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SECURITIES & EXCHANGE COMMISSION

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

Norman Joseph Adams, d/b/a :
Adams & Company :
5455 Wilshire Boulevard :
Los Angeles 36, California :

File Nos. 8-9318 and :
801-2534 :

RECOMMENDED DECISION

Sidney Ullman
Hearing Examiner

Washington, D. C.
March 5, 1963

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before the
SECURITIES AND EXCHANGE COMMISSION

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5455 Wilshire Boulevard
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801-2534

RECOMMENDED DECISION

BEFORE:

Sidney Ullman, Hearing Examiner

APPEARANCES:

Arthur W. Fred, Esq., for the Division of
Trading and Exchanges.

H. Bradley Jones, Esq., Jones and Maupin,
611 Wilshire Boulevard, Los Angeles 17,
California, for respondent.

I. NATURE OF PROCEEDINGS

The issue now before the Hearing Examiner in these proceedings is whether, under Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration as a broker and dealer of Norman Joseph Adams, doing business as Adams & Company ("registrant" or "Adams"), pending final determination whether such registration should be ^{1/}revoked.

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

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

With respect to revocation, Section 15(b), as applicable to this case, provides that the Commission shall revoke the registration of any broker or dealer if it finds it is in the public interest and such broker or dealer is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, or has willfully violated any provision of the Securities Act of 1933 or the Exchange Act or any rule thereunder.

The proceedings were instituted by the Securities and Exchange Commission ("Commission") by Order for Public Proceedings dated January 29, 1963, as amended on February 8, 1963, ("Order") under Sections 15(b) and 15A of the Exchange Act and Section 203(d) of the Investment Advisers Act of 1940 ("Investment Advisers Act"). They relate to the registration of Adams as a broker-dealer under the Exchange Act since March 9, 1961, to his registration as an investment adviser under the Investment Advisers Act since March 27, 1961, and to his membership in the National Association of Securities Dealers, Inc. ("NASD"). However, as indicated above, this recommended decision is limited to the issue of suspension of registrant as a broker-dealer.

A public hearing was held pursuant to the Order at Los Angeles, California, commencing February 13, 1963, before the undersigned Hearing Examiner, and both registrant and the Division of Trading and Exchanges ("Division") were represented by counsel. The Order provided for the taking of evidence on the allegations of the Division set forth therein, initially on the question of suspension of the broker-dealer registration pending final determination of the question of revocation, and for the

continuation of the hearing forthwith for the purpose of taking additional evidence on the remaining questions set forth in the Order and relating, as indicated above, to revocation of Adams' registration as a broker-dealer, to the revocation or suspension of his registration as an investment adviser, and to his suspension or expulsion from membership in the NASD.

The Division did not present its evidence initially on the issue of the suspension vis a vis all other issues: rather, the case was presented in its entirety on all issues raised by the Order. A major portion of the Division's case was received in evidence pursuant to stipulation of counsel, and much of this evidence consisted of exhibits and of statements of expected testimony of witnesses whose presence at the hearing was obviated by the procedure adopted, in the interests of time.

The allegations of the Division relate to alleged violations of the net capital and bookkeeping requirements of the Exchange Act and of the rules of the Commission issued thereunder; to allegedly willful violations of that Act and rules thereunder in the purchase and sale by registrant of the common stock of Industrial Fasteners, Inc. ("Industrial") and The Squire for Men, Inc. ("Squire") without disclosure of control, and to allegedly willful violations of the anti-fraud provisions of the Securities Act of 1933 ("Securities Act") and the Exchange Act in the offer and sale of the common stock of Industrial, Squire, and

Measurements Spectrum, Inc. ("Spectrum").

The common stock of Spectrum had been originally offered to the public in December 1961 under a claimed exemption from the registration requirements of the Securities Act, pursuant to the provisions of Section 3(b) thereof and Regulation A issued thereunder. Adams was the underwriter of that offering. The exemption, however, was temporarily suspended by the Commission on May 25, 1962, and in response to the Commission's order of suspension Adams (as well as the issuer) requested a hearing which would give him the opportunity to show that he had no culpable responsibility with respect to the allegations which constituted the basis for the Commission's order of suspension. A hearing was held before the undersigned Hearing Examiner in Los Angeles, commencing July 30, 1962, and one of the issues at the hearing, in which Adams participated personally and through counsel, was the issue of his culpable responsibility in connection with the Spectrum offering. In the instant proceeding, at the request of counsel for the Division, official notice was taken of stated portions of the transcript and exhibits received in evidence at the Measurements Spectrum hearing.^{2/}

Proposed findings of fact and conclusions of law have been submitted by both counsel on all issues set forth in the Order.

^{2/} A recommended decision of the Hearing Examiner in the Measurements Spectrum matter has not as yet been filed. (File No. 24 SF-2959).

The Division's findings and conclusions include a supporting brief.

Insofar as the testimony and exhibits received in evidence at the hearing reflect upon any and all of registrant's activities as a broker-dealer, past and present, such evidence is relevant to the issue of suspension of the broker-dealer registration. Nevertheless, in treating with the issue of suspension at this time it is not deemed necessary for reasons indicated infra, to consider the evidence adduced on the issues of the alleged net capital and bookkeeping violations, neither of which is indicated by the evidence or by the Division's proposed findings, conclusions and brief, to have special import as a continuing or currently existing problem.^{3/} Conversely, registrant currently is engaged in active trading and is dealing with the public in the purchase and sale of securities. Any evidence adduced at the hearing which reflects upon such activities of registrant must at this time be regarded as bearing importantly on the question whether suspension of his registration as a broker-dealer "is necessary or appropriate in the public interest or for the protection of investors." This recommended decision, accordingly, is based upon the evidence adduced at the hearing except insofar as it pertains directly to the alleged net capital and bookkeeping violations. Findings of fact on these matters are not necessary

^{3/} As of October 16, 1962, the last date as to which evidence of alleged net capital violation exists in the record, the deficiency was asserted to be only \$689. (On September 28, 1962, the alleged deficiency was \$17,555.)

to the conclusions of law reached herein, and these matters are reserved for consideration in a recommended decision which will subsequently be filed with regard to all issues in the Order other than that of suspension of Adams' registration as a broker-dealer.

On the basis of the record in this case and the findings of fact set forth below, the Examiner believes there has been a sufficient showing of misconduct on the part of registrant to make it necessary and appropriate in the public interest and for the protection of investors to suspend the broker-dealer registration pending the final determination of the question of revocation of such registration and the determination of the other issues in the Order.^{4/}

II. FINDINGS OF FACT

1. Registrant has been registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act since March 9, 1961 and is still so registered.
2. Registrant has been registered as an investment adviser pursuant to Section 203(c) of the Investment Advisers Act since March 27, 1961, and is still so registered.

^{4/} Cf. Alexander Reid & Co., Inc., Securities Exchange Act Release No. 6727 (February 8, 1962); D. H. Victor & Company, Inc., Securities Exchange Act Release No. 6562 (May 17, 1961); Peerless-New York, Incorporated, Securities Exchange Act Release No. 6193 (February 26, 1960).

3. Registrant is a member of the NASD, a national securities association registered pursuant to Section 15A of the Exchange Act.

4. On November 13, 1962, the United States District Court for the Southern District of California entered a final judgment permanently enjoining registrant from violating Section 17(a)(3) of the Securities Act, Sections 10(b), 15(c)(1), 15(c)(3) and 17(a) of the Exchange Act and Rules 10b-5, 15c1-2, 15c1-5, 15c3-1 and 17a-3 thereunder.

5. Counsel stipulated that while registrant was engaged in transactions in connection with the common stock of Industrial, Squire and Spectrum, registrant directly and indirectly made use of the mails and means and instruments of transportation and communication in interstate commerce and of the means and instrumentalities of interstate commerce.

6. The Examiner finds that the trading practices and selling techniques of Adams and his sales staff during the period commencing at least as early as December 18, 1961, and continuing at least to the end of December 1962, reveal serious misconduct and activities which contravene the obligations of a broker-dealer to his customers and to the investing public, in the manner and at the times indicated below, particularly with regard to the common stocks of Industrial, Squire and Spectrum.

Industrial Fasteners, Inc.

7. Under an offering circular dated April 27, 1962, authorized by the California Commissioner of Corporations, registrant was the underwriter of a public offering of 120,000 shares of common stock of Industrial Fasteners, Inc. for sale to bona fide residents of California only, at an offering price of \$2.50 per share. The company's business is the manufacture of fasteners and bolts and related products primarily for the aircraft and missile industries.

8. It was stipulated that at all material times registrant was also a promoter and a director of the corporation, a creditor in the amount of \$20,900, and the owner of 20,000 shares of its stock. His status as a creditor and his ownership of the 20,000 shares were set forth in the offering circular.^{5/}

9. Registrant conducted a vigorous campaign for the sale of Industrial stock, commencing with the public offering and continuing to the end of 1962. As part of the campaign he distributed, directly and indirectly to the investing public, thousands of copies of brochures, newsletters and other publications urging the purchase of Industrial stock.

^{5/} Registrant owned 20,000 shares of Industrial only at the effective date of the offering. His inventory, purchases and sales of Industrial stock varied thereafter, and were the subject of extended testimony and documentary evidence.

10. The offering circular of Industrial Fasteners reflected a liability "Due to Factor" of \$152,325.89 as of December 31, 1961. At or about the time of the offering registrant wrote the "copy" of a newsletter on Industrial Fasteners (North's News Letter), which was printed on or about May 15, 1962 at registrant's request and distributed widely to the investing public by registrant and the printer.

11. The newsletter stated with respect to the proceeds of the public offering:

"This has enabled company to eliminate costly factoring of receivables, and provide for expansion."

A further statement was

"Currently, four prospective acquisitions are under consideration and negotiation, and if all were consummated, pro forma sales for the year 1962 could exceed \$3,000,000, management states."

The newsletter also stated that as a result of the recent public offering the company has a "balance of \$87,500 for increased working capital" and that management projected net income for 1962 at 30 to 40 cents per share.

12. The president of Industrial Fasteners testified that factoring of the company's accounts receivable was never eliminated and that, to the contrary, its accounts receivables continued to be factored at the date of his testimony. He also denied that four prospective acquisitions were ever under

consideration, and although he stated that Adams at various times had discussed merger or acquisition possibilities, two of the four companies mentioned by Adams in this connection were "very large", "big business" and "considerably larger than Industrial Fasteners".

13. The statement in the newsletter to the effect that four acquisitions were currently under consideration was palpably false and misleading and was so intended by Adams. The increase in working capital resulting from the public offering was "quite a bit less than \$87,000", according to the president's testimony, and there was no basis, in fact, for a prediction of per share earnings of from 30 to 40 cents, excepting possibly the aspirations of the sales manager for substantially increased sales.

14. The North News Letter, a "confidential report" subsequently distributed by Adams to the public (despite a caveat thereon to the contrary)^{6/} and other material which he published and distributed widely, contained false and misleading information concerning Industrial Fasteners and its business. This material was intended as a basis for intensive telephone campaigns to promote the sales of Industrial stock by registrant's offices in Los Angeles and Sherman Oaks, California.

^{6/} This caveat was required by the California Commissioner of Corporations in his supervision of advertising material distributed to the public. Testimony by an official of the Commissioner's office and his correspondence with registrant relative to Industrial and Squire indicate registrant's frequent violations of the Commissioner's rules on advertising, among other matters.

15. In October and November 1962 registrant conducted among his salesmen a contest with cash prizes offered to the salesman disposing of the largest number of shares of Industrial stock and to the salesman selling the most Squire stock.

16. In a memorandum dated November 1, 1962, distributed to his salesmen, registrant listed for the month of October all salesmen and the number of shares of Industrial stock and of Squire stock sold by each.

17. The memorandum stated, in part,

"Let's hustle this month. Come in earlier. Stay later. Phone new names. Any names! Be No. 1 this month. The salesman who sells the most Industrial Fasteners in November will receive \$100 cash bonus. Also the salesman who sells the most Squire in November will receive a \$100 cash bonus (minimum required - 2,000 and 1,000 shares, respectively) . . . Who will win the prizes in November? Be a Sales man and you will win them both?? Try?"

18. Customers and prospective customers were called on the telephone and were told by registrant's salesmen, among other things, that Industrial Fasteners was a "good solid company"; that its stock "should double in price by January 1963"; that the company could be expected to earn 30 or 40 cents in the calendar year 1962.

19. They were not told the fact that Industrial Fasteners then had an operating deficit of from \$80,000 to \$90,000.

20. There was no reasonable basis for an expectation of earnings of 30 to 40 cents during the calendar year 1962, or, based upon the business and operations of the company, for a statement that the price of the common stock could be expected to double by January 1963.

21. During the Fall of 1962 registrant instigated and promoted among his salesmen an active campaign to induce customers who had purchased Squire stock to sell it to Adams & Company and to buy Industrial stock with the proceeds.

22. One witness, R. M., testified that at the urging of Adams and one of his salesman, both of whom came to his home on November 26, 1962, he exchanged 440 shares of Squire which he had previously purchased from registrant for 660 shares of Industrial. This was one of many similar transactions which customers entered into at the ^{ur}ring of registrant and his salesmen. The transaction was induced by the representation that Adams was "creating a market" for Industrial stock and it would therefore increase in price; conversely, that the price of Squire stock was expected to fall because of an unfavorable earnings report, and in order to protect the customer Adams would exchange Industrial stock for Squire stock on the basis of three Industrial shares for two Squire shares.

23. This offer was made to many customers on the dollar basis of Adams purchasing Squire stock for \$4.50 per share and selling

Industrial for \$3 per share. One customer testified that he was told by a salesman that he would be paid \$4.50 for Squire stock only if he purchased Industrial at \$3; otherwise, he was told, he could receive only \$3 or \$3.50 per share for his Squire stock.

24. The alleged upward movement in the price of Industrial stock from \$2.50 to \$3 was described to customers by registrant and his salesman in November 1962 as indication of a strong move by the stock. In fact, registrant dominated and controlled the market for Industrial stock and the movement in price reflected an arbitrary increase by registrant rather than activity in a free, open and competitive market. This was not disclosed to several of the witnesses who testified that they sold Squire stock and purchased Industrial stock with the proceeds.

25. In October 1962 registrant made ~~extensive~~^{intensive} efforts to have other broker-dealers quote prices on Industrial stock in the Pacific Coast Section of the National Daily Quotation Service (white sheets). He arranged to indemnify one broker-dealer against losses and furnished the prices to be quoted. These prices were quoted for a short period by the broker. No other broker-dealer quoted the stock during this period. The purpose of registrant's efforts was to create the illusion of an independent market and facilitate his sale of his large inventory of Industrial stock.

26. At least some of registrant's salesmen, while engaged in the contest for prize money in the sale of Industrial stock, were

ignorant of and unconcerned with the financial condition of the corporation. Two salesmen testified that they had no knowledge that the corporation had an operating deficit, that they were under the impression that the corporation was earning money, and that they had never seen any financial statements of the company excepting those of December 31, 1961, which appeared in the offering circular. The company was losing money during this time.

27. The salesmen testified that they were ignorant of the fact that financial statements of the corporation as of May 31, 1962 and August 31, 1962 had been issued. The May 31 statement showed an operating loss for the five months ending that date of \$82,224, and the deficit as of August 31, 1962 was \$94,538.

28. Relatively few if any of the purchasers of Industrial stock from registrant were apprised of the fact that he was a promoter of the company.

The Squire for Men, Inc.

29. This company is in the business of providing and servicing hairpieces for men. Registrant was the underwriter of the public offering under a Regulation A exemption. He was listed in the offering circular dated April 25, 1962 as a director and the owner of 10,000 shares.

30. The witness, R. M., referred to above, is a machinist, who testified that in September 1962 he received a telephone call

from one of registrant's salesmen, who thereafter came to his home and persuaded him to sell his holdings in one stock and buy Squire stock with the proceeds. He testified that he was told the Squire stock "is really going to boom, to go up to eight, nine, ten dollars a share."

31. R. M. followed this advice and bought 440 shares of Squire stock at \$5.25 per share. A few days later he was called on the telephone and was told by the salesman that "It's gone up to 5 5/8, and it's going to climb. You'd better get aboard." He was assured that the stock would be around \$8 to \$10 by February or March, and was told "It's going up that far at least, we're sure."

32. R. M. ordered 500 additional shares of Squire at 5 5/8 on condition and with the understanding that a stop-loss order would be made effective for the 940 shares.^{7/}

33. A few days later he was called by the salesman and he bought 250 additional shares at 5 7/8 and 250 shares at \$6. He was assured that the stop-loss order would be effective for all of his stock.

^{7/} R. M. testified he had heard "some of the fellows at the shop talking about . . . 'Well, if you're going to buy stock, why, you'd better put in a stop-loss order so you couldn't lose - - or at least so you wouldn't lose too much.'"

34. On return from his vacation around October 20, 1962, R. M. called Adams & Company and was told that his salesman had been fired for inattention to his customers. The witness spoke with Adams, who stated he had no knowledge of a stop-loss order. Nor did R. M. ever receive confirmation of such order.

35. At Adams' suggestion, R. M. thereafter visited the plant of Industrial Fasteners. In subsequent telephone conversations Adams "was pushing this Industrial Fasteners, and he was stressing this exotic metals feature of it. He said". . . . Exotic metals in the '60's are going to be like electronics were in the '50's."

36. On November 26, 1962, Adams and a salesman visited R. M.'s house, assured him they were creating a market for Industrial Fasteners stock and this would increase its price. R. M. exchanged 440 shares of his Squire holdings for 660 shares of Industrial Fasteners on representations that "If you will let us make this switch for Industrial Fasteners, we know we can recoup some of your losses."

37. Another witness, S. B., testified that in November 1962 he was called at his home in New York City by one of registrant's salesmen in Los Angeles. The salesman represented that Squire stock was $4\frac{1}{2}$ but was going to go down fast and might drop to $\frac{1}{2}$; that "the only way he would get out of Squire at that time was to buy Industrial Fasteners, Inc." , S. B. sold 100 shares of Squire and purchased 150 shares

of Industrial with the proceeds.

38. Much of the aforementioned fraudulent activity of registrant in promoting and selling Industrial and Squire stock and in the switching of Industrial for Squire stock was engaged in after the entry of the injunction and in violation of its provisions permanently enjoining him from, among other activities, engaging, by any means of communication in interstate commerce in over-the-counter sales of common stock of Industrial, Squire and Spectrum in violation of the anti-fraud provisions of the Exchange Act; and from sales of any securities, by means of interstate commerce, in contravention of the anti-fraud provision of Section 17(a)(3) of the Securities Act.

Measurements Spectrum, Inc.

39. Measurements Spectrum was incorporated in 1960 (as Otterman-Dempsey Electronics), and was engaged in the business of certifying, calibrating and repairing electronic measuring equipment.

40. As underwriter of the Measurements Spectrum offering of 60,000 shares at \$5 per share in December 1961, Adams was thoroughly acquainted with the provisions, terms and financial statements in the offering circular.

41. Adams participated actively in finding persons who would lend

money needed by the issuer and in arranging loans of substantial sums of money following the August 31, 1961 date of the financial statements in the offering circular. He was aware of promissory notes in the amount of approximately \$56,000 executed by the issuer between August 31, 1961 and the effective date of the offering circular, December 18, 1961.

42. He was also party to the assignment by Charles Otterman, president of the corporation, of 17,500 of the 20,900 promotional shares to be issued to Otterman. A major portion of this stock was assigned by Otterman to Adams, who, in turn, executed assignments to members of the selling group, to his salesmen, to directors of the corporation, and to persons lending money to the corporation. Options to purchase stock were also executed by Adams, and a block of 5,000 promotion shares was optioned by Otterman to a lender at 5 cents per share.

43. Although the obligations reflected by these promissory notes materially affected the financial condition of the issuer and although the assignments and options were material facts required to be disclosed in the offering circular, Adams used the offering circular during the public offering and thereafter without change or correction to reflect the borrowing, assignments or options executed prior to December 18, 1961.

44. The offering circular stated that the issuer had a backlog of \$178,000 in open purchase orders. Registrant ~~knew~~ that these were forecasts rather than committed business.

45. Adams accepted, published and distributed to security dealers, to members of the selling group, to some of his salesmen, and to some of the issuer's directors, figures given him by Otterman, purporting to reflect past sales and anticipated sales of the company's products, without verifying the figures by examination of the books and records of the company or adopting other reasonable methods of corroboration. The published figures were gross exaggerations of past sales and were fantastically out of touch with reality as regards anticipated sales.

46. Actual sales were less than one half the exaggerated figures which totalled approximately \$107,000 for a period of almost six months commencing July 1, 1961. The memorandum distributed by Adams stated, following the exaggerated figures: "Sales for 1962 are anticipated by management to exceed \$3. million!"

47. This is one of several demonstrated instances in connection with the Industrial and Spectrum offerings, of registrant's willingness to accept, publish and distribute figures and other information favorable to the sale of common stock issues he had underwritten, without serious effort to verify its accuracy by examination of the books and records or similar action.

48. In some instances registrant would attach to such information a label such as "management states", and he now seeks refuge behind the label, asserting freedom from responsibility because management was the source of the information.

49. As the underwriter of offerings which registrant concedes and indeed urges were described as speculative and which were patently unseasoned, he had an obligation to take reasonable precautions to verify the accuracy of such information before using it, in order to publish the true facts not only during the initial offering periods but also thereafter when he was conducting active retail sales campaigns.^{8/} His unwillingness to discharge that obligation is fully established by the evidence.

^{8/} Cf. Heft, Kahn & Infante, Inc., Securities Exchange Act Release No. 7020 (February 11, 1963) citing, at page 5, Charles E. Bailey & Co., 35 SEC 33, 41, 42 (1953), where the Commission stated:

"In offering the . . . stock, registrant, as underwriter, owed a duty to the investing public to exercise a degree of care reasonable under the circumstances of this offering to assure the substantial accuracy of representations made in the prospectus and other sales literature . . . /His/ purported substantial reliance on information furnished him by the issuer . . . did not constitute discharge of /that/ duty . . . Moreover, where, as here, an issuer seeks funds from the public to finance a new and speculative venture, the underwriter must be particularly careful in verifying the issuer's obviously self-serving statements as to its operations and prospects."

See also The Richmond Corporation, Securities Act Release No. 4584 (February 27, 1963) on the nature of an underwriter's responsibility and the consequences of failure to discharge the responsibility adequately.

50. In connection with his negotiating a loan to the issuer, registrant became a creditor of the company in the amount of \$20,000 prior to the date of the offering circular. He also entered into a contract of employment with the company, under which he was to receive \$18,000 over a period of three years for services as a financial consultant. These material facts were not disclosed either in the offering circular or to purchasers of Spectrum stock from registrant.

Mark-ups in Sales of Industrial and Squire Stock

51. The Division introduced schedules and testimony showing unconscionable mark-ups by registrant in the sale of Industrial and Squire stock. A great number of the sale prices were substantially higher than the contemporaneous prices paid by registrant for the same stock and the prices quoted in the white sheets.

52. Over a period of several months commencing June 4, 1962, based on contemporaneous costs ranging from $3/4$ to 2 and on sales ranging from $2\frac{1}{2}$ to 3, registrant's mark-ups for Industrial stock were within the range of 31.2% to 185.7%.

53. The Division's schedule showing mark-ups in the sale of Squire stock showed 296 sales, as principal, during the period May 3, 1962 to January 29, 1963, involving mark-ups ranging from 5.4% to 51.5% over contemporaneous cost.

54. These securities were sold to customers to whom no information was given regarding current prices being paid by registrant for the same stock, and, conversely, the purchases by registrant were made without information to selling stockholders of the prices being received by him in sales of the same stock.

55. Registrant prepared a memorandum dated April 5, 1962, directed to all employees, purportedly describing his pricing mark-up policy for over-the-counter sales. In general, the stated mark-ups were limited to either 4% or 5% over cost, with certain exceptions for sales not made on the same day as the stocks were purchased, as to which registrant prescribed a somewhat higher mark-up. The memorandum closed with the warning:

"Any employee making errors in this regard will most certainly be immediately discharged from our firm. Have no doubt about this!"

56. Registrant's mark-ups, in actuality, were completely out of line with his stated policy, with the policy or guide of the ^{9/} NASD, and were in violation of the anti-fraud provisions of the

^{9/} NASD Manual, p. G-3, par. A3:

"The mark-up over the prevailing market price is the significant spread from the point of view of fairness of dealings with customers in principal transactions. In the absence of other bona fide evidence of the prevailing market, a member's own contemporaneous cost is the best indication of the prevailing market price of a security."

securities laws as interpreted by the Commission.^{10/}

57. Registrant testified that he sent a copy of his memorandum on mark-up policy to Mr. Charles Margerum, of the Commission's Los Angeles Branch Office in April 1962, and had no unfavorable response, suggesting that his prices were defensible because the memorandum was not challenged or questioned. The departures from the memorandum in actual selling practice were so gross that this testimony and suggestion hardly deserves comment. Nevertheless, cf. In the Matter of Mitchell Securities, 37 S.E.C. 178, at 183-4.

58. In general, registrant's "boiler-room" sales techniques involving high-pressure telephone solicitation by untrained salesmen without adequate supervision^{11/} and direct mail solicitation employing inaccurate and misleading material, reflected a disregard of the basic standards of conduct of a broker-dealer toward his customers and the public.

^{10/} Samuel B. Franklin & Company, Securities Exchange Act Release No. 5915, p. 3 (March 24, 1959), which states as follows in footnote 4:

"We have frequently held that the prices contemporaneously paid by a dealer, and the current quotations published in in the National Daily Quotation Sheets, are indications of the prevailing market prices for the purpose of determining mark-ups charged customers. Charles Hughes & Co., Inc., 13 S.E.C. 676 (1943) aff'd 139 F. 2d 434 (C.A. 2, 1943), cert. denied 321 U.S. 786; Mitchell Securities, Inc., 37 S.E.C. 178 (1956) and Managed Investment Programs, 37 S.E.C. 783 (1957)."

^{11/} One salesman testified that he had met perhaps three or four of the approximately 200 customers to whom he had sold various issues in which Adams was interested. He also testified to a lack of training, and the absence of adequate supervision of salesmen is amply demonstrated by the record.

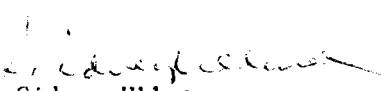
III. CONCLUSION OF LAW

The evidence indicates to the Examiner that since December 18, 1961 registrant has engaged in a course of conduct which violated the anti-fraud provisions of the Exchange Act and the Securities Act, and since November 13, 1962, his course of conduct has violated the injunction of the United States District Court for the Southern District of California, all as indicated in the above Findings of Fact.

RECOMMENDATION

In view of the foregoing the Hearing Examiner recommends that the Commission issue an order forthwith under Section 15(b) of the Exchange Act, finding it is necessary or appropriate in the public interest ^{12/} and for the protection of investors to suspend the registration of the registrant as a broker and dealer pending final determination whether such registration should be revoked. ^{13/}

Respectfully submitted,


Sidney Ullman
Hearing Examiner

Washington, D.C.
March 5, 1963

^{12/} Cf. Alexander Reid & Co., Inc., Securities Exchange Act Release No. 6727 (February 8, 1962); Brown, Barton & Engel, Securities Exchange Act Release No. 6821 (June 8, 1962).

^{13/} To the extent that the proposed findings and conclusions submitted to the Hearing Examiner are in accord with the views set forth herein they are sustained, and to the extent that they are inconsistent therewith they are expressly rejected.