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ADMINISTRATIVE PROCEEDING
FILE NO. 3-5439

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
STILWELL COKER & CO., INC.	
S.C. ASSOCIATES, INC.	
FIRST SOUTH CAROLINA CORP.	
CHARLES D. STILWELL	
STEPHEN C. COKER	
VINCENT P. KANE	
HOWARD SPENCER HART	
DONALD R. HUFFMAN	
JOAN H. SCHUMANN	
ALFRED R. HUGHES, JR.	
MARGARET C. THORNAL	

INITIAL DECISION

Filed 6/20/79

Washington, D.C.
June 18, 1979

Irving Schiller
Administrative Law Judge

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MARGARET C. THORNAL	

APPEARANCES: Joseph L. Grant, Assistant Regional Administrator, Atlanta Regional Office and Nancy J. Van Sant for the Division of Enforcement.

Daniel I. Macintyre for respondents S.C. Associates and Stephen C. Coker.

Wade H. Logan, III of Holmes, Thomson, Hogan & Cantrell for respondents Charles D. Stilwell and First South Carolina Corp.

A. Hoyt Rowell, III of Gibbs, Gaillard, Rowell & Tanenbaum for respondent Vincent P. Kane.

Charles E. Auslander, Jr. of Harvey, Battey, Macloskie & Bethea for respondent Howard Spencer Hart.

Phillip A. Middleton for respondent Donald R. Huffman.

Thomas Tew and Richard H. Critchlow of Tew, Critchlow, Sonberg & Traum for respondent Joan H. Schumann.

Russel W. Harter, Jr. of Horton Drawdy, Maschbanks, Chapman & Brown for respondent Alfred R. Hughes, Jr.

William L. Runyon, Jr. for respondent Margaret C. Thornal.

BEFORE: Irving Schiller
Administrative Law Judge

This public proceeding was instituted by an Order of the Commission on April 18, 1978 (Order) pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934[1/], (Exchange Act) Section 10(b) of the Securities Investor Protection Act of 1970(SIPA)[2/] and Sections 203(e) and (f) of the Investment Advisers Act of 1940 [3/] (Advisers Act) to determine whether the three corporate respondents and various individual respondents wilfully violated or wilfully aided and abetted violation of the antifraud provisions of Section 17(a) of the Securities Act of 1933 (Securities Act)[4/] and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder[5/]; whether the respondent firms and various individual respondents wilfully violated or wilfully aided and abetted violations of Sections 15(b),(c)(3) and 17(a) of the Exchange Act and specified Rules thereunder, Sections 204, 206(1) and (2) of the Advisers Act and Rule 204-2(a) thereunder and whether any remedial action is appropriate in the public interest.

1/ 15 U.S.C. § 78 o (b); 15 U.S.C. § 78 s (h).

2/ 15 U.S.C. § 78 c c c.

3/ 15 U.S.C. § 80b-3e and f.

4/ 15 U.S.C. § 77 q (a).

5/ 15 U.S.C. § 78j(b); 17 CFR 240.10b-5.

The Order, in essence, charges that respondents [6/] S.C. Associates, Inc. (SCA), First South Carolina Corp.(First S.C.), Charles D. Stilwell (Stilwell), Stephen C. Coker (Coker), Vincent P. Kane (Kane) and Joan H. Schumann (Schumann), (sometimes hereinafter referred to collectively as the remaining respondents) during the period between December 1975 to in or about December 1976 wilfully violated and wilfully aided and abetted violations of the above noted antifraud provisions of the Securities Act and the Exchange Act; that during the period from November 1975 to date Stilwell Coker & Co., Inc. (registrant) wilfully violated and the remaining respondents aided and abetted violations of the record keeping and reporting requirements of Section 17(a) of the Exchange Act and various specified Rules thereunder; that during the period from March 1, 1975 to on or about December 17, 1976 registrant wilfully violated and the

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6/ The Order alleges violations against the following firm and persons whose cases have been determined by the Commission on the basis of Findings and Orders Imposing Remedial Sanctions as reflected in the Commission's Releases as noted: Stilwell Coker & Co., Inc. (Charleston, South Carolina), Exchange Act Release No. 14979, dated July 19, 1978, 15 SEC Docket 313; Howard Spencer Hart (Beaufort, South Carolina), Alfred R. Hughes, Jr. (Greenville, South Carolina), and Margaret C. Thornal (Charleston, South Carolina), Exchange Act Release No. 15286, dated October 31, 1978, 16 SEC Docket 7; Donald R. Huffman (Dallas, Texas), Exchange Act Release No. 15481 dated January 8, 1979, 16 SEC Docket 697.

remaining respondents aided and abetted violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder and that from April 1976 to the present registrant wilfully violated and respondents Stilwell, Coker and Kane aided and abetted violations of Section 15(b) of the Exchange Act and Rule 15(b)(3) thereunder. The Order further charges that from September 30, 1976 to December 1976 SCA wilfully violated and respondents First S.C., Stilwell, Coker, Kane and Schumann aided and abetted violations of Section 204 of the Advisers Act and Rule 204-2(a) thereunder and Section 206(1) and (2) of the Advisers Act.

In addition the Order alleges that on December 17, 1976 respondents Stilwell, Coker and Kane were enjoined from violating the antifraud provisions of the Securities Act and the Exchange Act by the United States District Court for the District of South Carolina and that on the same date the Court entered a consent Order adjudicating the customers of registrant to be in need of protection under the provisions of SIPA and appointed a trustee for registrant pursuant to the provisions of that Act.

After appropriate notice, hearings were held in Charleston, South Carolina. All of the remaining respondents were represented by counsel. Proposed findings of fact and conclusions of law and supporting briefs were filed by the Division of Enforcement (Division) and respondents SCA, Coker and Schumann. Respondents

First S.C., Stilwell and Kane have not filed proposed findings of fact or briefs. As indicated in note 6 supra, the cases against several of the respondents charged in the Order with a variety of violations have been concluded. Accordingly, any findings that will necessarily be made herein relating to those respondents in light of their involvement in the conduct and activities which are the subject of charges against the remaining respondents, will have no application to the respondents whose cases have been determined.

The findings and conclusions herein are based upon the record and upon observation of the demeanor of the various witnesses. The standard of proof applied to the antifraud charges is that requiring proof by clear and convincing evidence.7/ As to the remaining charges, the preponderance of the evidence standard of proof is applied.

7/ In Collins Securities Corporation v S.E.C. 562 F2d 820, decided August 12, 1977, as amended on denial of request for rehearing September 23, 1977, the Court of Appeals for the District of Columbia Circuit held that in a Commission administrative proceeding where charges of violations of the antifraud provisions of the securities laws are made and where the sanction may involve an expulsion or substantial suspension order, the "clear and convincing standard of proof" should be applied. Though it is recognized that the Commission continues to assert in other proceedings that the preponderance of evidence standard is legally sufficient in its administrative proceedings, Steadman Securities Corporation et al., Investment Company Act of 1940 Release No. 9830, June 30, 1977, 12 SEC Docket 1041, appeal pending in the Court of Appeals for the Fifth Circuit, Charles W. Steadman v S.E.C. No. 77-2415, it is believed that the appropriate course in the instant case, in light of the charges in the Order of violations of the antifraud provisions of the Exchange Act and the Securities Act, is to apply the Collins standard with respect to the fraud charges.

The Respondents

Registrant, a South Carolina corporation organized June 19, 1975, registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act, effective as of October 9, 1975. Its principal place of business was in Charleston, South Carolina. Registrant succeeded to the business of Stilwell, Coker & Co. Investment Securities, a limited partnership formed in June 1973. Registrant was a member of the National Association of Securities Dealers, Inc., (NASD) a national association registered pursuant to Section 15A of the Exchange Act. As noted above the United States District Court for the District of South Carolina appointed a trustee for the registrant pursuant to the provisions of SIPA. Registrant's registration as a broker-dealer was revoked on July 19, 1978.8/

SCA was organized July 10, 1975 under the laws of South Carolina. Its principal place of business was in Charleston, South Carolina. SCA is registered as an investment adviser pursuant to Section 203(c) of the Advisers Act which registration became effective September 4, 1975.

Stilwell, at all revelant times, was chief executive officer of registrant, chairman of its board of directors, and from the date of registrant's organization until April 10, 1976 was president of registrant. He and Coker formed the limited partnership which was the predecessor of registrant. Stilwell was also vice-president

8/ See footnote 6 supra

and secretary of SCA and a shareholder of registrant and SCA.

Coker, at all relevant times, was executive vice-president and secretary of registrant and president and treasurer of SCA. He was a director and shareholder of registrant and SCA. He and Stilwell formed registrant's predecessor.

Kane, since on or about April 10, 1976, was president, chief operating officer and ex officio a member of the board of directors of registrant.

First S.C. was incorporated under the laws of South Carolina on February 9, 1976, to act as a holding company for registrant and SCA. First S.C. was held out to be the parent corporation of registrant and SCA. There is no evidence however that any of registrant's stock was ever issued to SCA. There are a great many documents in evidence reflecting transactions between First S.C. and registrant which establish that the operations and activities and some of the personnel of First S.C. and registrant were intermingled. Stilwell was president and treasurer and Coker was vice-president and secretary of First S.C.

Schumann was engaged by registrant from about April 1976 to about December 10, 1976 as a "consultant". On June 1, 1976, the NASD was advised in writing by registrant that Schumann was authorized to speak on behalf of registrant to the staff of the NASD on matters "relative to the 1933 and 1934 Acts as well as the Rules of Fair Practice and the Uniform Practice Code". On July 21, 1976, the Atlanta Regional Office of the Commission was

sent a similar letter informing the Commission staff that Schumann was authorized to speak for registrant. Schumann maintains she was engaged by registrant on a consulting basis to help reorganize registrant's procedures, was paid $100 per day as a consultant and was not an "associated person" of registrant as that term is defined in the Exchange Act.

Organization of registrant - Background

In the spring of 1973 Stilwell and Coker, who were both employed by a brokerage firm, determined to form a partnership for the purpose of entering the brokerage business on their own. Between them, they interested five individuals into investing $10,000 each for a 50% interest in the partnership, becoming limited partners,[9/] the other 50% of the profits was to be shared equally between the two general partners, Stilwell and Coker, neither of whom made any capital contribution. The partnership never operated profitably. Subordinated loans were obtained to permit registrant to meet its net capital requirements. By spring or summer of 1975 losses approximated $75,000. Registrant was organized in June 1975 to succeed to the partnership. The limited partners were each to receive 5,000 shares of common stock of registrant for their interest in the partnership. In addition 100,000 shares of convertible preferred stock at $1.00 per share was sold to seven individuals, most of which was paid for in the form of promisory notes, secured by various securities given as collateral to secure

9/ The limited partner was respondent Howard Spencer Hart (Hart). The other persons were George C. Evans (Evans), Carole W. Rivers (Rivers), William Mikell (Mikell) and Thomas Gibson (Gibson).

the notes.10/

From its inception registrant cleared its transactions on a fully disclosed basis through Elkins, Stroud, Supplee (Elkins), a registered broker dealer in Philadelphia, Pennsylvania. Some time in March 1976 registrant started clearing some transactions. However, the majority of registrant's customers transactions continued to be cleared by Elkins. In August 1976 Elkins terminated its agreement with registrant and the following month commenced delivering to registrant all of the securities it held belonging to registrant's customers. The Elkins transmittal forms sent to registrant identified the names and account numbers of each of the customers who owned the securities and contained the specific certificate numbers of the securities forwarded for the customers account. By the middle of October 1976 all customers securities held by Elkins had been forwarded to registrant.

Violations of the antifraud provisions of the Securities Act, the Exchange Act and the Advisers Act

Each of the remaining respondents is charged with having wilfully violated and aided and abetted violations of the antifraud provisions of the Securities Act and the Exchange Act. With respect to the Advisers Act, only SCA is charged with wilfull violations and the others only with aiding and abetting such violations.

10/ The preferred stockholders were Bonnie A. Williams, Henry J. Lee, Beaman Bond, Peter M. Knoller (Knoller), Margaret S. Waring (Waring), George E.Z. Johnson and D. Joan Kennedy(Kennedy).

The evidence in this case demonstrates in clear and convincing fashion that the remaining respondents engaged in and aided and abetted in acts and practices and a course of business which operated as a fraud and deceit upon its customers, upon persons who made subordinated loans to registrant and upon registrant's shareholders. The record further establishes, in similar fashion, that in connection with offering and selling and effecting transactions in securities obtained monies and property by means of false and misleading statements or omissions to state material facts relating to registrant's purported profitable operations, registrant's financial condition and its solvency respondents aided and abetted others in the foregoing conduct. To implement the fraudulent scheme, securities furnished to registrant by its shareholders as collateral and securities belonging to customers were knowingly and deliberately sold without authorization of and contrary to representations by Stilwell, Coker or Kane to such persons that such securities would not be sold without prior approval by such persons and the proceeds of such sales were used in registrant's business without the knowledge of such persons. To accomplish their ends one or more of the respondents resorted to sending statements to registrant's customers reflecting securities being held in their account when in fact such securities had been sold and funds used in registrant's business, to sending "dividends" or "interest" to customers presumably on securities the customers

believed they owned when in fact their securities had been sold, to causing fictitious entries to be made in various of registrant's and SCA's books, ledgers and other records, to failing to enter or properly reflect transactions in its books and records, to creating at least one letter purportedly forwarding securities to Stilwell and creating other documents purporting to reflect transfers of securities. Other respondents participated in or aided and abetted such conduct. One witness testified that he never prepared or signed any letter forwarding securities to Stilwell and never executed several stock powers for the sale of certain securities and his signature on such stock powers was forged. As one consequence of the fraudulent acts and practices utilized to effectuate the scheme, the SIPA trustee on behalf of the Securities Investors Protection Corporation, was required to pay out approximately $328,000 to satisfy claims from registrant's customers.11/

From the inception of the partnership by Stilwell and Coker in 1973 until June 1975, when registrant was formed, the partnership never operated profitably. Coker testified that in excess of $10,000 which had been loaned to the partnership on a subordinated basis and $50,000 which had been contributed by the five limited partners had been lost by June 1975, at the time Stilwell suggested and he (Coker) agreed to organize registrant to succeed the partner-

11/ The claims of two such customers exceeded the limitations of SIPA. One of such customers suffered a loss of about $13,000 and the other about $1300. The record discloses that no funds are available for distribution to registrant's general creditors which include the telephone company, the lessor of registrant's office space, travel agencies, airlines, automobile rental agencies or other general creditors. Registrant's preferred and common stockholders or its subordinated lenders will not receive any distribution.

ship. The five original limited partners became stockholders of the registrant, each receiving 5,000 shares of common stock. Coker further testified that shortly after registrant came into existence it was determined, at Stilwell's suggestion, to sell 100,000 shares of convertible preferred stock at $1.00 per share in order to obtain sufficient capital for registrant's operations. Coker stated that Stilwell explained to him that the persons to whom the preferred stock would be sold would pay for the stock by executing notes collateralized by securities. Notwithstanding advice from counsel retained by registrant that under South Carolina law notes could not be accepted as payment[a/], the preferred stock was nevertheless sold to seven persons by the end of 1975, primarily by Stilwell with Coker's knowledge, and such persons paid for the stock, either in whole or in part, by signing notes which were secured by various securities given as collateral. In connection with these sales it is significant to note that the preferred stockholders were told, by Stilwell or Coker, that the collateral furnished by such persons would not be sold by the registrant without the prior approval or consent of the stockholders.

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a/ 1976 S.C. Code Sec 33-9-80 provides in pertinent part " ..... promisory notes ... shall not constitute payment or part payment for shares issued to such subscribers or purchasers".

The manner in which the fraud was perpetrated on registrant's preferred stockholders is clearly manifest from the testimony of such persons as well as that of Coker and the statements made by Stilwell under oath. Knoller, one of the preferred stockholders, testified that in September 1975, at Stilwell's request, he purchased 10,000 shares of registrant's preferred stock at $1.00 per share, signed a note for $10,000 and gave registrant securities as collateral for the note. Stilwell told Knoller that the collateral would not be sold and that he would receive any dividends on the stock and the interest on the bond he furnished as collateral. Knoller also testified he spoke with Coker about his purchase of the preferred stock and the understanding that the collateral would not be sold. The record discloses that Coker, in fact, witnessed the note Knoller executed. Without notice to Knoller the collateral was sold one month later in October 1975. In January 1976 Knoller made a second investment in registrant, again signing a note this time for $5,000 and furnishing additional securities as collateral. Knoller stated he was dealing with both Stilwell and Coker at the time and either one of the other promised him that the collateral would not be sold without his prior authorization. At the time Knoller made his second investment neither Stilwell or Coker told him that the collateral he furnished in September had already been sold. A certificate for 15,000 shares of registrant's convertible preferred stock was given to Knoller on April 2, 1976. In May 1976 the collateral furnished by Knoller in connection with his second investment was sold without his authorization. The record discloses

that when the collateral was sold the proceeds received exceeded the amount of the note, but the difference was never given to Knoller. Moreover, on September 27, 1976 Knoller issued a check for $2,800 as a payment on his note which was deposited to the account of First S.C. despite the fact that the collateral realized more than the amount of the note. Finally, at an October meeting of registrant's shareholders, which Knoller attended, neither Stilwell or Coker informed him his collateral had been sold without his authorization nor that his check , for payments on his note, had been deposited to the account of First S.C.

Notwithstanding the sale of his collateral, Knoller was sent "dividend" checks on such collateral in January, April, August, September and October, 1976. On December 7, 1976 Knoller received two statements from registrant, (one of which was signed "Steve", Coker's first name), reflecting the amount of dividends paid him during the year on his collateral, thus deceiving Knoller into believing registrant still held his collateral.

Bond, another preferred stockholder, purchased 10,000 shares of registrant's preferred stock in the fall of 1975 for which he signed a note and deposited collateral. In the latter part of December or early in 1976 Bond asked Coker about the interest on his collateral. Coker testified he knew of Stilwell's arrangement with Bond not to sell the collateral without the latter's consent, he knew that Stilwell had sold the collateral without Bond's knowledge in September 1975, shortly after it was deposited with registrant, but nevertheless failed to inform Bond that his collateral

had been sold.

Lee, another preferred stockholder, also issued a note and pledged a $10,000 face amount bank note as collateral. Again notwithstanding, a promise to the contrary by either Stilwell or Coker, the latter liquidated the collateral without advising Lee. Another preferred stockholder, Johnson, executed a note for his purchase of the stock and deposited a $6,000 face amount Bond as collateral. Without obtaining Johnson's permission to sell the collateral, as promised, the collateral was sold prior to March 1976.

Waring purchased 35,000 shares of preferred stock and gave $52,000 in face amount Chase Manhattan Notes to secure her note. In the latter part of December 1975 or early 1976 the collateral was sold by Coker without her knowledge and without informing her son, who worked in registrant's office with Stilwell and Coker. The record discloses that when the collateral was sold the proceeds exceeded the amount of Ms. Waring's note, but the excess amount was never remitted to her but used in registrant's operations. Moreover, in Waring's case the fraud was aggravated by the fact that following the sale of the collateral, Coker was requested by Waring's son to switch the Chase Manhattan Notes into Citizens and Southern Convertible Debentures, which Coker agreed to do. Coker never told Waring or Waring's son that the collateral had already been sold. However, some time in April or May 1976 Coker purchased the said Bonds but registrant had no money to pay for them.

Coker talked with Stilwell about the matter and Stilwell told him to sell the bonds, which he did. Within the next month Coker again purchased the bonds for Waring and again registrant was unable to pay. Coker again sold the bonds. Neither Waring or her son were informed of these actions. At some time during these activities Kane became aware of the Waring problem but he did nothing to alleviate the matter.

Kennedy testified that in May 1974, at Stilwell's request, she furnished registrant's predecessor (the partnership) $10,000 face amount of Bonds under a subordination agreement signed by both Stilwell and Coker. She was told the bonds would be held and never sold and was given a letter signed by both Stilwell and Coker stating, among other things;

> "Steve and I have no intention of selling your bonds or even borrowing against them ...."

In May 1975 the subordination agreement was renewed for another year. Kennedy further testified Stilwell told her orally that the Bonds would not be used without her permission. Kennedy stated she never saw the Bonds again after 1974 and that she never authorized Stilwell or Coker or anyone else to transfer or otherwise dispose of the Bonds, nor did she authorize anyone to use the proceeds of the sale or other disposition for registrant or any other entity. Early in 1976 Stilwell approached Kennedy to purchase 2500 shares of 20% preferred stock in First S.C. Payment was to be in the form of 100 shares of ITT to be held as collateral. Kennedy gave Stilwell

a certificate for 200 shares of ITT of which 100 shares was to be used as collateral and the remaining shares reissued to her. Again she was told the collateral would not be sold and by letter dated June 30, 1976 Stilwell stated, among other things;

> "This is essentially the same agreement that we have always had between us".

On the same date she received a certificate for 2500 shares of Cumulated Preferred Stock of registrant. Kennedy had no explanation from anyone as to why she received registrant's stock when she believed she was purchasing stock of First S.C. At any rate Kennedy never received the 100 shares of ITT promised her nor the 100 shares she furnished as collateral. Kennedy testified she never authorized anyone to sell her collateral or the other 100 shares of ITT.

Having obtained funds by the fraudulent means described above registrant was able to stagger along during the latter part of 1975 and until August or September 1976. During this period transactions were being effected on behalf of customers of registrant. The course of conduct of registrant, Stilwell and Coker was not confined to defrauding only its preferred stockholders but was pursued, with even greater zeal, with its customers. As noted earlier, registrant cleared its transactions with Elkins on a fully disclosed basis. Effective March 1, 1976 registrant elected to begin clearing its own transactions. However, the majority of its customers transactions continued to be cleared by Elkins. On April 10, 1976 Kane was elected president and chief operating officer of registrant, Stilwell was

elected chairman and chief executive officer and Coker, vice-chairman of registrant. From at least March 1976 until some time in August 1976, when Elkins terminated its clearing agreement with registrant, registrant continued to face financial difficulties. During that period its capital deficits ranged from about $31,000 to at least approximately $189,000.

In September 1976 Elkins began delivering to the registrant the securities it held for the benefit and accounts of registrant's customers. The transmittal forms accompanying the customers securities identified the name of the customers who owned the security being forwarded, the amount of securities owned and the specific certificate number or numbers of the security. The deliveries started September 15 and concluded by October 21, 1976.

An appreciation of the nefarious nature of the course of business embarked upon by the registrant, Stilwell, Coker, Kane and the other respondents is best demonstrated by the events commencing in the latter part of September 1976. At that time registrant was faced with a number of debts and financial obligations, primarily to banks, which it was unable to meet. One bank in particular, having experienced a number of overdrafts by registrant, ordered it to close its accounts and pay off its loans. In addition, withholding taxes due to the IRS and the State of South Carolina had not been paid. The situation became so desperate that on September 29, 1976 Stilwell, Coker and Kane met to discuss the means by which registrant could be kept in business. Realizing that funds were no longer available to continue operations, Stilwell

suggested and Coker and Kane readily agreed, at this meeting that rather than close their doors, they would sell securities belonging to their customers, which had been received from Elkins when that firm terminated the clearing agreement, and use the proceeds in their operations. Following the meeting of September 29, 1976 between Stilwell, Coker and Kane, the details as to which customers securities were to be sold were left to Coker and Kane, who, after initially selecting the customer and the securities to be sold, informed Stilwell and obtained his approval. That plan was carried into effect in four monthly selling waves from September 29 through about December 8, 1976.

The following table depicts the sales of customers securities by registrant, the date such securities were delivered to registrant by Elkins, the name of the customers for whose account the securities were delivered, the amount and description of the securities, the date such securities were sold by registrant, the amount received from such sales and the name of the account on whose behalf the securities were purportedly sold.

TABLE OF CUSTOMER'S SECURITIES SOLD

DATE DELIVERED BY ELKINS	CUSTOMER FOR WHOM DELIVERED BY ELKINS	AMOUNT AND DESCRIPTION OF SECURITIES	DATE OF SALE BY REGISTRANT	AMOUNT	SOLD BY REGISTRANT FOR ACCOUNT OF
		THE SEPTEMBER SALES			
9-15-76	HINSON L. MIKELL	AMERICAN TEL & TEL	9-29-76	$ 6,050	FIRST S.C.
9-15-76	HINSON L. MIKELL	15M C&S-CORP. 5.75% DEBS, '97	9-29-76	11,000	FIRST S.C.
9-15-76	HINSON L. MIKELL	500 S.C. ELEC & GAS	9-29-76	9,062	FIRST S.C.
9-15-76	HINSON L. MIKELL	500 GIDDINGS&LEWIS	9-30-76	4,191	REGISTRANT
9-15-76	VAN NOY THORNHILL	C&S CORP. 5.75% DEBS '97	9-29-76	4,400	FIRST S.C.
9-15-76	VAN NOY THORNHILL	600GIDDINGS&LEWIS	9-30-76	5,030	REGISTRANT
9-15-76	VAN NOY THORNHILL	300GRANITEVILLE CO	9-30-76	3,875	REGISTRANT
9-15-76	WALTER BILBRO, JR.	500 GIDDINGS & LEWIS	9-30-76	4,191	REGISTRANT
9-17-76	SALLIE J. SCOTT	1,150WINN-DIXIE STORES	9-30-76	42,824	REGISTRANT
		THE OCTOBER SALES			
9-30-76	TALCOTT & LUCY INGRAHAM	300LINDBERG CORP	10-12-76	3,600	REGISTRANT
10-4-76	RICHARD & DIXIE BUTTON	1000 PAN AM WORLD AIRWAYS	10-12-76	4,750	FIRST S.C.
10-4-76	MRS. H. EVATT	200 HOME CORP	10-12-76	1,350	FIRST S.C.
10-7-76	JAMES & LORIS MIMS	100 PAN AM WORLD AIRWAYS	10-12-76	475	FIRST S.C.
10-7-76	JAMES & LORIS MIMS	750 C&S NAT'L BANK OF GEORGIA	10-12-76	4,984	FIRST S.C.
10-7-76	JAMES & LORIS MIMS	1500 VLAKFONTEIN GOLD ADR's	10-12-76	675	FIRST S.C.
10-7-76	JAMES & LORIS MIMS	900 STILFONTEIN GOLD ADR's	10-12-76	1,350	FIRST S.C.
10-7-76	J. ALBERT STUHR	750 STILFONTEIN GOLD ADR's	10-12-76	1,125	FIRST S.C.

TABLE OF CUSTOMER'S SECURITIES SOLD

DATE DELIVERED BY ELKINS	CUSTOMER FOR WHOM DELIVERED BY ELKINS	AMOUNT AND DESCRIPTION OF SECURITIES	DATE OF SALE BY REGISTRANT	AMOUNT	SOLD BY REGISTRANT FOR ACCOUNT OF
		THE OCTOBER SALES CONTINUED			
10-7-76	J. ALBERT STUHR	300 C&S NAT'L BANK OF GEORGIA	10-12-76	$ 1,993	FIRST S.C.
10-1-76	J. ALBERT STUHR	150 C&S NAT'L BANK OF GEORGIA	10-12-76	996	FIRST S.C.
10-7-76	JOHN R. STEPHENS	500 TRANSCO CO INC.	10-12-76	5,600	FIRST S.C.
10-1-76	WILLIAM McG MORRISON	1,000 VLAKFONTEIN GOLD ADR's	10-12-76	450	FIRST S.C.
10-7-76	C.P. EFSTATHIOU	1,200 VLAKFONTEIN GOLD ADR's	10-12-76	540	REGISTRANT
10-7-76	DR. JAMES R. CARTER	500 VLAKFONTEIN GOLD ADR's	10-12-76	225	FIRST S.C.
10-7-76	GERALDING DEAS	300 VLAKFONTEIN GOLD ADR's	10-12-76	135	FIRST S.C.
		THE NOVEMBER SALES			
9-30-76	MRS D. MIKELL	5M S.C. PUBL SV. AUTH 4.10%	11-10-76	3,749	REGISTRANT
9-30-76	JACK WHITE, TRUSTEE	5M S.C. PUBL SV. AUTH 4.10%	11-10-76	3,749	FIRST S.C.
10-1-76	THOMAS E. THORNHILL	4M C&S CORP 5.75% DEBS '97		3,000	
10-21-76	THOMAS E. THORNHILL	400 GIDDINGS & LEWIS	11-10-76	3,045	FIRST S.C.
		THE DECEMBER SALE			
10-1-76	ROBERT & JEAN GOODWIN	19M UTAH PWR & LT	12-8-76	12,819	FIRST S.C.

In addition to the eighteen customers listed above, securities or money belonging to four other customers were also converted in December 1976 and the proceeds of the sales used in registrant's operations. The evidence shows that 400 shares of Toledo Edison Co. belonging to Eleanor Pierce and 300 shares of Bankers Trust Co. of New York belonging to Elleria Kinne were sold by registrant on December 9, 1979 for $9,900 and $10,762 respectively and the funds used by registrant to shore up its financial position. The evidence further shows that on or about August 2, 1976 one, Lucas Ford, purchased and paid for in full a $10,000 face amount of Citizens and Southern Corp. 5.75% convertible subordinated debentures which was later sold by registrant and the proceeds used by registrant. In addition Ford had a credit balance in his account of $8,970, which funds were never given to Ford by registrant. Jane Diaz, another customer of registrant caused two checks in excess of $24,000, both payable to Diaz, to be sent to registrant in care of Kane for her account. The checks were endorsed (not by Diaz) and deposited to the account of First S.C. The funds were used to purchase various securities except for a balance of $8,112 which balance was used by registrant or First S.C. and never returned to Diaz.

The evidence establishes that all of the twenty two customers referred to above were customers of either Stilwell, Coker, Kane or a Mr. Silcox, a registered representative of registrant, and that nearly all of the actual sales of the securities were effected

by Coker and apparently a small amount by Kane.

Of particular significance in evaluating whether the conduct and activities of the registrant and the remaining respondents was fraudulent, is the overwhelming evidence from the customers who, in each instance, testified that they never authorized registrant, Stilwell, Coker, Kane or any employee of registrant or First S.C. to sell or otherwise dispose of their securities, nor is there evidence they were even aware their securities would be or had been sold. None of them authorized the use of the proceeds of sale in registrant's operations.

The record also discloses the fraudulent manner in which Stilwell and Coker treated securities belonging to yet another customer of registrant. On or about August 24, 1976 Atlantic Coast Life Insurance Co. (Atlantic), a customer of registrant purchased $50,000 face amount of Baltimore Gas and Electric. First refunding 6 1/8% bonds due 8/1/97 (Baltimore Bonds), for which it paid $40,755. After the securities were purchased Margaret Thornal (Thornal), registrant's cashier, in the regular course of her duties, endorsed the securities to be registered in Atlantic's name and prepared the necessary instructions to the transfer agent. She then placed the securities and the instructions in an envelop to be mailed. Thornal testified that the next day she was informed by registrant's receptionist that Coker had removed the envelop from the mail. Thornal stated that she went to Coker to find out the reason he had taken the Baltimore Bonds envelop. Coker admitted taking the envelop saying he would explain

later. Thornal told Coker the Baltimore Bonds had been assigned to the transfer agent and were not negotiable. She then talked to Stilwell about the matter and was told "that .. was something that they had to take care of", Stilwell also told her they would tell her what to do. The following day she was given a sales ticket reflecting that the same Baltimore Bonds were sold to Aisel & Co. The sales ticket was in Coker's handwriting. Coker testified he sold the bonds to Aisel & Co. Thornal further testified that either Coker or Stilwell told her to draft the securities to Aisel. She was also instructed by either Stilwell or Coker not to enter the Aisel transaction in registrant's books. The result of these actions by Stilwell and Coker was that registrant had been paid $40,755 by Atlantic for securities which were not delivered to it, but were sold for $38,249 to another brokerage firm and the proceeds used in registrant's operations.

Stilwell, Coker and Kane each admitted they converted customers securities and used the proceeds of such conversions in the operations of registrant. The unauthorized use of customers securities by Stilwell, Coker and Kane to raise funds for use in registrant's operations alone constitutes,at the very least, a fraudulent course of business and a scheme to defraud proscribed by the anti-fraud provisions of the Securities Acts.

However, and unfortunately, the fraud in which registrant and the individual respondents engaged was not confined solely

to the activity of effecting sales of securities without the authorization or consent of the owners of the securities. In order to be able to sell the securities in question a scheme had to be designed to make it possible to convert securities belonging to customers. Such a plan appears to have been originated by Stilwell who discussed it with Coker and Kane. Simply stated the plan was to prepare absolute transfers of securities to either Stilwell or Coker who would then transfer them to First S.C. where the securities would be sold purportedly for the account of First S.C. In other instances the so-called absolute transfers would be made to registrant and the sales made for the account of either First S.C. or registrant. Thus the documentary evidence discloses that as a part of the scheme no entries were made on registrant's blotters or position records of the customer's securities received from Elkins between September 15 and October 21, 1976. The documentary evidence furtyer discloses that in September 1976 the so-called absolute assignments were in fact prepared purporting to transfer securities from First S.C. to registrant with respect to some or all of the securities listed in the above table [12/] belonging to Mikell, V.N. Thornhill, Ingrahm , Scott, Efstathiou and Bilbro notwithstanding the lack of authorization or knowledge of such persons. One of such alleged assignments bore the signatures of Stilwell, Coker and

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12/ The record shows that three of such transfers were actually dated in the latter part of August 1976.

Kane, the balance only the signature of Stilwell.

Perhaps the most significant evidence of the fraudulent activities engaged in by registrant and other respondents is demonstrated by the conduct and actions taken by Stilwell and Coker in connection with securities furnished by Hart, as indicated below. Emphasis is placed on these events because they unquestionably establish the surreptitious manner and the unlawful means employed by registrant, Stilwell and Coker to convert Hart's securities. Hart, as noted earlier, was one of the five original limited partners of registrant's predecessor investing $10,000 in cash. In addition Hart, at Stilwell's request, loaned the partnership $30,000 worth of securities on a subordinated loan basis. Hart understood that such securities could be sold and the proceeds used in the operation of the partnership. When registrant was organized in 1975 Stilwell explained to Hart that the corporation would take over the assets of the partnership and continue as a brokerage firm and that the purpose of the corporation was to raise more capital and "go into underwriting". At Stilwell's request Hart became a director along with Stilwell and Coker.

On February 29, 1976 Hart entered into an agreement entitled "Absolute Transfer of Securities" which, in essence, provided that Hart would transfer to Stilwell and Coker for their use seven specified securities or such securities as may be substituted therefor. The agreement stated the securities "shall be held" in a custodial account in the Bank of Beaufort,

Beaufort, South Carolina, in the names of Hart, Stilwell and Coker. The purpose of the arrangement, Hart testified, was to enable the registrant "to show these securities as part of their net capital". The agreement further stated that the securities may be transferred by Stilwell and Coker to First S.C. provided, however, that the seven specified securities "shall remain in the custody of the Bank of Beaufort and the Bank of Beaufort shall be advised, in writing, of each transfer or substitution of such securities and the party to whom such securities have been transferred". Hart further testified that according to the agreement and the understanding between himself, Stilwell and Coker, the seven specified securities could be sold and the proceeds used in the operation of registrant's business provided that if Stilwell and Coker took the securities from the Bank they would replace them with securities of equal value so that the Bank at all times held securities equal to the value of the specified securities. At the date of the February agreement the specified securities had a value of approximately $90,000.

Simultaneously with the foregoing agreement, Stilwell and Coker on behalf of registrant, entered into an agreement with Hart in which they agreed to transfer to Hart certain other specified securities. This agreement was also entitled "Absolute Transfer of Securities". The agreement warranted that the value of the securities transferred to Hart was $91,000. Hart testified that neither he nor his attorney ever received

the securities which Stilwell and Coker agreed to transfer to him. Hart also testified that until December 16, 1976, the day before registrant closed its doors, he was never told that the securities specified in the February 29th agreement under which he had transferred the said securities to Stilwell and Coker had been sold and the proceeds used in registrant's operations.13/ Since the said securities were in Hart's name some means had to be contrived to give the appearance that they had been furnished by Hart to Stilwell or Coker or registrant and that the certificates were in transferrable form. Coker's astounding and unrefuted testimony is indicative of the lengths to which he and Stilwell went to perpetrate their fraud. Coker testified that Stilwell had obtained one of Hart's letterheads and fabricated a letter in Hart's handwriting purportedly enclosing to Stilwell the securities which had been placed in custody in the Beaufort bank. The letter was dated "September 20, 1976" addressed "Dear Charley" and was signed "Spencer" (Hart's given name). Coker testified he was present and watched Stilwell not only prepare the phony letter but sign Hart's name as well. Hart testified he never wrote the letter, the handwriting was not his nor was the signature. Coker admitted he raised no objection to the fabrication because Stilwell told him "this had to have been done to"(sic). This gave the appearance that the securities came into Stilwell's possession in a proper manner.

13/ The record discloses that between February and December 1976 Hart attended a number of directors meetings at which Stilwell, Coker and sometimes Kane were present and that no mention was made to Hart of the unwarranted sale of his securities.

The documentary evidence furnishes the clue as to the means employed to make the certificates negotiable. Such evidence includes copies of the stock certificates, in Hart's name, of the seven securities specified in the "absolute transfer of securities" agreement of February 29, 1976. Hart testified the signatures on seven blank stock powers relating to some of the said certificates was not his, that his name was written on such stock power by someone else and that he did not authorize Stilwell or Coker to sign his name to any stock powers and that he never gave anyone authority to sign his name to blank stock powers. Hart further testified he believed all the stock powers purportedly bearing his signature were forgeries, except for two noted below. The record shows that Hart's signature on each of three stock powers was guaranteed by registrant and bear Coker's signature on behalf of registrant. Hart identified only one stock power as bearing his signature and another such stock power as "possibly" bearing his signature but that the signature was not clear enough for certain identification. The means by which Stilwell and Coker dealt with Hart's securities clearly constituted fraud. The record also discloses that although Hart's securities were converted by Stilwell and Coker and the proceeds of the sales of such securities used by registrant in its operations, Hart himself, to some extent, participated in the over-all fraud.

Stilwell alerted Hart he would receive a call from registrant's auditors about his securities. Both registrant's counsel and its auditor testified that they telephoned Hart on December 5, 1976, and asked him whether he had transferred about $200,000 worth of securities to registrant and Stilwell and Coker, and whether he was aware that the securities had been sold and the proceeds used in registrant's business. Hart, who testified he knew that an audit was being prepared for registrant, confirmed he furnished the securities and was aware they were sold. The latter statement was false. Hart's statement apparently satisfied the attorney and the auditor who were trying to ascertain the status of Hart's securities. At the hearing Hart testified, as noted above, that it was not until December 16, 1976 that he learned his securities had been sold and the proceeds used by registrant.

In addition to all of the foregoing and as part of the fraudulent course of business, registrant attempted to conceal the conversion of customers' securities by mailing to customers, statements of their accounts reflecting "long" positions in their accounts after the securities had been converted.[14/] Concealment of the conversion of customers' securities or

14/ Included among such customers were Mikel, Ingraham, Mims and Efstathiou, all listed in the table of conversion of customers securities.

of securities pledged as collateral by preferred shareholders of registrant was accomplished by mailing "dividend" or "interest" check on stock or bonds, some of which were drawn on the account of First S.C., notwithstanding the fact that the securities belonging to customers or preferred stockholders had been converted. In order to keep track of which customers or stockholders were to receive such payments Kane and respondent Huffman prepared index cards for the securities converted, reflecting the date a particular issuer usually paid dividends or interest.

It is concluded that the fraud perpetrated by Stilwell, Coker, Kane and First S.C. was deliberate and intentional, devised with an intent to deceive and defraud customers and shareholders of registrant. Stilwell, Coker, Kane and First S.C. are found to have wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that they evolved a scheme to defraud and engaged in acts, transactions and practices and a course of business which operated as a fraud and deceit upon registrant's shareholders and upon its customers. In this connection the findings supra under the caption "Record Keeping and Reporting Violations" are deemed to be included herein as an integral part of the scheme to defraud and to be additional acts and practices and course of business which operated as a fraud. Though as noted earlier, the standard of proof relating to charges other than antifraud violations is preponderence of evidence, it is concluded that the evidence relating to "record keeping and reporting violations"

also meets the "clear and convincing" standard mandated by Collins supra, with respect to antifraud charges.

Net Capital Violations

The Order charges that from about March 1 to about December 17, 1976, registrant wilfully violated and the remaining respondents wilfully aided and abetted violations of the net capital provisions of the Exchange Act (Section 15(c)(3)) and Rule thereunder (Rule 15c3-1). The record establishes that throughout the said period registrant's trial balances and net capital computations were false and inaccurate. Liabilities were understated and assets overstated. The documentary evidence discloses, and there is no dispute, that from at least March 1 to the time registrant ceased doing business, its capital deficits ranged from $31,361 to at least $188,862. This excludes minimum capital required of $25,000 which would make the deficiencies even greater. The record discloses that as of March 1, 1976 registrant's aggregate indebtedness was understated by at least $98,000, by September 30, 1976 by at least $175,000 and by December 1, 1976 by at least $182,000. As of February 28, 1976 registrant showed net capital of $66,607 which in reality was a deficit of over $31,000. The deficit was increased to over $75,000 by September 30, 1976, when registrant showed capital of $100,417. As of November 30, 1976 registrant showed net capital of $32,109, but the deficit had increased to at least $188,862. In this connection, the documentary evidence discloses that notwithstanding the fact that in April 1975 Gunther Walker loaned registrant's predecessor

$10,000 Spartanburg County, South Carolina, IDR bonds on a subordinated loan basis which were returned to the lender in May 1975, registrant continued through June 1, 1976 to include the said bonds as subordinated capital.[15/] The evidence also shows that although Stilwell and Coker knew that securities pledged as collateral by purchasers of registrant's preferred stock had been unlawfully converted by registrant, no liabilities were reflected on registrant's records for the amounts due them. In addition, the February 29, 1976 agreement between Hart and Stilwell and Coker, the so-called "absolute transfer of securities", provided, in essence, that Stilwell and Coker may transfer the securities, held in the custodial account at the Beaufort Bank, provided, that if securities were sold, securities of comparable value were to be escrowed into the custodial account. When such securities were sold and no securities substituted, registrant's books failed to carry any liability to Hart. Similarly, when registrant was unable to pay for securities Waring requested to be purchased for her a liability in excess of $70,000 should have been reflected in registrant's records but

15/ The record also discloses that in the summer of 1976 Stilwell and Coker went to Walker and requested him to loan them the bonds for a few days so that the auditors would see such bonds in registrant's possession. Walker loaned them the bonds for several days.

no such entry was made. It is concluded that, from at least March 1, 1976 to the date registrant ceased operations, Stilwell and Coker, and from about April 10, 1976 Kane, when he became president and chief operating officer of registrant, aided and abetted registrant's wilfull violation of Section 15(c)(3) and Rule 15c3-1 thereunder.

Record Keeping and Reporting Violations

The remaining respondents are also charged with having wilfully aided and abetted registrant's violations of Section 17(a) of the Exchange Act and Rules 17(a)-3(a), 17a-4 and -5 thereunder. In essence, the charges relate to registrant's failure accurately to maintain a host of its books and records, including its blotters, containing an itemized daily record of all security transactions, receipts and deliveries of securities and all receipts and disbursements of cash and all other debits and credits; its ledgers reflecting all assets, liabilities, income and expense and capital accounts; a securities record or ledger reflecting separately for each security "all long or short" positions (including securities in safekeeping); ledgers (or other records) showing securities transfers, dividends and interest received, securities borrowed or loaned, fails to receive or deliver and documents or records showing security counts and verification of each security. The charges hereunder also involve failure to preserve books and records as required and failure timely to file a report of financial condition for the calendar year 1975.

From the time it commenced doing business until it ceased operation, registrant either failed to maintain certain books and records as required or failed properly to maintain and keep current such books and records. Hughes, one of the respondents originally named herein, testified that in the latter part of February 1976, when he was hired by Stilwell, ostensibly as a comptroller of First S.C., he was informed that some of the books and records of registrant were not current and he was requested to help bring the books and records up to date. Theoretically Hughes' function was to oversee the bookkeeping and financial functions of First S.C. but in fact he assisted in preparation of the trial balances required to be maintained by registrant. It is manifest that the operations and affairs of both registrant and First S.C. were intertwined and were being conducted from the same office with the same personnel being used for both entities as the occasion required. Cash and securities were funneled from Stilwell and Coker to First S.C. and then to registrant or back to Stilwell and Coker. Specifically, registrant's cash receipts and disbursement ledger from late 1975 until June or July 1976, were not current. Hughes further testified that since registrant's cash receipts and disbursements were not properly reflected in its journal, its trial balances for May and June 1976 were not accurate and registrants' profit and loss statements for April, May and June 1976 were also inaccurate. In that same period of time Hughes was informed frequently by one of registrant's banks that its account was over-

drawn and checks were being returned because of insufficient funds. Registrant's books never reflected overdrafts. Hughes testified he began preparation of a new general ledger but was unable to bring the ledger up to date until July 1976. Prior to July 1976 registrant also failed to maintain any "fails to receive" or "fails to deliver" records, as required.

Although registrant was supposed to be a subsidiary of First S.C. Hughes was unable to ascertain whether any of registrant's stock had ever been issued to First S.C. and never saw any such stock nor did he ever see any records reflecting the names of any shareholders of First S.C. Hughes also testified he was frequently told by Stilwell to post entries in registrant's books and records and though he requested back up material to substantiate the entries none was furnished to him by Stilwell. After entries were made by Hughes he became aware that changes were made in such entries without his knowledge. When he questioned Stilwell about the changes he was told to contact Schumann. In September 1976 Stilwell told him not to bother him any further but to follow instructions. In that same month the Elkins statements delivering customers securities began arriving and when Hughes attempted to determine the status of the securities he was informed by Stilwell there was an error by Elkins and that Coker would straighten it out. Hughes was told by Kane that registrant received a wire from Elkins

demanding some $42,000. He was told by Stilwell, in Kane's presence, that Elkins stated it would cease doing business with registrant and notify the NASD[16/] unless it was paid. Stilwell told Hughes to prepare a check for the $42,000.

The evidence also shows that pursuant to the "absolute transfer" of securities agreement of February 29, 1976, noted earlier, securities were transferred from Hart to Stilwell and Coker. On the same date the two men transferred the securities to First S.C. then transferred them to registrant. Registrant's balance sheet as at February 29, 1976 reflected as an asset the said Hart securities in the amount of $89,537.50 without setting up any liability. Such liability was required to be reflected since the Hart agreement provided that if the securities were sold there was an obligation to replace them with securities of equal value. The same balance sheet also reflected under "Assets" and "Account Receivable - Subsidiaries" $88,236. Registrant had no subsidiaries and the balance sheet was, in this respect, false. Similarly registrant's balance sheet as of March 31, 1976 continued improperly to reflect Accounts Receivable-Subsidiaries in an amount of $90,741.

16/ Hughes stated that on September 13, 1976 Stilwell gave him a check in a rather large amount and told him to sign it. When Hughes questioned whether there were sufficient funds in registrant's account to cover the check Stilwell told him arrangements were made for a deposit to cover the check. When Hughes asked Stilwell about the deposit he was told to do exactly what he was told and to stop bothering Stilwell or he would be fired. Hughes thereupon resigned.

As noted earlier herein from September through December 1976, Elkins forwarded customers' securities to registrant. After registrant unlawfully converted such securities no liability was reflected in its books and records. In addition, the evidence shows that securities belonging to customers Mikell, Thornal, Scott, Ingraham, Bilbro and William McMorrison were assigned by the so-called "absolute transfer" documents from First S.C. to registrant and shown as assets notwithstanding that such securities belonged to the said customers and registrant had no lawful authority to assign such securities much less sell them. One such assignment bore the signatures of Stilwell, Coker and Kane, and the others, only Stilwell's signature. In fact, all misappropriations of customers securities from September through December resulted in compounded false entries being made in the ledger accounts for customers, registrant and First S.C. A further result of the conversions was the falsification of the cash receipts journal. Debiting or crediting registrant or First S.C. with the proceeds of sale of customers securities was a prevarication.

The evidence further discloses that registrant's books and records purporting to reflect receipt and delivery of securities, purchases and sales, and securities positions contained many false entries. Thornal testified that on instructions from Stilwell she inserted certificate numbers of securities in the blotters of registrant which were completely false. When Thornal

was instructed by Stilwell or Coker to send the Baltimore Gas bonds to Aisel and Co. as detailed earlier herein, Thornal was told not to enter such sale in registrant's books and records at that time.[17/] The original entry in registrant's books, made by Thornal, showing the sale of the said bonds to Atlantic Coast Life Insurance Company was not changed. Thornal further testified that in September and October, Stilwell and Schumann gave her registrant's position records, blotters, customer ledger cards, and other records in which slips of paper were inserted and directed her to make changes in such records in accordance with the information on the slips. Stilwell told her that since she was keeping the books and records it was necessary for her to erase Stilwell's handwriting and make changes in her handwriting to avoid detection by anyone examining the records. Stilwell also told her that she was to follow any instructions given her by Schumann. Thornal testified that between 10 and 20 percent of the time she was requested to make alterations, Schumann gave her the instructions. Thus, postings were dated on the records weeks and months prior to the date when made, with no indication as to the dates entries were actually made. Entries omitted for whatever reason are required to be shown on the date actually inserted in the records with "as of" indication of the date such entries should have been made. The entries of the nature ordered by Stilwell and Schumann are found to constitute deliberate falsification of records.

17/ The transaction apparently was reflected about two months later.

There is also evidence that a number of records were destroyed or removed in violation of Rule 14a-4 under the Exchange Act. Tramsmittals from Elkins were not found. The account records of customers were missing. Though the record does not specifically detail each and every record or document which could not be located, it is, under the circumstances, reasonable to believe that the number of missing or destroyed records was extensive.

Coker throughout the hearing contended and in his brief urges that he "played no role in maintaining books and records of Registrant", did not review and was not familiar with the contents of registrant's books and records, did not supervise the individuals who maintained such books and records and never prepared or directed preparation of any documentation in connection with any such transfers. The record does not reflect that Coker personally maintained the ledgers, customers account cards and some other records required to be kept by a broker dealer firm. Coker urges that Stilwell assumed management control over all corporate and financial aspects of the firm and [18/] that in essence this included responsibility for all the books and records. However, the record distinctly shows he originally started registrant's predecessor as an equal partner with Stilwell and since the formation of registrant and throughout the period thereafter until registrant ceased operatons continued to consider himself and in fact was an equal co-owner

18/ In this connection the record shows that when registrant filed its statement of financial condition in August 1975 for the period ended July 31, 1975 it was Coker who certified that the financial statement was true and correct.

with Stilwell of registrant.[19] Coker was at all relevant times executive vice-president, secretary and a director of registrant and when SCA was registered as an investment adviser in September 1975, he was its president and treasurer and a director and owned an equal amount of common stock of SCA as did Stilwell. The record further shows that Coker knew, since at least February 1976, when Hughes was hired by Stilwell, that the reason for the hiring was that registrant's books were not current and that it was Hughes' function to correct that situation. There is no evidence Coker made any effort to determine whether registrant's books were being currently maintained. Coker, who knew of registrants' consistently failing financial condition, knew, by reason of having signed the February 29, 1976 " absolute transfer" agreement with Hart that if the latter's securities were sold they would have to be replaced by securities of equal value. Coker knew that Hart's securities were converted. Coker was physically present and raised no objection when Stilwell fabricated a letter purportedly from Hart. Coker knew of the agreement that preferred shareholders' collateral would not be sold without authority, knew that he actually sold the securities, and knew that the proceeds of such sales were used in registrant operations. Coker also knew, by reason of having signed the agreement, that the "absolute transfer" of customers' securities

19/ Registrant's broker-dealer registration form,as amended in April 1976, lists Coker as owner of between 50 and 75% of registrants' common stock.

from First S.C. to registrant was improper and knew that certain bonds belonging to an insurance company had been improperly sold. Despite all this knowledge and more, because Coker admits in his brief he signed many documents at the direction of Stilwell, the argument that Coker bore no responsibility for bookkeeping violations is rejected. Coker must have known that bookkeeping violations were occurring. For example, having admittedly participated in, or to use Coker's own words, "acquiesced" in, the decision to convert customers securities, he must have known or been aware of the fact registrant's records would not accurately reflect that such securities were being sold on behalf of registrant or First S.C. Since Coker knew that the proceeds of such sales were being used to shore up registrant's financial condition he should have known that entries were being improperly made to reflect income to registrant of monies not belonging to it. Similarly, Coker never inquired how the records were kept relating to the unauthorized sale of the registrant's preferred shareholders' collateral, a fact which the record demonstrates he was well aware of having actually sold such securities. As executive vice president and secretary and number two person in the firm, Coker can not avoid his responsibility by contending he never made an entry into any books or records. Coker can not exculpate himself by stating he did not review or supervise the maintenance of any books or records. By selling the securities noted above, he, in fact, initiated the keeping of false records. The Commission has held that prin-

cipal officers are obliged to make certain that books and records are being properly maintained and their failure to take appropriate steps to detect and prevent record-keeping violations make them responsible for the violations. Billings Associates Inc. et al. 43 SEC 641, 649 (1967).

It is concluded that Stilwell, Coker, Kane and First S.C. wilfully aided and abetted registrant's violation of Section 17(a) of the Exchange Act and Rules 17a-3(a), and 17a-4 thereunder in that registrant failed accurately to make and keep current and preserve certain of its books and records as noted above, as required by the said Rules.

The Order also charges registrant failed promptly to file an amendment on Form BD reflecting that Kane had become president and chief operating officer of registrant. The evidence establishes that in April 1976 Kane was made president and chief operating officer of registrant and that Stilwell resigned as president and was made chief executive officer, in addition to being chairman to the board of directors. Registrant failed to comply with the requirement promptly to file an appropriate amendment to its registration on Form BD to reflect such changes. Stilwell, Coker and Kane, as officers and directors of registrant and responsible for its operations, are found to have wilfully aided and abetted registrant's violation of Section 15(b) of the Exchange Act and Rule 15b-3 thereunder from the period April 1976 to the date of the Order.

The Order further charges that Stilwell, Coker and Kane wilfully aided and abetted registrant's failure to promptly file a report of its financial condition for the calendar year 1975. The evidence shows registrant failed to file a report of its financial condition on Form X-17-A-5 for the calendar year 1975 until October 15, 1976, approximately seven months late. When filed, the said report failed to comply with the requirements of Rule 17a-5 in that it did not contain an oath or affirmation as required by paragraph (b)(2) of said Rule or schedule of SIPC payments as required by Rule 17a-5(b)(4). Though Kane was not an officer and director during the calendar year 1975 he, nevertheless, had a duty after April 1976, when he became chief operating officer of registrant, to make certain that registrant complied with the filing requirements. That duty, he failed to fulfill. Accordingly, Stilwell, Coker and Kane are found to have wilfully aided and abetted registrant's violation of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder.

The Charges Against Schumann

The Order, in essence, charges that Schumann wilfully violated and wilfully aided and abetted violations of the anti-fraud provisions of the Securities Act, that she aided and abetted registrant's violations of the record-keeping requirements, aided and abetted registrant's violation relating to its failure to timely file a report of its financial condition, aided and abetted registrant's net capital violations and aided and abetted violations by SCA of Section 206 and Section 204 of the Advisers Act and Rule 204-2(a) thereunder.

Schumann denies she violated or aided and abetted any of the violations as alleged, that any violations committed by other respondents, if any, were done without her knowledge, consent or participation, that in light of the Hochfelder decision (Ernst & Ernst v Hochfelder 425 US 185 (1976)) there is no evidence she possessed the requisite scienter, that under the Collins case (Collins Securities Corp. v S.E.C. 562 F.2d 820 (D.C. Cir. 1977)) the evidence is not "clear and convincing" that she violated or aided and abetted violations of the anti-fraud provisions of the Securities Laws and that the proceedings should be dismissed as to her because she was not an "associated person" of the registrant within the meaning of the Exchange Act.

The Commission has taken the position that the Hochfelder scienter requirement is not applicable to administratative pro-

ceedings whether initiated by it under Section 17(a) of the Securities Act or Section 10(b) of the Exchange Act. Steadman Securities Corporation 12 SEC Docket 1041, 1051 (June 29, 1977). These proceedings are, in part, premised upon Section 17(a) of the Securities and two Sections of the Advisers Act as to which Hochfelder is not applicable. With respect to whether scienter is applicable to Section 17(a), the circuits are split, three circuits holding scienter inapplicable in proceedings thereunder. S.E.C. v Coven 581 F. 2d 1020, 1025-1027 (C.A. 2, 1978); S.E.C. v. World Radio Mission Inc. 544 F.2d 535, 541 n10(C.A.1, 1976); S.E.C. v American Realty Trust 586 F. 2d 1001 (4th Cir. 1978); contra, Sanders v John Nuveen & Co. Inc., 554 F. 2d 790 (C.A. 7, 1977). With respect to the applicability of Collins supra, it has already been stated that the clear and convincing standard will be applied to the fraud charges.

Schumann next contends she is not and was not an associated person of registrant within the meaning of the Exchange Act. Section 3(a)(18) of the Exchange Act, as pertinent here, defines the term "person associated with a broker or dealer" or associated person of a broker or dealer to mean any officer, director or any person occupying a similar status or performing similar functions, any person directly or indirectly controlling, controlled by or under common control with such broker or dealer, any employee of such broker or dealer except that any person whose functions are solely clerical or ministerial shall not

be included.

In April 1976 Schumann was engaged as a "consultant" by registrant. Schumann states in her brief that from the time she was engaged until December 10, 1976, she was not an officer or director of registrant, First S.C. or SCA, but was an independent contractor who "consulted with Registrant for the purpose of setting up the books and records of Registrant for security regulation purposes". It is manifest that the basis for any conclusion that a person was an associated person of a broker or dealer in situations where the person is not an officer or director, is dependent upon the nature of activities performed by such person on behalf of registrant. Characterizing herself as a consultant or independent contractor does not per se determine that Schumann was not an associated person. Rather, consideration must be given to whether Schumann's activities bring her within any of the categories of persons meeting the definition of an associated person. A perusal of the evidence, both oral and documentary, demonstrates in clear and convincing fashion that Schumann performed functions which bring her within the category of a person performing functions similar to those of an officer and the category of a person controlled by registrant.

It is noted that Schumann did not testify at the hearing. Thus the record lacks evidence directly from Schumann herself as to precisely what she did. However, ample evidence was furnished by several witnesses, whose testimony is not refuted

by Schumann, and by documentary evidence, which gives an insight as to the nature of the work she performed at registrant's place of business as well as the nature of the authority she exercised in connection with registrant's operations. Registrants' records disclose that registrants made payments to Schumann during the months of May through August and October through about December 10, 1976.[20/]

Prior to her engagement with registrant Schumann was employed by the NASD from January 1972 until February 1975, as an examiner. Her supervisor at the NASD testified Schumann made examinations of books and records of brokers and dealers and was familar with and knowledgeable about books and records required to be maintained by such brokers and dealers.

In light of Schumann's contentions, a detailed examination of the record evidence relating to the nature of her activities at registrant's office and elsewhere is essential. During the month of July 1976 Schumann spoke with Michael Callahan, Assistant Regional Administrator in the Atlanta Regional Office of the Commission, concerning registrant's failure to file its X-17-5 report and told him registrant's books and records were not current. Apparently some question arose as to whether

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20/ The total payments to Schumann for the entire period was about $10,875. In May she received about $1,530; in June about $1,325; in July about $1,185; in August about $1,935; in October $1,500; in November $1,400; and, about December 10, $2,000.

Schumann could speak for registrant. In a letter dated July 21, 1976 Stilwell, as president of registrant, informed the Atlanta office of the Commission that Schumann is authorized to speak "on behalf of our firm to members of the staff on matters relative to the 1933 and 1934 Acts as well as the Rules of Fair Practice and the Uniform Practice Code". The letter also stated that Schumann "is working with our firm on a consulting basis and is helping us to reorganize our procedures". The letter concluded

> ".... it will be necessary for Miss Schumann to be in contact with your office with some frequency and until such time as her work is finished, she can speak for our firm".

Callahan testified that he had many conversations with Schumann prior and subsequent to the letter with respect to the staff's request for financial information. Schumann, on several occasions, promised Callahan the financial reports would be filed, as did Stilwell. Callahan responded to Stilwell's letter stating that authorization to speak for the firm should be by appointing Schumann as attorney in fact, which would require an amendment to the Form BD. Schumann informed Callahan she was reluctant to be named on the form BD. No amendment was ever filed. However, Callahan's explanation as to the reason he continued talking with Schumann was as follows:

> "she would be able to speak for the firm; in other words, she could make management decisions and she could bind the firm, that was the way that we understood the letter".

Darrold Brooks (Brooks), supervisor at the NASD, testified he talked frequently with Schumann concerning registrant's records and the filing of reports with NASD and since she was not an officer or director of registrant he requested a letter from Stilwell which would authorize the NASD to accept Schumann's contacts with the NASD as the "voice of the firm". Stilwell, on June 6, 1976, furnished the NASD a letter authorizing Schumann to speak for the firm. The letter was exactly the same as the one sent to the Commission. Thus, Schumann was given authority to act on behalf of and represent registrant before the NASD and the Commission.

As indicative of Schumann's authority, Brooks further testified he continued regularly to talk with Schumann about a number of matters relating to registrant's records and reports. For example Brooks testified he talked with Schumann on December 6, 7, and 8, 1976. On December 6 she told Brooks that a September 30 audit was being made of registrant. She sought an opinion concerning the use of securities as capital where such securities were supposedly located in Beaufort and in Florida. The following day Schumann called the NASD again with respect to the fact that Kane had borrowed $6,000 of registrant's securities which he used as collateral for a loan to purchase a boat and she explained that the auditors could not account for all of registrant's securities which were supposed to be in registrant's lock box. The nature of the matters discussed with Brooks evinces that Schumann was not merely

transmitting messages to and from Stilwell but was directly involved in decision making in matters relating to registrant's books and records and filing of reports and was exercising the authority given her by registrant to act on the firm's behalf.

Thornal testified she was told by Stilwell that Schumann was setting up registrant's books and records and that Thornal was to follow instructions given her by Schumann as she would instructions from Stilwell. Thornal also testified that when she made the improper alterations in registrant's books and records, as noted earlier herein, Schumann gave her the books and records in which the changes were to be made, and told her to make the changes as indicated by notations in Stilwell's handwriting. In addition, Thornal stated, that about 20% of the time alterations were made in registrant's books and records, Schumann herself requested the changes and the rest were requested by Stilwell. Stilwell informed Thornal that Schumann advised him that the NASD would arrive on Monday, October 4, 1976 to make an examination of registrant's records and requested Thornal to work that weekend on the books. Thornal stated that she did so part of the time and that Stilwell, Schumann and at least three of registrant's employees were present that weekend. Both Stilwell and Schumann gave instructions as to the particular books and records which were to be completed or altered. Thornal further stated that

during the NASD examination when the NASD personnel were not present, registrant's employees, who were available at registrant's office, each took "a record of some sort" to work on and that Schumann "directed the activities" by reading out the transactions which were to be posted or those which required changes or alterations.

Mr. Harold Pratt-Thomas (Pratt-Thomas), the auditor, testified during July through September 1976 when he and his partner were working at registrant's office on the December 31, 1975 audit, Schumann, who was present about 50% of the time, worked across the table on "current accounting matters" of registrant. Thereafter, the auditors began work on the audit for the September 30, 1976 period. Pratt-Thomas testified his firm worked almost constantly from November 11 until December 8, 1976, that Schumann was present "the whole time" except near the end, when she was there about 50% of the time, that she worked in the same room with the accountants, that she tried to give answers in regard to securities and that she "worked on current accounting and security matters". Pratt-Thomas further testified that on November 29, 1976, he and his associate discussed with Stilwell and Schumann the problem relating to the so-called absolute transfers, particularly those from Hart, and they were given answers by Schumann and Stilwell indicating that all the absolute transfers were

of a similar nature and had been approved by the NASD. Pratt-Thomas told Schumann and Stilwell he was not satisfied with their explanation. On Sunday, December 5, 1976 Pratt-Thomas, still pursuing the matter, met with Stilwell, Coker, Kane and Schumann at Pratt-Thomas' office and discussed with them the fact that registrant was over-spending to an extreme amount, that absent the absolute transfers, registrant would have been insolvent, and the entire problem relating to the absolute transfers. Schumann and Stilwell again responded that all the transfers were approved by the NASD, when they knew the NASD was never shown the absolute transfers. On Monday, December 6, 1976 Pratt-Thomas and his associate went to registrant's office where Schumann informed them she "looked into the various securities matters and that she had prepared a list for us, indicating that the securities in question were still in St. Petersburg, Florida and were at the nome (sic) of Spencer Hart in Beaufort". Schumann gave Pratt-Thomas the list which was in her handwriting. Pratt-Thomas further testified Schumann told him that the first three securities on the list she prepared were in St. Petersburg, Florida.

Another meeting was held on December 8, 1976 at the office of registrant's attorney. Pratt-Thomas, his partner, Stilwell, Schumann and the attorney were present. The discussion related to whether securities which registrant's position record indicated were on hand belonging to registrant were, in fact, in the lock box or at a place where they could be easily found. Pratt-Thomas discovered that registrant's records reflected that certain

securities belonged to registatnt and had been pledged as a loan to registrant. The same securities had also been pledged by Kane for a loan which Kane made at the bank. At another meeting later that same day at the attorney's office attended again by Stilwell, Schumann, Pratt-Thomas and his associate, the attorney informed those present he was no longer associated with registrant and if the accountants did not notify the SEC he (the attorney) would. The accountants terminated their audit and notified the Commission that day. Pratt-Thomas met with Stilwell and Schumann the following day, December 9, 1976. Though the record reflects that Schumann attended the meeting it does not reflect the manner, if any, in which Schumann participated in the last meeting. However, Pratt-Thomas testified that during the course of the discussion Stilwell informed Pratt-Thomas that no firm had ever survived a notification to the SEC and that Schumann reiterated that; she said "no, no firm had survived a SEC notification". He further testified that Stilwell tried to prevent him from insisting that the SEC be notified about the problems. Schumann who was present made no objection nor made any comment with respect to Stilwell's attempt to prevent notification to the SEC.

In light of the foregoing, Schumann's contentions that she had nothing to do with the maintenance of registrant's records, that nothing was done on the October weekend preceeding the NASD examination which was improper, or that false entries

or adjustments were made to registrant's books and records with Schumann's, knowledge and that she was not in a position to influence registrant's activities in connection with the violations found herein, are not supported by the record and contrary to the testimony of the witnesses who testified and whose testimony with regard to Schumann's participation is credited. The record clearly and convincingly demonstrates that Schumann was an experienced examiner when she was with the NASD, that she had knowledge of the requirements for the proper maintenance of books and records, knew that registrant's books and records were not current and was registrant's representative in contacts with the SEC and the NASD in matters relating to compliance with the Securities Acts and Rules and the Rules of the NASD. She was thus clothed with authority to act and speak for registrant and did so. She issued instructions to Thornal and others concerning entries to be made in registrant's books and records and reports to be filed with the SEC and the NASD.

The record clearly shows Schumann worked with registrant's accountants and was accepted by them as an authoritative figure of registrant. Schumann attended meetings with Stilwell relating to registrant's operations and the ownership and location of registrant's securities. Her participation in meetings, particularly during the latter part of November and early December were those of a person occupying the status of an officer. Though the record reflects that Stilwell was a

dominant force in registrant's operations, he was not alone in the perpetration of the massive fraud by registrant. It is incredulous that Schumann with her expertise in broker-dealer operations, and especially in the area of record keeping and the filing of required reports, was completely unaware that the books and records were being altered and were being improperly maintained. She and Stilwell discussed the absolute transfer of securities with Pratt-Thomas in the latter part of November when the accountant expressed doubts as to their validity. Thornal's testimony that Stilwell told her that when Schumann was present to follow her instructions and that in about 10 or 20% of the time Schumann, on her own, issued instructions to her regarding alterations or changes to be made in registrant's books is unrefuted and is credited. Absent the knowledge, which the record demonstrates she had, there would have been no reason for Schumann to have conferred with the accountants or attended meetings relating to registrant's operations in so far as such operations were reflected in registrant's books. Schumann's argument that alterations were made only at Stilwell's request, which she concedes she transmitted to Thornal, merely fortifies the conclusion that she was under the control of registrant through Stilwell, its president. It is concluded that Schumann was controlled by registrant, that she performed the functions

of and exercised authority on behalf of registrant similar to those of an officer and, within the meaning of the Exchange Act, was an associated person of registrant.

On the basis of the foregoing findings it is concluded that Schumann wilfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, that she aided and abetted registrant's violation of Section 17(a) of the Exchange Act and Rules 17a-3, 17a-4 and 17a-5 thereunder. However, the evidence is not clear and convincing that Schumann had or exercised any responsibility with respect to SCA's books and records and the charges of aiding and abetting violations by SCA of specified provisions of the Advisers Act and Rule thereunder will be dismissed. Similarly, the evidence is not clear and convincing that Schumann aided and abetted registrant's violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder and such charges against her will, also be dismissed.

Violations by SCA

SCA, a registered investment adviser, is charged with wilfully violating Section 204 of the Advisers Act and Rule 204-2(a) thereunder and Section 206(1) and (2) of the said Act; with violating and aiding and abetting violations of the antifraud provisions of the Securities Acts and with aiding registrants violations of the record keeping requirements, net capital and reporting requirements. In its defense SCA

urges it never became, nor ever functioned as an investment adviser, never had any assets, liabilities or capital to reflect in the books, never gave any orders for the sale of Efstathiou's securities or caused registrant to make any statement to Efstathiou and that the charter of SCA was forfeited and it is no longer in existence. All of these defenses are rejected.

Official notice is taken of the fact that on July 7, 1978 the Secretary of State of South Carolina forfeited the charter of SCA. Such forfeiture however does not prevent the Commission from taking action against the corporation for violations committed during its existence if such action is taken within two years after forfeiture. Section 33-21-220 of the South Carolina Code provides in pertinent part:

> "The dissolution of a corporation ... by forfeiture of its charter shall not take away or impair any remedy against such corporation .... for any right or claim existing or any liability incurred prior to such dissolution if action or proceeding thereon is commenced within two years after the date of dissolution. Any such action or proceeding by or against such corporation may be prosecuted or defended by the corporation in its corporate name".

These proceedings were instituted prior to the forfeiture of SCA's charter. Moreover SCA is still registered as an investment adviser. SCA argues that the section applies only to "claims" or "liabilities" incurred prior to dissolution and the terms used in the Code "import monies or properties

owed to the person bringing the action". The argument lacks substance. It is evident that the purpose of the statute is to permit any type of action or proceeding against dissolved corporations for any type of liability the corporation incurred during its existence be it civil, criminal or remedial. This is made clear by the last sentence in the above quoted section which permits any "action or proceeding" to be "prosecuted" against the corporation in its corporate name for any type of liability incurred. The corporation has a duty to comply with all State or Federal Laws and by its failure to do so it incurred the type of liability which the Code envisaged.

SCA's argument that it never acted as an investment adviser is not supported by the record and is rejected. Section 206(1) and (2) of the Adviser Act, in essence, proscribes fraudulent conduct with respect to "any client or prospective client". Efstathiou, who was a client of registrant, testified he frequently spoke with Coker concerning his investments and that Coker undertook to give him advice concerning his portfolio. Efstathiou further testified that his account at registrant was being handled by Silcox, one of registrant's representatives, that in July 1976 he determined he needed professional management of his portfolio and that Coker offered him "investment advisory management services". Efstathiou, by letter dated July 30, 1976 addressed to Coker, stated among other things:

> "Accordingly, I would like your management company to take over my account, with the understanding that final decision on investment changes rests with me. Also, even though my account will be supervised by the management concern, I want all the commissions generated within my account to be credited to Heyward".

There is no doubt that references to the management company and concern refer to SCA. Following the foregoing arrangement Efstathiou received statements, one of which the record discloses, was about November 16, 1976 evaluating his portfolio at over $53,000. Included therein were 1200 shares of Vlakfontein Gold Mining ADR's which had been sold on October 12, 1976. The statement evaluating the 1200 shares as at November 16, 1976 was plainly an attempt to cover up the sale a month earlier. Efstathiou testified he never authorized Coker to dispose of the said stock and never received any confirmation of sale. SCA apparently seem to agree that the statement was sent by registrant but not SCA and hence SCA bears no responsibility therefor. The record demonstrates that registrant, First S.C. and SCA were all used interchangeably to suit Stilwell, Coker and Kane's purposes. However, an analysis of the documentary evidence reveals that those which reflect, or related to, transactions of registrant were on stationary or forms of registrant and those of First S.C. on the latter's stationary or forms or, at the very least, the documents specifically indicated it was on behalf of one or the other company. The list of Efstathiou's securities bore no markings on its face as to its source. A

reasonable inference under the circumstances is that since Efstathiou retained SCA as his adviser the list was prepared on behalf of SCA, which was then acting through Coker, as the investment adviser to Efstathiou.

The evidence is clear and convincing that SCA was the entity which acted as investment adviser to at least Efstathiou, that Coker was president of that entity and that Coker furnished investment advice on behalf of that entity which was engaged by Efstathiou to supervise his account. Though the record does not reflect any arrangement to pay the fee of $500 which SCA stated in its registration statement it intended to charge, it is evident that SCA nevertheless acted as investment adviser and that commissions generated, which may also be considered a form of compensation, would be paid to Silcox. The collapse of the complex of companies made further fee payments moot.

It is concluded that the manner in which SCA acted as investment adviser to Efstathiou and unlawfully sold part of his portfolio constitutes a wilfull violation of the antifraud provisions of the Advisers Act to wit, Section 206(1) and (2) of such Act and that Coker aided and abetted such violations. In its brief SCA admits it maintained no books or records. Having found that it acted as an investment adviser it is accordingly concluded that SCA wilfully violated Section 204 of the Advisers Act and Rule 204-2(a) thereunder in failing to maintain any general ledger reflecting assets, liabilities and capital or for that matter any records of its operations, limited as they may

have been, and that Coker aided and abetted such violations.

Conclusion Pursuant to Section 15(b)(4)(C) of the Exchange Act and Section 10b of SIPA

On December 17, 1976 the United States District Court, District of South Carolina, entered permanent injunctions against registrant, Stilwell, Coker and Kane enjoining them from further violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Registrant and the above named respondents consented to the injunctions. (SEC v Stilwell, Coker & Co. Inc., et al., Civil Action No. 76-2405)

In that same action the Securities Investor Protection Corporation (SIPC) filed a petition requesting the Court to determine that registrant's customers were in need of the protection provided by SIPA and sought the appointment of a trustee for registrant pursuant to the provisions of SIPA. Registrant and the above named respondents consented to the adjudication and the appointment of a trustee. Norman Stevenson of Charleston, South Carolina, was appointed trustee for registrant and, as noted earlier, paid out to customers in excess of $325,000 in cash, which has been advanced for the most part by SIPA.

Under Section 15(b)(4)(C) of the Exchange Act the entry of a permanent injunction constitutes a basis for imposition of sanctions in an administrative proceeding. Under Section 10(b)

of SIPA [21/] the appointment of a trustee constitutes a basis for the imposition of a sanction against respondents Stilwell, Coker and Kane who, the record shows were officers, directors and controlling persons of registrant at the time the trustee was appointed.

Public Interest

The remaining question is whether it is in the public interest to impose a sanction on each of the remaining respondents. The record is overwhelming that registrant's operations were fraudulent and that such operations constituted a scheme and course of business which operated as a fraud and deceit upon customers and shareholders alike. The defrauded customers and shareholders placed faith and trust in Stilwell, Coker and Kane whose duplicitous conduct not only manifested a lack of candor in their dealings with such persons but a grievous breach of the obligation and duty to deal fairly and honestly with such persons. The irony of the faithless conduct was that when Stilwell, Coker and Kane determined in the latter

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21/ Section 10(b) of SIPA provides, in pertinent part:

> "The Commission may by Order bar or suspend for a period, any officer, director, general partner, owner of 10 per centum or more of the voting securities, or controlling person of any broker or dealer for whom a trustee has been appointed pursuant to this Act from being or becoming associated with a broker or dealer if after appropriate notice and opportunity for hearing, the Commission shall determine such bar or suspension to be in the public interest".

part of September that, in light of registrant's dire financial situation, customers securities would be sold and the proceeds used for registrant, the selection of the customers was determined upon the basis of customer's who had in the past relied upon the advice of these three persons and who they believed would, in the future, rely upon and be guided by their advice.

All of the violations of the Securities Act, the Exchange Act and the Advisers Act which Stilwell, Coker and Kane were found to have committed and those which Schumann were found to have aided and abetted were determined to be willfull. The Commission and the Courts have construed willfull as the intentional commission of the act which constitutes the violation and it is not necessary that a person so charged be aware he is violating the law. In Douglass Co., Inc. 14 SEC Docket 523, 535 (1978) the Commission succintly stated:

> ".... it is not necessary that a respondent be aware he is violating the law in order to find his actions 'willfull'". It is sufficient if he has intentionally committed the act which constitutes the violation or, if charged with a duty to act, has failed to meet his responsibilities. See Arthur Lipper Corp. v S.E.C. 547 F 2d 171, 180-181 (C.A. 2, 1976) cert denied 98 S.Ct. 719 (1978); Hanly v S.E.C. 415 F 2d 589, 595-596 (C. A. 2, 1969).

In the instant case the acts of Stilwell, Coker and Kane were deliberate, knowing and intentional. Similarly the findings that Schumann aided and abetted violations of specified provisions are premised upon acts done knowingly, deliberately and intentionally.

The evidence of the involvement of Stilwell, Coker and Kane in the fraudent conduct has been detailed earlier and need not be repeated. In determining the nature of the sanction to be imposed emphasis is place here on the salient acts which clearly and convincingly demonstrate the deliberate and intentional manner in which the three men operated. In September 1976 registrant's financial situation was desperate. Stilwell met with Coker and Kane, informed them of the immediate need to raise cash stating that the only means available was to sell customers securities and seek to replace them at a later date. All three concurred in such plans. When registrant received customers securities from Elkins no entries were made in the position record to reflect the true owners of the particular security. The record shows that the details of selecting the customers and the securities to be sold were left to Coker and Kane who kept Stilwell continually advised as to their progress. No mention was made concerning notice to the customers of the plan and obviously no confirmations of sales were sent to them. Coker, in fact, was the person who executed most of such sales. At other times when the need to raise capital was necessary, the collateral furnished by preferred stockholders in connection with their purchases of registrant's preferred stock was sold notwithstanding that investors were told that such collateral would not be sold without their

knowledge and consent. As a part of this scheme some of these investors were paid dividends after customers securities had been misappropriated. In other instances dividend checks of First S.C. were issued to preferred stockholders on collateral given registrant on the purchase of the stock which collateral had already been sold, with the obvious intent of covering up the conversions.

To avoid detection of the fraudulent scheme some of the so-called absolute transfers of securities were fabricated, a utterly false letter was also fabricated purporting to transfer securities from Hart to Stilwell so that registrant could show receipts of some of the securities carried as capital by it. When this so-called letter from Hart was manufactured Stilwell and Coker were present. Coker testified Stilwell did the job while he stood by silently watching and knowing what was being accomplished. Though Hart testified that many of his signatures on stock were forgeries the record herein does not reflect the person committing such acts. However, other than Stilwell, Coker, or possibly Kane, there is no evidence that persons other than these three had authority to or, in fact, ever handled such securities or stock powers except to do whatever ministerial work was necessary in connection therewith.

The fraudulent scheme was not confined solely to the foregoing acts. The record shows that Kane had turned over some securities to registrant to be used as capital. The securities were pledged at a bank for a loan by registrant.

Stilwell and Kane handled this transaction at the bank. Kane made a personal loan at the same bank and used the same securities previously pledged by registrant as collateral for his personal loan. In October registrant paid off its loan and the securities pledged were released to Thornal. In November 1976 Kane made another loan from the bank to buy a sailboat and gave as collateral one of the securities which had just been released to registrant. On December 1, 1976 Kane made an additional loan and gave securities in his wife's name as collateral. This collateral had been given previously by Kane to registrant to be used as capital. On December 8, 1976 Kane and Coker went to the bank's officer and requested him to release the certificates so they could be shown to the accountants, who were auditing registrants books and attempting to locate registrant's securities so they could issue the September 30, 1976 financial statement. The bank officer refused to comply with the Coker and Kane request. This incident triggered the ultimate collapse of registrant.

Coker in his defense urges in substance the following: that Stilwell was responsible for the financial end of registrant's operations and his role in the firm was that of a salesman and as an account executive, customer representative and investment advisor; that he performed his functions "in an exemplary fashion"; that though he sold registrant's preferred stockholders' collateral without their authorization he "was

never consulted about and never participated in the decision to sell", only doing so because Stilwell requested him; that with respect to the conversion of customers' securities, all he did was "acquiesce" in Stilwell's determination to sell; that the only role he played with respect to documentation in connection with transfers of securities was to execute documents at Stilwell's direction sometimes, without fully reading or understanding such documents; that throughout the spring and summer of 1976 he believed that a Robert Blake would invest about $250,000 in registrant and have SCA manage a portfolio of five to six million dollars and that even in September, despite nothing happening, he still believed in the Blake "angel" appearing to solve registrant's financial difficulties. Coker intimates he went along with the entire scheme in the hope that once he, Stilwell and Kane obtained the six million dollar portfolio all the customers and shareholders would somehow be made whole. Presumably Coker believed that he would sell Blake's securities and pay back those whom he had already fleeced. All of Coker's arguments are contrary to the evidence and are rejected. Moreover, none of such arguments are sufficient to exculpate him from his participation in registrant's fraudulent operations. Nor is Coker exculpated from aiding and abetting registrant's bookkeeping violation, as noted above, merely because he personally made no entries in the records. He must have known when he sold customers and stockholders securities without

authorization that improper entries would be made in the records to avoid detection. The order tickets reflecting sales by First S.C. of securities he knew belonged to customers were false and he must have known, and is chargeable with knowledge, that entries in the purchase and sales blotters, receipt and delivery blotters, position records, inventory records, confirmations and entries in the general ledgers and financial statements would all be false and misleading.

Coker's attempted portrayal of himself as an innocent dupe in Stilwell's machinations is contrary to the evidence and defies credibility. Everything Coker did was done knowingly and intentionally. If his argument is that he never really understood what was happening and that he sat in his office buying and selling securities, it demonstrates he has neither the capacity nor the ability to be permitted to deal with customers. He bears equal responsibility with Stilwell for the irresponsible and fraudulent operations of registrant.

Consideration was given to the eight letters furnished by Coker from persons who believe he should be permitted to continue in the brokerage business. These letters, when weighed alongside Coker's conduct are hardly sufficient to allow Coker to remain in the brokerage business. The public requires greater protection.

While all of the above noted actitivies were taking place, registrant's books and records were being improperly maintained. This was part of the fraud and a cover up of the

deceitful acts. It is in this connection that Schumann played a vital role. The manner in which she aided and abetted violations by registrant and others has been detailed earlier herein. In assessing an appropriate sanction consideration is given to Schumann's background since it is indicative of her ability to comprehend registrant's activites. Suffice it to say in this regard that her employment by the NASD as an examiner and supervisor for three years certainly made her knowledgeable of the proper manner of maintaining books and records of a broker and dealer. In her brief Schumann denies she had responsibility for the maintenance of registrant's records, denies giving instructions to Thornal about entries to be made in registrant's books and in general maintains she did nothing more than advise employees of registrant "as to setting up the books and records for security regulation purposes and to advise on procedural and regulatory matters". The denials and her statement as to what she did are contrary to the evidence and are rejected. She was early on clothed with authority to represent registrant at the SEC and the NASD and the evidence discloses she exercised that authority and conferred frequently with representatives of the NASD, and on a number of occasions the SEC, with respect to substantive matters, not merely giving advice to employees on procedural and regulatory matters. She attended meetings with Stilwell and the accountants and attorneys on such substantive matters as the absolute transfers, the lo-

cations of securities supposedly in transit and urged the position that such securities were good for capital purposes. She furnished a list of registrant's securities to the accountants. Schumann gave Thornal instructions concerning false entries to be made in registrant's books. The claim that she did nothing more than transmit messages to Thornal from Stilwell must be rejected in light of her experience. She obviously appreciated the nature of the changes and alterations she was informing Thornal to make. In fact she gave Thornal the appropriate books and records in which these alterations were to be made. If, as Schumann contends, she had no duty to maintain the books she also had no duty to help falsify the books and records. None of Schumann's arguments are sufficient to exculpate her from the manner in which she aided and abetted the registrant's violations. Consideration is given to the dismissal of certain charges against her.

In light of the evidence supporting the serious and pervasive violations found herein and the entire record adduced in these proceedings, it is concluded that the sanctions ordered below for remedial and deterrent purposes are appropriate and essential in the public interest.

ORDER

IT IS ORDERED that:

Respondents Charles D. Stilwell, Stephen C. Coker and Vincent P. Kane are hereby barred from being associated with any broker or dealer, investment adviser or investment company.

Respondent First South Carolina Corporation is hereby barred from being associated with any broker or dealer, investment adviser or investment company.

The registration of S.C. Associates, Inc., as an investment adviser is hereby revoked and it is hereby barred from being associated with any broker or dealer, investment adviser or investment company.

As noted herein, the charges that respondent Schumann aided and abetted violations of Section 204 of the Advisers Act and Rule 204-2(a) and that she aided and abetted registrant's violations of Section 15(c)(3) of the Exchange Act and Rule 15C3-1 are hereby dismissed. Respondent Joan Schumann is hereby barred from being associated with any broker or dealer, investment adviser or investment company, provided that after one year from the effective date of this Order she may apply to the Commission to become so associated in a non-supervisory position upon an adequate showing that she will be properly supervised.

This Order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice 17 CFR 201.17(f).

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party that has not within fifteen (15) days after service of this initial decision upon him or it, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission

pursuant to Rule (c), determines on its own initiative to review this initial decision as to him or it. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party. 22/

Irving Schiller
Administrative Law Judge

Washington, D.C.
June 18, 1979

22/ All proposed findings, conclusions and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent they are inconsistent therewith they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of the various witnesses is not in accord with the findings herein it is not credited.