wilful violations of the Commission's net capital rule, and wilful violations of the Commission's rule requiring notification by registrant of its customers concerning free credit balances, and in view of Van Hoozer's frequent attempts, while on the witness stand, to misrepresent, and obfuscate the facts concerning his misconduct, the respondent's request should be denied.

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21/ The letter also requests that Van Hoozer be permitted to resign as a member of the N.A.S.D. The Commission's order of March 10, 1965, instituting this proceeding states that registrant is a member of the N.A.S.D. and makes no reference to membership in such association by Van Hoozer as an individual. However, the letter will be treated as an application by registrant for permission to resign from the N.A.S.D. While the provisions of Section 15A(1)(2) of the Act provide authority, in an appropriate case, for an order suspending or expelling a member of a registered securities association from membership, request for permission to resign should be addressed to the N.A.S.D. In this case, however, such a request would appear academic.

The trust and confidence placed in Van Hoozer by gullible investors like the Renkens is not a mitigating factor but serves only to demonstrate the necessity for taking remedial action to prevent any additional predatory forays upon the investing public which might be undertaken by the respondents in the future.

The facts establish that registrant and Van Hoozer were totally oblivious to their obligations to their customers; that they deliberately violated numerous provisions under the Securities Acts and the rules adopted by the Commission thereunder, and that Van Hoozer purposefully gave untruthful testimony during this proceeding.[22/]

Accordingly, IT IS ORDERED that respondents' request for withdrawal of the registration of Van Hoozer & Company, Inc., as a broker-dealer be and hereby is denied; and

IT IS FURTHER ORDERED that the registration of Van Hoozer & Company, Inc., as a broker-dealer is revoked; that Van Hoozer & Company, Inc., is expelled from membership in the National Association of Securities Dealers, Inc.; and Thomas H. Van Hoozer is barred from being associated with a broker-dealer.

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

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial

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22/ The proposed findings and conclusions submitted have been considered. To the extent such proposals are consistent with this Initial Decision, they are accepted.

decision within fifteen days after service thereof on him. 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 for review pursuant to Rule 14(b) or the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition to review or the Commission takes action to review as to a party, this initial decision shall not become final as to that party.

Samuel Binder

Samuel Binder
Hearing Examiner

Washington, D. C.
April 25, 1966