UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
HUNTINGTON SECURITIES CO., INC. (8-8892)
BENJAMIN STEIN
SAUL KAY
PETER FOTIS
JAMES DE MAMMOS
ERWIN GERSTEN

INITIAL DECISION

Sidney Ullman
Hearing Examiner

Washington, D.C.
May 31, 1966

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
HUNTINGTON SECURITIES CO., INC. (8-8892) BENJAMIN STEIN SAUL KAY PETER FOTIS JAMES DE MAMMOS ERWIN GERSTEN	INITIAL DECISION

BEFORE: Sidney Ullman, Hearing Examiner

APPEARANCES: Philip Wagner and John A. Santospirito, Attorneys for the Division of Trading and Markets

Feiner and Klaris
150 Broadway
New York, New York
Attorneys for Erwin Gersten and Saul Kay

Peter Fotis, pro se

James De Mammos, pro se

Nature of the Proceedings

These proceedings were instituted by order of the Commission dated March 1, 1965 (Order), pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act)[1/]. The Order alleges that Huntington Securities Co., Inc. (registrant) and Benjamin Stein, its president, together with Saul Kay, Peter Fotis, James De Mammos and Erwin Gersten, salesmen of registrant, during the period June 1, 1963 to May 31, 1964, singly and in concert with each other wilfully violated and aided and abetted violations 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, commonly known as the anti-fraud provisions[2/], in the offer and sale of the common stock of Consumer Credit Corporation (Consumer), a small loan company.

The Order also charges that registrant and Stein failed to file a required report and an amendment to registrant's application

---

1/ Section 15(b)(7) provides for the censure of any person or the barring of any person from being associated with a broker or dealer, or the suspension of any person from such association for a period not exceeding 12 months, if the Commission finds that such censure, barring, or suspension is in the public interest and that such person has wilfully violated or aided and abetted any violation of the Securities Act or the Exchange Act or any rule thereunder.

Section 15A relates to suspension or expulsion of a broker or dealer such as the registrant from a registered securities association, but for reasons stated, infra, such issue has become moot.

2/ The composite effect of the anti-fraud provisions, as applicable here, is to make unlawful the use of the mails or interstate facilities in connection with the offer or sale of any security by means of a device to defraud, an untrue or 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.

for registration as a broker-dealer, failed to maintain certain books and records, and failed to conform with requirements of the "net capital" rule of the Commission. However, except insofar as the allegations relate to violations of the anti-fraud provisions by the four salesmen named above, they have become moot by reason of stipulations and consents by registrant and Stein which became the subject of Findings, Opinion and Order of the Commission revoking registrant's broker-dealer registration, expelling registrant from membership in the National Association of Securities Dealers, Inc. (NASD), and barring Stein from being associated with a broker-dealer. These stipulations and consents were submitted following hearings before the undersigned Hearing Examiner in June and July 1965, during which registrant and Stein were represented by counsel. The aforementioned Findings, Opinion and Order of the Commission were issued on March 24, 1966 as Securities Exchange Act Release No. 7842, and a copy is annexed hereto as Exhibit A.

At the hearing in these proceedings, respondents Gersten and Kay were also represented by counsel. Respondents Fotis and De Mammos appeared and participated pro se. Following the conclusion of the hearing, counsel for Gersten and Kay moved by letter dated September 30, 1965, to re-open the record in the proceedings (1) to take further testimony from R. C. Fernon, president of Consumers, who had testified at the hearing as a witness for the Division of Trading and Markets (Division), (2) to receive in evidence a letter from Fernon to Consumer

shareholders and (3) to strike from the Order an allegation on which testimony was received at the hearing. The motion was opposed by the Division and was denied by my order of November 5, 1965, for reasons indicated therein. Thereafter, counsel for the Division filed proposed findings of fact, conclusions of law and a brief in support thereof, and counsel for Gersten submitted similar documents on his behalf. No proposed findings, conclusions or briefs were submitted by or on behalf of respondents Kay, Fotis or De Mammos. The Division filed a reply brief in response to the documents filed by counsel for Gersten.

The findings and conclusions herein are based on the record in the proceeding, including the exhibits, on the documents filed on behalf of the parties, and on my observation of the respondents and of the witnesses who testified during the hearing.

Findings of Fact and Conclusions of Law

Although registrant's consent and the resultant Findings, Opinion and Order of the Commission leave for determination no issues concerning registrant, some discussion of the firm's background and activities is necessary to the proper evaluation of the pendent charges relating to the activities of the four salesmen. This is especially true because the Division has proposed findings that registrant was a boiler-room while the salesmen were employed by it. Such findings are rejected, however, for reasons set forth in the following discussion of registrant and Consumer.

Registrant and Consumer

In October 1960 registrant became registered with the Commission as a broker-dealer and became a member of the NASD. Respondent Stein founded the firm and was its president, managing officer and controlling stockholder. His prior experience in the securities business consisted of approximately two years of activity as a salesman for two brokerage firms, at least some of this time being spent in temporary and part-time employment. Stein is an accountant with a record of Federal and State government employment as well as a creditable record of war-time military service. His testimony at the hearing was extensive and it appears to be in fairly large measure plausible.

Stein testified that before hiring each of the firm's salesmen he telephoned the last employer listed in the particular NASD application form. He received no unfavorable information on any of the men he hired. Nevertheless, the backgrounds of the respondent-salesmen were obviously less than admirable, and each was previously employed by broker-dealers who became involved in Commission regulatory proceedings which were eventually resolved against the firms. However, none of said salesmen appears to have been named in any of these proceedings, and Stein testified that at the time he hired the men the NASD application form of each man was marked "no" in response to the question whether he had ever worked for a firm that had been suspended or revoked.

In April 1963 Stein became interested in selling Consumer stock to the public and began his efforts to learn about the company. Discussion in some detail of the nature of Stein's investigation of Consumer is necessary not so much to reveal the inadequacy of the investigation, for this is no longer an issue, but rather to support a patent conclusion that registrant was not a boiler-room and to furnish a background against which the selling activities of the four respondents can be evaluated. The evidence reveals not only that Stein was lacking in sophistication and experience, but also that he was easily and perhaps even willingly misguided by the president of Consumer and the information he made available to Stein. Neither registrant nor Stein was free from blame and neither the consent to registrant's revocation nor Stein's consent to the bar order of the Commission can be said to be ill-founded, for reasons which appear, infra. But the evidence fell short of proving the Division's contention that registrant was a boiler-room.

Consumer is a Florida corporation, about 16 years old, with a record, Stein testified, of having at one time paid a small cash dividend. It had "gone public" about five years earlier and the underwriting was handled by a member firm of the New York Stock Exchange. Stein was referred to Mr. Fernon by this firm.

Fernon informed Stein by telephone that he had taken control of Consumer four or five years earlier and that the company was progressing nicely. Thereafter, probably in May or June 1963, he sent Stein unaudited financial statements as of the ten-month period ending April 30, 1963, reflecting earnings of approximately 1-1/2 cents per-share. He also sent a letter dated June 4, 1963,

stating that Consumer had

> "arranged for the sale of up to $200,000 of 6% subordinated debentures to a life insurance company. . . . They, of course, are not convertible, carry no warrants or options and there was no fee or commission involved in the sale."

The letter added that since small loan companies normally borrow approximately 1-1/2 times their capital funds from banks, and since subordinated debentures are considered capital funds, the "effect on earnings of an additional $500,000 in small loans in our present offices should be considerable." In addition, Fernon's letter spoke of an agreement to acquire two small loan companies in Florida, of an "informal agreement" to acquire a third company, and of plans to open a new Consumer office in the near future. Fernon also sent a telegram on August 13, 1963, reading as follows:

> "Your inquiry. I am forwarding copy Annual Report June 30. As previously advised when full utilization of new subordinated debentures reached earnings should approach about two cents monthly. Additionally negotiating favorably with several potential acquisitions. Confidentially negotiations by me personally to acquire control Union Finance have taken a turn consider most favorable. Have received permission from principal to negotiate directly with directors and indicated if successful that he would accept offer."

The above-mentioned annual report included a letter from Mr. Fernon to stockholders, proclaiming and charting the company's substantial growth and accomplishments during six years under its current management, and outlining its expansion program. The letter concluded:

> "The current year promises further substantial growth and improvement in earnings. We are located in one of the fastest growing areas in the country and our future appears promising."

Despite the very unexciting financial statement of Consumer as of June 30, 1963, reflecting annual earnings of approximately 1.5 cents per share, a telegram of September 16, 1963 advised Stein of action by the board of directors declaring a 10% stock dividend, subject to stockholder approval. Thereafter, by letter of October 25, 1963 in response to Stein's inquiry, Fernon advised that the stockholders had approved an increase in the authorized capital stock upon which this stock dividend was conditioned. In other telephone conversations Fernon continued to reaffirm the optimistic prospects earlier related to Stein by telephone.

Also of importance in portraying the background against which registrant and its salesmen sold Consumer stock during part of the period June 1963 to April 1964, is material made available by Fernon and by the public press with regard to Fernon's common control of both Consumer and Tower Credit Corporation (Tower)[3/], a Delaware corporation engaged in the small loan business in the South and Southwest, the shares of which were traded on the American Stock Exchange. The testimony of many investor witnesses, as discussed in detail below, indicates that in offering Consumer stock to the public registrant's salesmen made representations of a proposed or contemplated merger between Consumer and a small loan company listed on the American Stock Exchange. Some of these representations undoubtedly related to Tower: some, but not all, made in and after late September 1963 mentioned Tower by name.

3/ Tower was formerly known as Tower Universal Credit Corporation.

Fernon testified on direct examination for the Division that no "merger" of Consumer and Tower was ever planned or contemplated. On cross-examination, however, it developed that the common control of the two companies was a matter which Fernon had verbalized to Stein to no small extent. The testimony of both Fernon and Stein indicated that it was only in the latter part of November 1963 that Fernon thought about "the combination of Tower and Consumer" and began negotiations to acquire Tower stock and communicated to Stein his plans for a combination of the two companies. However, this is not consistent with credible testimony by an investor-witness, B. L., to the effect that in late September 1963 Stein mentioned the possibility of a merger with Tower; it is also inconsistent with other credible testimony suggesting that the November date is not accurate.

A "combination" of Consumer and Tower eventually took place when Fernon and Consumer acquired large amounts of Tower common stock. The annual report of Consumer for the year ended June 30, 1964, reflecting ownership of 25% of Tower stock, stated:

> "Our corporation has acquired, as the company statement shows, a substantial block of stock of Tower Credit Corporation, a company listed on the American Stock Exchange. The combination of these companies should enable further expansion through a national chain operating throughout the South."

In addition, Fernon testified that the two companies eventually shared a common office.

These subsequent developments between Consumer and Tower resulting from Fernon's common control do not excuse or justify the misrepresentations made earlier, as discussed below. In addition, unwarranted representations of price rises and other irresponsible selling practices of the remaining respondents were disclosed by the credible evidence.

Selling Activites of Respondent-Salesmen

Fotis

Investor witness H. B. testified that he purchased 100 shares of Consumer stock at $1 per share on July 25, 1963 and an additional 100 shares at $1 per share on September 21, 1963, after Fotis described Consumer as a finance company similar to Household Finance and represented that the stock would possibly go to $3 per share, at which time, he suggested, the customer should sell the stock. In connection with the second purchase, Fotis represented that a stock dividend was being paid and that it therefore would be wise for the customer to buy the additional 100 shares.

A. P., a policeman, testified that on or about November 15, 1963, he bought 100 shares of Consumer at $1 per share after Fotis represented that the company would merge with a Florida company listed on the Stock Exchange and that the price of Consumer stock would rise 1 or 2 points within a few months.

Mr. J. A., a teacher in the New York City school system, bought 60 shares of Consumer on September 25, 1963 when Fotis represented that the company might merge with a large loan company and that the price of the stock would rise 1 or 2 points, or perhaps more.

Mr. S. A. B. testified that he bought 200 shares of Consumer at $1 per share on September 20, 1963 after Fotis described the company as very much like Beneficial Finance Company and stated that the stock had a "possibility of moving". On September 23, 1963, S. A. B. bought an additional 200 shares at $1 per share.

Mr. P. E. bought 250 shares at $1 per share on September 23, 1963, after Fotis called him and advised that another stock then held by the customer was not worth anything. Fotis advised the customer to sell that stock for its current price of $3 per share and put the money into Consumer stock, which he represented would go to $10.

Mrs. A. P., a housewife, bought 350 shares of Consumer from Fotis on July 10, 1963 at $1 per share when Fotis represented that the company would merge with another and that the price of the stock would rise when the merger was effected. On July 19, 1963, Mrs. A. P. purchased an additional 350 shares and on October 23, 1963, an additional 300 shares, all at the price of $1 per share.

Mr. P. D. bought 500 shares of Consumer from Fotis at $1 per share in November 1963 after Fotis represented that the price of the stock "could hit 15" in 6 months or a year.

Mr. S. S., an engineer, testified that in August 1963 Fotis telephoned him and represented that Consumer "was going to make a profit and it should go up to about $5 a share" in about six months. S. S. bought 900 shares at $1 per share. On cross-examination by Fotis and counsel for registrant, he admitted that Fotis had advised that Consumer stock was "more or less a gambling stock", that Fotis knew that the customer wanted to speculate, and that three or four months after the purchase Fotis advised him that the merger was not going through, that the stock is not "going to go anywhere", and that he therefore sold almost all of his Consumer holdings.

D. J. T., of New London, Connecticut, bought 200 Shares of Consumer on July 11, 1963 and 500 shares on September 20, 1963, each time

at $1 per share during telephone conversations with Fotis. The second purchase was made after Fotis advised of the forthcoming 10% stock dividend.

G. W. W., Jr., testified that on September 16, 1963 he bought 200 shares of Consumer at $1 per share after Fotis called and represented the stock as a good investment which would rise 4 or 5 points within 6 months to a year. The witness testified that Fotis also mentioned the possibility of the stock being listed on an Exchange.

Thereafter, on October 25, 1963 the customer purchased an additional 100 shares at $1 per share when Fotis represented, according to the testimony, that ". . . it would be a good time to buy additional shares; that the stock was going to move."

Each of the above customers testified that at no time was he or she advised by Fotis that the earnings of Consumer stock for the fiscal year ended June 30, 1963 amounted to approximately 1.5 cents per share. Nor is there credible evidence that these customers received copies of any of Consumer's financial statements.

De Mammos

Mr. E. W. K., a computer programmer, testified that on June 7, 1963 he bought 700 shares of Consumer from De Mammos at $7/8 per share after the salesman represented that he expected the price of the stock to go to $1-1/2 to $2. On June 13, 1963 he bought 1500 shares at the same price and on August 12, 1963 he bought 800 shares at $1 per share.

Mr. A. H. testified that on June 12, 1963 he bought 100 shares of Consumer at $7/8 per share after De Mammos expressed confidence that the improved earnings of the company "would possibly

reflect a substantial price improvement, something possibly even as high as $4 in time." Mr. A. H. testified that De Mammos expressed the view that such a rise might take about 6 months. On July 9, 1963 the witness purchased 200 additional shares at $1 per share.

Mr. M. G., an employee of the United States Post Office, testified that on June 12, 1963 he bought 200 shares of Consumer from De Mammos at $7/8 per share after the salesman represented that there would be a merger or consolidation of some sort between Consumer and another company, and that the price of the stock should rise at least to $1-1/2 to $2 per share in approximately 6 months. On September 26, 1963 the witness purchased an additional 100 shares at $1 per share when De Mammos advised that the plans for consolidation with another company were moving ahead.

Mr. A. J. M. testified that on September 23, 1963 he bought 500 shares of Consumer from De Mammos at $1 per share when De Mammos recommended that he sell 100 shares of Electronic Controls and purchase Consumers because of a better chance of a quick profit with the latter. The salesman represented that the customer would be able to sell the Consumer shares within a few months at about $2 per share because of a prospective merger of Consumer with another company.

Mr. C. P. testified that on September 12, 1963 De Mammos advised him to sell Metallurgical International stock and to buy Consumer shares with the proceeds. The salesman represented that Consumer would merge with another company, that a dividend would be paid and that a substantial profit could result from a price rise which should occur

within a few months. The witness purchased 400 shares on September 12, 1963 at $1 per share. After the purchase was made the witness received a copy of Consumer's annual report for the year ending June 30, 1963.

Dr. R. C. P. testified that on July 1, 1963 he bought 300 shares of Consumer at $1 per share and that on August 13, 1963 he bought 200 shares at the same price. The first purchase resulted from a call by De Mammos in which he represented that the stock was a good buy and would appreciate $1 or $2 in a year or so. He spoke of the possibility of a merger or consolidation with a larger loan company, advised that the loan business in Florida was flourishing and that Consumer was in "on the ground floor".

Mr. W. L. B. testified that on June 10, 1963 he was called by De Mammos, who advised that Consumer had a chance of going up 1 or 2 points in 6 months. When the witness objected to putting more money into stocks, De Mammos suggested that he sell 1,000 shares of his Metallurgical International stock and buy shares of Consumer with the proceeds. Mr. W. L. B. followed that advice and bought 700 shares of Consumer at $7/8 per share.

Mr. H. L. L., a college professor, testified that on June 12, 1963 he bought 1,000 shares of Consumer stock at $3/4 per share after De Mammos telephoned and informed him that Consumer was a growing and agressive company and that the price of its stock should go to $2 or $3 in a year or so. The witness sold his shares of Metallurgical International stock at the suggestion of De Mammos and bought the Consumer shares with the proceeds.

Mrs. P. J., then a housewife and subsequently a registered representative with a broker-dealer, testified that on August 7, 1963 she bought 200 shares of Consumer at $7/8 per share when De Mammos called and advised that the company was about to become the largest commercial financing business in Florida because of a prospective merger. He advised that its earnings would approximate 2 cents per month or 24 cents per year and suggested that at a "normal price-earnings multiple" of 10 times, the price of the stock could reach $2. On August 8, 1963, the customer purchased an additional 300 shares of the stock, again at $7/8 per share, after De Mammos called and advised that the parties involved in the take-over of Consumer were at that time together and that the papers were due to be signed.

De Mammos did not advise any of the above investor-witnesses of the minuscule earnings of Consumer for the 10 months ended April 30, 1963, or that its earnings for the fiscal year ended June 30, 1963 approximated 1.5 cents per share, with the possible exception of E. W. K. Kay

Mr. F. J. S., an attorney, testified that in November 1963 he was called by Kay and was told that Consumer would be involved in a merger shortly and that the stock would "go up substantially", i.e., "double or triple" within a short time. The witness bought 1,000 shares at $1-1/8, and another 1,000 shares at $1-1/4. Thereafter, on December 4, 1963, he bought an additional 1,000 shares at $1-1/8

when Kay advised that the stock was ready for a move and that the merger was going through.

On cross-examination the witness admitted that he was a very active trader in both high and low-priced stocks and that he recognized that his purchases of Consumer stock were speculative ventures, but he testified that Kay assured him personally that Consumer and other speculative stocks he recommended would rise in price.

Mr. H. L., a certified public accountant, testified that on June 4, 1963 he bought 1,000 shares of Consumer stock at $5/8 per share. Some time after the purchase, the witness testified, Kay advised him of a contemplated merger between Consumer and another company whose name the witness could not recall.

Mr. R. S. testified that he bought 1,000 shares of Consumer stock at $5/8 per share on June 5, 1963 from Stein. Thereafter, following a conversation with Kay in which the salesman represented that the company's earnings potential was approximately $.02 per month or $.20 or $.24 for the coming year, R. S. telephoned Mr. Fernon in Florida and inquired about the company. He learned from Fernon, as well as from an article published in the Wall Street Journal, that Fernon was purchasing a large block of Tower stock. The witness testified that he made a second purchase of the stock on January 31, 1964. He also testified that Kay advised of the possibility of an exchange of one share of Tower Corporation stock for either 1 or 2 shares of Consumer stock, at a time when Tower stock was selling on

the American Exchange at approximately $3 per share. There is no indication in the evidence of any basis for such representation.

At no time did Kay inform the above witnesses of the earnings of Consumer or furnish them with financial statements of the company.

Gersten

J. R., who is employed as a sales engineer, testified that after he had responded to registrant's advertisement by returning a card or a form through the mails, he received a telephone call from Gersten on November 14, 1963, during which he purchased 175 shares of Consumer at $1.25 per share. J. R. testified that Gersten informed him that an electronics corporation, some of whose stock the witness then held, was under investigation, and he recommended the sale of that stock and the purchase of Consumer stock with the proceeds. Gersten also advised of a stock dividend to be paid on Consumer stock in the immediate future, and stated that there would most likely be a merger with or a take-over by a company whose stock was listed on the American Stock Exchange. At a later date Gersten reiterated the statement concerning the prospects of a merger, and several months later, when the witness informed Gersten that he was contemplating the sale of the Consumer stock the salesman urged him to retain it because of the possibility of the company's merging with another company and the resultant potential increase in the price of the stock.

J. A. K., Jr., a data processing manager, testified that on February 5, 1964 he bought 200 shares of Consumer at $1-3/8 per share during a telephone conversation in which Gersten advised him that there was a chance that the company would merge with Tower Credit Corporation, which was listed on the American Stock Exchange. It was clear from the testimony of this witness that he was interested in buying "cheap stocks" and recognized his purchase as a speculation, and that Gersten was acquainted with the customer's speculative inclinations.

J. D. R., an automobile salesman in Providence, Rhode Island, indicated in his testimony that he responded to registrant's advertisement by sending through the mails a card indicating his interest in securities.[4/] Following this, in November 1963 he received several telephone calls from Gersten in which the purchase of Consumer stock was recommended. Gersten advised that the company was raising money in order to increase its outstanding loans and that it was buying up a few other small companies. He also stated that the price of the stock would double to $2-1/2 per share by the end of 1964 because of the company's expansion in a fast-growing territory and an increase in earnings from the additional funds available for loans. And Gersten pressured the witness into a purchase by making several telephone

---

4/ The witness testified his response to the advertisement followed rather than preceded the first of Gersten's telephone calls, but the testimony of the witness was not sufficiently precise or reliable to support such a finding. Conversely, the probabilities of the situation suggest that the telephone calls from Gersten came after the mailing of a form or card to registrant by the witness.

calls and by warning him that he would not have the benefit of a 10% stock dividend if he delayed the purchase. The witness bought 500 shares of Consumer at $1-1/4 per share on November 7, 1963.

The witness also testified regarding a representation by Gersten that the company's earnings would increase by approximately 1-1/2 cents or 2 cents per month. Whether this testimony accurately reflects Gersten's representation or whether Gersten in fact paraphrased Fernon's prediction in the telegram sent to Stein in November 1963 is not clear. But inasmuch as the recollection of the witness was not entirely accurate in other areas, I am loathe to conclude that Gersten misrepresented the information transmitted by Fernon as to monthly earnings. I find, rather, that his representation was of per share earnings of 1-1/2 to 2 cents each month as a result of the increase in available funds. This is consistent with the fact that other representations by Gersten were predicated on and reflected information made available by Fernon.

Legal Effect of Sales Activities

The evidence falls short of supporting the Division's argument that "the operation of registrant's business was in the classical boiler-room pattern". For example, registrant was not selling the stock of a company organized solely for the purpose of disposing of its own stock issue; it did not, according to the evidence, engage in the exclusive or almost exclusive sale of an obscure security by means of long distance telephone calls to inexperienced and unsophis-

ticated customers whose names were obtained from compilers of lists; it did not manipulate the price of the stock, engage in the practice of sending "wooden orders" to persons who had never agreed to buy stock or in the practice of having "opening salesmen" followed by "re-loaders" who shared commissions; and I find no deliberate and planned scheme by registrant and the salesmen or by the salesmen among themselves to defraud the public by selling securities they believed to be worthless. 5/

This is not to suggest that any one or all of the above activities or practices is a sine qua non of a boiler-room operation. Nor does it suggest that registrant's operations exhibited none of the indicia of a boiler-room or did not violate the standards of high conduct required of a broker-dealer. Conversely, but without belaboring the point inasmuch as registrant's registration already has been revoked, it seems sufficient to point out that Stein hired salesmen with employment backgrounds which should have dictated, at the least, very close supervision by management over their sales techniques and activities, that he failed utterly in his responsibility for supervising these men and for assuring himself that they were properly trained, and that he was careless, as were the respondent-

---

5/ Cf. the discussion of the characteristics of a boiler-room in the Report of Special Study of Securities Markets, Part I, p. 265 et seq. (1963). Cf. also W. E. Leonard & Co. Inc., Securities Exchange Act Release No. 7070, April 30, 1963; Wright, Meyers and Bessell, Inc., Securities Exchange Act Release No. 7415, September 8, 1964.

I do not overlook or minimize the importance or seriousness of the other violations by registrant, as recited in the attached order of the Commission.

salesmen, in accepting and passing on to employees and to customers the untested and unreliable information and the puffing of Fernon.[6/] This is especially so, where that information purported to reflect relatively dramatic increases in business activity and profit potential.[7/]

And Stein and the respondent-salesmen, all of whom had prior experience in selling securities, should have been sufficiently knowledgeable and sophisticated not to have pressured customers into purchasing Consumer stock because that company was buying other small loan companies whose respective financial conditions were unknown to them, or because Consumer was anticipating the declaration of a stock dividend which would increase the number of shares held by a purchaser but not the value of his holdings, or because it

---

6/ Cf. Shearson-Hammill, Securities Exchange Act Release No. 7743, November 12, 1965, where the Commission said, at page 21:

> "It is clear that the reckless and irresponsible representations made to customers by these respondents cannot be justified by any asserted reliance upon information supplied by the issuer or published sources. Not only did the representations and predictions in many instances go beyond the information [furnished] but the circumstances under which the information was received - without the benefit of any financial statements for USAMCO and for the companies it had acquired or proposed to acquire - should have put them on notice that it might not be reliable."

Cf. S.E.C. v. Macon, 28 F. Supp. 127 (D. Ct. Colo. 1959).

7/ Cf. Crow, Bourman & Chatkin, Inc., Securities Exchange Act Release No. 7839 (March 15, 1966); Hamilton Waters & Co., Inc., Securities Exchange Act Release No. 7725 (October 18, 1965); B. Fennekohl & Co., Securities Exchange Act Release No. 6898, (September 18, 1962); Lawrence Securities, Inc., Securities Exchange Act Release No. 7146 (September 23, 1963); Amos Treat & Co., Inc., Securities Exchange Act Release No. 7341 (June 11, 1964); The Richmond Corporation, Securities Act Release No. 4584 (February 27, 1963).

was expected that Consumer would merge with another company whose operations were in no wise indicated as being profitable.

Moreover, as stated above, each salesman sold Consumer stock without disclosing to customers the minuscule earnings of the company,[8/] and each represented, without any reasonable basis therefor, that the price of the stock would increase substantially.[9/] It follows from the evidence that each of the respondents wilfully violated the anti-fraud provisions of the securities laws, i.e., 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.[10/]

8/ That the earnings of the company were approximately 1.5 cents per share for the 10 month period ended April 30, 1963 and for the fiscal year ended June 30, 1963 was a material fact which could have weighed, at least to some extent, in the investment judgment of purchasers, even when the stock was selling for a fraction of a dollar per share. The failure to inform customers of the small earnings was an omission of a material fact. Cf. W. H. Bell & Co. Inc., 29 S.E.C. 709 (1949).

9/ The Commission has held time and again that predictions of specific and substantial price rises of speculative securities are a "badge of fraud" and cannot be justified. Albion Securities Company, Inc., Securities Exchange Act Release No. 7561, March 24, 1965; Linder, Bilotti & Co., Inc., Securities Exchange Act Release No. 7460, November 13, 1964; Alexander Reid & Co., Inc. 40 S.E.C. 986 (1962); Wright, Meyers & Bessell, Inc., supra;

Although Consumer was not a young or a new company, its earnings and financial statements indicate that it was unseasoned and its acquisition of small loan companies of unknown and undisclosed status or worth furnished no basis for predictions of a price rise.

10/ In broker-dealer proceedings wilfulness does not require that a person intend to violate the law or know that he is doing so, but only that he intended the acts that constitute the violation. Hughes v. Securities and Exchange Commission 174 F 2d 969, 977, (C.A.D.C., 1949); Thompson Ross Securities Co., 6 S.E.C. 1111, 1122 (1940). Measured by these standards, the violations were wilful.

The mails and interstate facilities were used in selling the securities.

None of the respondent-salesmen took the stand to testify, and under the circumstances of this case, and considering the nature of the testimony adduced by the Division, this failure supports an inference that the testimony of each, if produced, would not have been favorable to his case.[11/] I draw such inference.

Public Interest and Sanctions

Many of the representations by Fotis were utterly irresponsible and flagrantly violated the trust and confidence essential to the relationship between a salesman of securities and his customers. Fotis' comparisons of Consumer with Household Finance Corporation and Beneficial Loan Company may not have been made for the purpose or with the intent of misleading (a matter on which there was no testimony), but they were in any event recklessly made.[12/]

More serious were his irresponsible predictions of price rises and his representations of merger, possible listing on an Exchange and of stock dividends made to induce hasty purchases.

Absent mitigating circumstances and any indication, during these proceedings, of the likelihood of a change in Fotis' tactics or course of dealings with customers, the public interest requires that an order should issue barring him from being associated with a broker or dealer.

11/ N. Sims Organ, 40 S.E.C. 573 (1961), aff'd 293 F. 2d 78 (C.A. 2, 1961), cert. den. 368 U.S. 968.

12/ G. J. Mitchell, Jr. Co., 40 S.E.C. 409 (1960); L. L. Bost & Co., 40 S.E.C. 958 (1962).

De Mammos is a more sophisticated and more temperate person than Fotis, and his misrepresentations in selling were more restrained than those of his associate. But as a result of his superior intelligence and his extensive experience as an employee of over-the-counter firms which have continued to operate by the use of improper selling practices, De Mammos is a very knowledgeable person in the over-the-counter securities business, and his employment of the improper devices and selling methods described was accordingly a more flagrant and reprehensible activity. I find no basis for mitigation of sanctions against De Mammos and conclude that the public interest requires that an order issue barring him from being associated with a broker or dealer.

Kay acted as manager or supervisor of registrant while Stein was absent from the office over an extended period of time following a heart attack suffered on January 28, 1964 and the ensuing hospitalization and convalescent period totalling approximately three months.

As stated above, Kay was represented at the hearing by the counsel who also represented Gersten, but Kay neither testified nor submitted through counsel or pro se any proposed findings or brief.

Kay's sales to F. J. S. occurred in November and December 1963, and appear to have been predicated at least to some extent on the expectation of the merger or combination between Consumer and Tower. That F. J. S. was interested in speculating and recognized Consumer stock as a speculation is not, of course, justification for Kay's

representations that the price of the stock would increase.[13/] The other misrepresentations and omissions, occurring as they did in June 1963 and at later dates, also indicate the need for and the propriety of imposing sanctions for Kay's improper activities. However, despite the failure to testify and the lack of other efforts to present mitigating factors, I do not believe that the ultimate sanction of barring Kay from being associated with a broker or dealer is required. I believe that a suspension of his association with a broker or dealer for a period of six months should be ordered in the public interest.

Gersten's background in the securities business, as shown by his application for registration by the NASD is extensive. From 1955 to the time of the hearing he sold securities for approximately 25 over-the-counter firms, with several periods of employments lasting less than one month and many for a few months. Although several of the employer-firms were found by the Commission to have operated in serious violation of the anti-fraud provisions of the securities laws, there is no indication that Gersten was named or involved in any proceedings instituted by the Commission or by any other regulatory body save the instant proceeding.

Gersten's counsel urge the adoption of proposed findings that his representations to customers were based upon information supplied by registrant and by Consumer, which the salesman had no reason to

---

13/ Charles C. Wilson, 1 S.E.C. 402 (1936); R. A. Holman & Co. Inc., Securities Exchange Act Release No. 7770 (December 15, 1965).

doubt. However, the cases cited at footnotes 6 and 7, supra, among others, indicate the responsibility of Gersten for his misrepresentations and support the Division's contention that he had no right to rely upon and relay such information to his customers.

Nevertheless, the fact that Gersten's sales to the three investor-witnesses who testified were effected after a relationship of some sort between Consumer and Tower became an accomplished fact is mitigative of the violations, as is the fact that two of the three witnesses recognized the speculative nature of the securities and one of these who wanted "cheap stocks" bought Consumer because he was advised only that there was "a chance the company would merge with Tower," which was listed on the American Exchange. Under the circumstances, even though Gersten's failure to testify supports an unfavorable inference, I agree with the contention made by Gersten's counsel that the evidence does not support and the public interest does not require that he be permanently barred from being associated with a broker or dealer. I believe that suspension from such association for a period of six months is appropriate.[14/]

Accordingly, IT IS ORDERED that Peter Fotis and James De Mammos are barred from association with a broker or dealer; and that Saul Kay and Erwin Gersten are suspended from association with a broker or dealer for a period of six months from the effective date of this order.

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

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice (17 CFR 203.17).

Petition for review of this initial decision may be filed in accordance with Rule 17(b) of the Commission's Rules of Practice within 15 days from service. Pursuant to Rule 17(f) of the Commission's Rules of Practice, this initial decision shall become the final decision of the Commission as to each of the above-named respondents unless he shall file a petition for review or the Commission determines on its own initiative to review. If a party timely files a petition for review or the Commission takes action to review as to a party, this initial decision shall not become final as to such party.

Sidney Ullman
Hearing Examiner

Washington, D.C.
May 31, 1966

EXHIBIT A

(Securities Exchange Act Release No. 7842)

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
March 24, 1966

In the Matter of HUNTINGTON SECURITIES CO., INC. 80 Wall Street New York 5, New York and BENJAMIN STEIN File No. 8-8892 Securities Exchange Act of 1934 - Sections 15(b) and 15A	FINDINGS, OPINION AND ORDER REVOKING BROKER-DEALER REGISTRATION, EXPELLING FROM REGISTERED SECURITIES ASSOCIATION AND BARRING ASSOCIATION WITH BROKER-DEALER

In the course of these proceedings pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act"), in which they were represented by counsel, Huntington Securities Co., Inc. ("registrant"), and Benjamin Stein, its president, a director, and principal stockholder, solely for the purposes of these and any other proceedings pursuant to Sections 15(b), 15A and 19(a)(3) of the Exchange Act and Section 203(d) of the Investment Advisers Act of 1940, have submitted certain stipulations and consents and waived further hearings and post-hearing procedures. Registrant admits the allegations in the order for proceedings and consents to findings of willful violations as alleged in such order, and to entry of an order revoking registrant's broker-dealer registration and expelling it from membership in the National Association of Securities Dealers, Inc. ("NASD"). Stein, neither admitting nor denying the allegations of the order for proceedings, consents to findings of willful violations as alleged in that order and to an order barring him from being associated with a broker-dealer.

On the basis of the stipulations and consents and the allegations in the order for proceedings, it is found that:

1. During the period from about June 1, 1963 to May 31, 1964, registrant, together with or aided and abetted by Stein, willfully violated the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 15c1-2 thereunder. In the offer and sale of common stock of Consumer Credit Corporation ("Consumer Credit"), registrant and Stein engaged in high-pressure telephone solicitation of customers to purchase a speculative security, without inquiry or regard for such customers' financial needs, objectives or circumstances; failed to give salesmen adequate training; and made false and misleading representations concerning Consumer Credit's current and projected earnings, an anticipated merger, and a rise in the price of the stock.

2. Registrant, aided and abetted by Stein, willfully violated Sections 15(b), 15(c)(3), and 17(a) of the Exchange Act and Rules 17 CFR 240.15b-2, 15c3-1, 17a-3 and 17a-5 thereunder. Registrant failed promptly to amend its application for registration to disclose that after June 25, 1962, only Stein owned more than 10% of its equity securities; during the period from approximately March 31 to May 4, 1964, registrant engaged in the securities business at times when its aggregate indebtedness exceeded the maximum permissible under the net capital rule; registrant failed to make and keep current certain required books and records during the period from about March 16 to April 15, 1964; and registrant failed to file a report of its financial condition for 1963.

3. In view of the foregoing, it is in the public interest to revoke registrant's broker-dealer registration and expel it from membership in the NASD and to bar Stein from association with a broker-dealer.

Accordingly, IT IS ORDERED that the registration as a broker and dealer of Huntington Securities Co., Inc. be, and it hereby is, revoked; that Huntington Securities Co., Inc. be, and it hereby is, expelled from membership in the National Association of Securities Dealers, Inc.; and that Benjamin Stein be, and he hereby is, barred from being associated with any broker or dealer.

For the Commission (pursuant to delegated authority).

Orval L. DuBois
Secretary