

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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SECURITIES & EXCHANGE
COMMISSION

In the Matter of :
STONE SUMMERS & COMPANY :
Suite 74, Lincoln Plaza Center :
4545 Lincoln Blvd. :
(8-13804) :
ALEXANDER J. STONE :
THOMAS E. SUMMERS :
BOBBY LAYNE SUMMERS :
Securities Exchange Act of 1934 :
Sections 15(b), 15A and 19(a)(3) :
:

INITIAL DECISION

(On Division's Motion for Interim Suspension of
Registrant for Alleged Violations of Stipulation)

Washington, D.C.
July 7, 1972

David J. Markun
Hearing Examiner

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APPEARANCES: Charles T. Rose and Wayne M. Whitaker of the
Fort Worth Regional Office, for the Division
of Trading and Markets.

Gene Stipe and Eddie Harper, of Stipe, Gossett,
Stipe & Harper, Oklahoma City, Oklahoma, for
respondents, joined by George F. Saunders,
Oklahoma City, Oklahoma, on the brief.

BEFORE: David J. Markun, Hearing Examiner

In this public proceeding pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 ("Exchange Act") the Commission by order dated June 7, 1972, directed that a hearing be held ^{1/} on a motion filed May 1, 1972, by the Division of Trading and Markets ("Division") for an interim-suspension order suspending the broker-dealer registration of Stone Summers & Company ("Registrant") pending final determination of this proceeding ^{2/} based upon an alleged violation by the Registrant of a stipulation between the Division and the above-captioned Respondents. ^{3/}

1/ The hearing was held in Oklahoma City on June 20 and June 21, 1972.

2/ The present posture of the basic proceeding, instituted by the Commission's order of May 13, 1970, is, briefly, as follows: After public hearings in late 1970, the hearing examiner's decision, which concluded inter alia that certain charged violations had been established by the evidence but that others had not, was filed on August 27, 1971. All parties petitioned for review and the matter is currently under review by the Commission. Meanwhile, the Registrant is subject to certain restrictions on the nature and scope of its operations pending final determination of this proceeding under a stipulation of June 11, 1970, and it is the alleged breach of this stipulation by Registrant that is here put in issue by the Division's motion. The findings made in the initial decision of August 27, 1971, except as modified herein, are hereby incorporated by reference to the extent relevant to this decision.

3/ As used in this decision "Respondents" embraces only the above-captioned respondents and does not include Paul L. Rice, a former registered representative of the Registrant, who is also a named respondent under the Commission's order for proceeding of May 13, 1970, and as to whom a separate hearing was held. The issues treated in this decision do not affect Respondent Rice.

The stipulation whose breach is alleged ("stipulation") was entered into by Respondents and the Division on June 11, 1970^{4/} in order to obviate the need for a hearing on, and determination of, the preliminary issue presented by the Commission's Order for Proceeding of May 13, 1970, i.e. whether, pending final determination of the substantive issues raised by the proceeding, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of Registrant.^{5/}

The stipulation provides, inter alia, that pending final determination of this proceeding, Registrant shall not (1) trade or quote the securities of any company which has been a defendant in an injunctive action instituted by the Commission; (2) engage in any retail business with customers (in contradistinction to wholesale transactions with other broker-dealers); and (3) trade securities except those of companies filing reports as specified by Section 13 of the Exchange Act whose securities are registered under Section 12 of the Exchange Act or have been registered under the Securities Act of 1933 ("Securities Act").

Respondents further stipulated to the entry of an order suspending Registrant's registration pending final determination of this proceeding in the event that any of the provisions of the stipulation are

^{4/} Exhibit 158B.

^{5/} Although the hearing examiner's initial decision of August 27, 1971, ordered the stipulation of June 11, 1970 revoked, the appeals taken by the parties kept this provision (along with all other provisions of the initial decision) from becoming effective, as the Commission expressly affirmed in its "Memorandum Opinion and Declaratory Order" of November 9, 1971. The Commission also declined, on the merits, to relieve Registrant of the restrictions imposed by the stipulation.

not complied with.

Pursuant to arrangements initiated by Respondent Tom Summers, ("Tom Summers"), a trader with and 1/3 owner of the Registrant and George T. Bishop, ("Bishop") vice president, a director and a principal of the Registrant, John Stephens & Co., Inc., "Stephens, Inc.," a broker-dealer whose principal offices are in Minneapolis, Minnesota, in January, 1972 opened a branch office in Oklahoma City, Oklahoma, ("Oklahoma City Branch") with Bishop as branch manager ^{6/} and Respondents Tom Summers and his brother Bob Summers, both registered representatives, as traders.

This Oklahoma City branch office of Stephens, Inc. continued in existence from about January 12, 1972, until March 29, 1972, at which time it was closed down following representations to Stephens, Inc. by the Division staff counsel that the latter regarded the establishment and operation of the Oklahoma City branch office as a fraudulent device to enable the Registrant, Stone Summers & Co., to circumvent the limitations of the stipulation, and that unless the branch office was discontinued appropriate action might have to be taken which could include action against Stevens, Inc. ^{7/}

The parties have stipulated that during the time it was in existence the Oklahoma City branch office of Stephens, Inc. engaged

^{6/} Bishop was made a vice president of Stevens, Inc. and was registered as a principal thereof.

^{7/} Division counsel called at the Oklahoma City branch offices on March 21 and 22 and as a result of his inquiries Tom Summers arranged for him to talk to John Stephens in Minneapolis by phone. Although Stephens reaffirmed to Tom Summers his view that the branch office operation was entirely legitimate and proper, he indicated he could not afford the risk of possible involvement in an SEC proceeding.

(continued)

in various transactions that were of a kind that Registrant was precluded from engaging in under its stipulation of June 11, 1970 with the Division. ^{8/} Thus, among other things, the Oklahoma City branch office traded the securities of two companies that had been defendants in injunctive actions, ^{9/} entered into retail transactions, and ^{10/} had transactions in the securities of eleven companies which had not registered under Section 12 of the Exchange Act as specified by Section 13 of that Act.

The essential remaining question, therefore, is whether the Oklahoma City branch office of Stephens, Inc. was merely the alter ego of Registrant, as the Division contends, ^{11/} or a legitimate branch

7/ (continued)

Stevens, Inc. has some public shareholders as a result of an earlier (1968) public offering and since May, 1971, it has had an additional proposed public offering of its stock pending before the Commission, a second prospectus amendment having been filed in March, 1972. Since the closing of the office Bishop has gone with another brokerage firm as a vice president and secretary ("the groceries must be on the table") and is no longer registered with the Registrant, but out of loyalty to the Summers brothers, continues to do certain minimal clerical duties required to keep Registrant licensed, though inactive.

8/ Exhibit 158A

9/ From February 14, 1972 through March 24, 1972, 8,850 shares of Commonwealth United Corporation were bought and 9,600 shares of that company were sold. From February 2, 1972, through March 22, 1972, 11,300 shares of Gold Field Corporation were bought and 9,800 shares of that company sold.

10/ Within the period January 12, 1972, through March 28, 1972, retail transactions were executed on behalf of 10 retail (i.e. other than a broker-dealer) customers.

11/ In addition to the alter ego contention, the Division contends that the activities of the Respondents constituted a sham to evade the restrictions of the June 11, 1970, stipulation and that their "evasive activity" amounts to a fraud on the Division, which entered into the stipulation in good faith.

office of Stephens, Inc., to whom the terms of the stipulation have no application, as Respondents contend.

The Division does not contend that Stephens, Inc. or any of its officers or employees conspired or knowingly collaborated with or aided and abetted Respondents in establishing a phony, alter ego branch office in Oklahoma City.^{12/} Rather, the Division contends that Stephens, Inc. was duped or misled into establishing such a branch office by the alleged misrepresentation by Respondents that Registrant was no longer subject to the restrictions contained in the stipulation of June 11, 1970. In support of its contentions the Division relies, among other things, upon the circumstances that Registrant and the Oklahoma City branch office of Stephens, Inc. had a common office address, certain common personnel, and that the branch office used certain office furniture and equipment of the Registrant.

As the courts have aptly (and perhaps ruefully) noted: "The laws as to when the courts will pierce the corporate veil are easy to state, but hard to apply."^{13/} Here, examination of the validity of the Division's alter ego and "sham" contentions require a somewhat extended consideration of the factual circumstances and terms under which the Oklahoma City branch office came to be established and under which it operated.

^{12/} The record contains no evidence that there was any such conduct on the part of Stephens, Inc. or its personnel.

^{13/} Shamrock Oil and Gas Co. v. Ethridge, 159 F. Supp. 693, 696 (1958), quoting Carlesimo v. Schwebel, 87 Cal. App. 2d 428, 197 P2d 167, 172.

In the latter half of 1971 Registrant became essentially "inactive" or "dormant" because of a number of factors, of which the most notable were market conditions and the restrictions involved in operating under the stipulation of June 11, 1970. Since August, 1971, Registrant apparently had only three transactions.^{14/} The firm's personnel essentially dwindled down to the three owners, Alexander J. Stone ("Stone"), Tom Summers, and Bob Summers, together with George T. Bishop ("Bishop"), a registered principal of the firm (along with Stone).^{15/} When the firm became inactive Bishop no longer drew his regular salary.^{16/}

In light of the Registrant's inactive state and in light of the uncertainty as to when or whether Registrant would again be in a position to become active, it occurred to Tom Summers and Bishop, sometime in December, 1971, that it might be feasible for them and for Bob Summers^{17/} to earn a livelihood in the securities

^{14/} These transactions included liquidation in January, 1972 of 1,500 shares of Standard Metal which had been purchased for an intended profit sharing plan that didn't come to fruition and a liquidation of 300 shares of G.R.I.

^{15/} At its peak Registrant had had some 30 employees and seven traders.

^{16/} Dale Hunter, who had worked somewhat sporadically for Registrant as a research man doing "due-diligence" work on stocks traded by the firm, nominally continued to assist with such work but drew no salary after the firm became inactive. In exchange for his assistance he had the privilege of using Registrant's long distance and other communications facilities in connection with his own work as head of "Hunter Research."

^{17/} Bob Summers has for years worked "in tandem" with his brother Tom in the securities business. Each of them owns 1/3 of the Registrant. The plans never included Stone, the other owner of the Registrant. Indeed, Bishop testified that he would not have been interested if the plan had included Stone, evidently because of some dissatisfaction with Stone's "absentee-owner" status with the Registrant.

business through organizing an Oklahoma City branch of another broker-dealer. The specific broker-dealer firm Tom Summers and Bishop had in mind to approach was Stephens, Inc , the Minneapolis broker-dealer, which already had branch offices in Los Angeles, New York, and Denver.^{18/} Tom Summers and Bishop both knew and had dealt with a trader, Arnold Greenberg, in the Denver office of Stephens, Inc. for a number of years. Tom Summers talked by phone to John Stephens ("Stephens") in Minneapolis and arranged a date in mid-December on which he and Bishop could go to Minneapolis to discuss the possibilities for formation of a branch office of Stephens, Inc. in Oklahoma City.

Bishop and Tom Summers met with Stephens in Minneapolis for about an hour after which they had further extended discussions with Nathan Newman ("Newman"), vice president, treasurer, a director and a shareholder of Stephens, Inc., with whom the more detailed operating procedures of the proposed branch were discussed. Stephens, Inc., however, made no final decision to go ahead with formation of the Oklahoma City branch office until they had gotten the concurrence of two additional directors of the firm.^{19/} The branch was ultimately

^{18/} The three branch offices were set up, respectively, in August, 1969, July 1970, and February 1971.

^{19/} The proposal for formation of an Oklahoma City branch seemed attractive to Stephens, Inc. in that it gave them an opportunity to penetrate an area with experienced traders well known in the area. Though realistically they must have realized that if the restrictions on Registrant were ever removed they would likely lose some or all of their key personnel in the Oklahoma City branch, they evidently were willing to run that risk. For the Bishop-Summers threesome formation of a Stephens, Inc. branch in Oklahoma City gave them the prospect of earning a livelihood in the securities industry that could turn out to be either long term or short term depending upon how profitable the branch operation proved to be and whether the Registrant would ever be able to resume unrestricted operations. As to the Summers brothers, if they

opened about January 12, 1972, with offices at Suite 74, Lincoln Plaza, 4545 Lincoln Blvd. ^{20/}

The arrangements under which the Oklahoma City branch operated were worked out orally and never reduced to writing. Under the agreement Bishop was made a vice president of Stephens, Inc. and was the registered principal in charge of the office. ^{21/} Bishop was under the overall supervision of Newman in the Minneapolis home office. Bishop was furnished the same procedures manual as governed operations of the other branch offices. Tom and Bob Summers were registered as registered representatives by Stephens, Inc. with the NASD and functioned primarily as traders. ^{21A/}

19/ (Continued)

decided to stay with Stephens, Inc. they had hopes of selling their ownership interest in the Registrant. Registrant has "tax losses" which might make it an attractive purchase. Bishop's testimony, which is credited, was that he would not return to Registrant unless he could acquire an ownership interest therein. Thus the likelihood of his having stayed with Stephens, Inc. was higher than that of the Summers brothers, particularly if he could ultimately have acquired an ownership interest in the Minneapolis firm.

20/ At about this same time the office of the Registrant was moved from its then offices in the May-Ex Building to the same offices occupied by the Oklahoma City branch office of Stephens, Inc. The main entrance to Suite 74 of the offices at Lincoln Plaza Center bore the names of Stipe, Gosset, Stipe and Harper (Registrant's law firm, from whom Stephens, Inc. subleased on a month to month basis, at \$300 a month, about 1/3 of the suite) and the names of the Stephens, Inc. branch and of the Registrant. Newman was aware that Registrant was listed at the same offices occupied by the Oklahoma City branch of Stephens, Inc. Registrant had a separate phone line, for which it paid, which line was on the same instruments with 2 lines held by the Stephens, Inc. branch office.

21/ Neither Tom nor Bob Summers has ever passed his principal's examination. Moreover, their experience and competence lies primarily in the area of trading whereas Bishop also had extensive experience in the administration area, both before and after becoming a registered principal with Registrant.

21A All three continued to be registered with Registrant as well (continued)

Consistently with the overall nature of Stephens, Inc.'s business, the business of its Oklahoma City branch was primarily wholesale, i.e. trading with other broker-dealers. ^{22/} They dealt primarily in low-priced (under \$5) OTC stocks.

Under the agreement Bishop and the Summers brothers, collectively, received as compensation 25% of the gross profits from trading activities and 50% of the retail commissions determined each month, less 25% of the gross losses for the month and less 25% of all prior losses not previously compensated for. Under this arrangement the Bishop-Summers group did not run a risk of "loss" except to the extent that losses could be offset against earnings. ^{23/}

These terms were the same as those under which individual traders in other branch offices of Stephens, Inc. were compensated, ^{24/} the

21A (Continued)

and this was known to Newman.

22/ About 95% of the Oklahoma City branch's business was wholesale as was that of the Denver branch office and of the home office, while the New York and Los Angeles branch operations were 99 and 100% wholesale, respectively.

23/ The home office imposed limits on how large a position the branch could take in any stock and in all stocks together. Stephens, Inc. furnished \$70,000 in capital for trading purposes.

24/ As was also true with other branches, the home office charged the branch office \$1 per transaction.

novel feature here being that the three in effect pooled their compensation instead of operating as individual traders and registered representatives.^{25/}

The home office paid the rent (\$300 per month) and various other office expenses, such as the cost of monthly publications utilized in due-diligence work, etc. but the Bishop-Summers group furnished what little furniture was required^{26/} and also paid the wages and salaries of additional personnel.^{27/} The additional personnel was minimal inasmuch as under the agreement all record keeping,^{28/} billing, collections, issuance of received stock, cashiering, and clearing operations were handled in the home office in Minneapolis and in the New York branch office, which exercised various clearing

^{25/} This did not make the three a "partnership", as the Division contends, since that term connotes putting up capital to risk, which was not involved here, since the three had no ownership interest in Stephens, Inc.

^{26/} The use of a trading table, ticket-stamping machine and some filing cabinets belonging to Registrant was given the Oklahoma City branch office by Registrant in exchange for its being allowed use of some space to store files and the convenience of being able to maintain an address without incurring rental expenses. In light of Registrant's inactive and uncertain status this seemed a realistic move on its part to cut costs while waiting for events to unfold. The balance of Registrant's furniture is still stored by it at the May-Ex building where it formerly had its offices.

^{27/} Any advances by the home office to personnel of the branch office were to be offset against compensation otherwise owed the branch office group. Bishop drew a \$600 per month advance and Richard C. Alcott, briefly employed by the branch office (see footnote 29) also drew advances.

^{28/} Except for compliance files on stocks traded by the Oklahoma City branch, which were Bishop's responsibility (the branch determined which stocks it would trade, as did other branch offices.)

^{29/} functions for the entire firm. Information on trades was transmitted by phone and recorded in Minneapolis or New York. The home office had "squawk box" lines connecting it to each of its branch offices and continual communication was maintained during trading hours.

Under the agreement, Stephens, Inc. made monthly "settlements"^{30/} with the Oklahoma City branch office. Under the January and February settlements, after application of advances, nothing was due the branch office, but as of March 29, 1972, when it was closed down, sufficient trading profits and commissions had been earned by traders at the branch office so that a net of \$5,280.76 was owed them. This sum was paid by check dated May 31, 1972 issued jointly to Tom Summers and Bob Summers, and they split the proceeds.^{31/} The Summers brothers and Bishop, who

^{29/} The office had no secretaries, typists, or receptionists. During the period it was in operation, the Oklahoma City branch had only one employee other than the Bishop-Summers trio. Richard C. Alcott, who had ceased employment with Registrant in June, 1971, was employed as a clerk for about a month and a half by the branch office to assist in the trading room at \$500 per month. It was expected by Bishop and the Summers brothers that eventually they could persuade the home office to pay the salaries of personnel such as Alcott (as they did for the Denver branch office) if they could make the Oklahoma City branch operations demonstrably profitable to Stephens, Inc. Ultimately Alcott was to be permitted to do some trading, but it was his misfortune that his registration as a registered representative came through just the day before the office was closed. Dale Hunter [see footnote 16 above] continued with the Oklahoma City branch the same arrangement he formerly had with Registrant, but he was never an employee of Stephens, Inc. During this time Hunter was also a registered representative with Royal Carson, an Oklahoma City broker-dealer, though he did not "office" there.

^{30/} The "settlements" (Exhibits 160, 161, 162) were captioned "Trading Commission Summary" and apparently followed the same format as was used for other branch offices to show results for a single trader.

^{31/} Because the Bishop-Summers group had not indicated to Newman how they were to split the trading profits and percentages of commission, and because of the somewhat abrupt closing of the Oklahoma City office, none of the usual withholding deductions were made for taxes, etc., from advances paid to Bishop and Alcott [See footnote 27] or from
(Continued)

had a tacit agreement that they would pool their trading profits and commissions and split them three ways, ^{32/} have not yet made final settlement among themselves; however, because of advances that Bishop ^{33/} had drawn, he has only some \$200 remaining due him and therefore has been in no hurry to make a final adjustment.

The trading and other profits that were generated by Stephens, Inc.'s operation of its Oklahoma City branch were all retained by Stephens, Inc., and none went to the Registrant. ^{34/} Neither did Registrant, or Stone (a one-third owner of Registrant), receive any part of the compensation earned by Bishop and the Summers brothers as traders and registered representatives in the Oklahoma City office.

Notwithstanding these facts, as to which there is no real dispute, the Division urges that the Oklahoma City Branch was really the alter ego of the Registrant, based largely upon the common office

31/ (Continued)

the final settlement check of \$5,280.76. The parties did intend that eventually all such deductions would be made, had the office continued, inasmuch as the Bishop-Summers people were particularly interested in participation in Stephens, Inc.'s "profit sharing" benefits, for which they would have become eligible after being with the firm for 6 months.

32/ The three also had a somewhat nebulous concept that if profits proved big enough they would set aside portions of them to buy ownership interest in Stephens, Co. or perhaps start their own firm.

33/ Unlike the Summers brothers, Bishop needed regular monthly funds for living expenses and therefore arranged to take advances instead of awaiting "branch profit" distributions, which as experience showed, were three months in coming.

34/ Likewise, Stephens, Inc. had the risk of loss in such operations, and Registrant had no such risk. Nor did the Bishop-Summers trio risk any capital.

address of the two entities and common personnel.^{35/} While Division counsel conceded that any one of the Bishop-Summers trio could have obtained employment as a registered representative and trader with any registered **broker-dealer**, and engaged in or participated in transactions identical to those here involved, without coming into violation of the stipulation,^{36/} they appear to contend that what each could do individually they may not all do collectively.

There is no merit to this contention. The fact that the branch office involved three persons who were also registered with the Registrant rather than one such person or two such persons has no legal significance so long as the branch office was, as here found, a legitimate branch office of Stephens, Inc. and the three persons and the Branch office were in no wise working for and on behalf of the Registrant in connection with the transactions involved. Neither does it make any difference, legally, that the three individuals suggested formation of a new branch office rather than joining an existing branch office or home office.

The Division appears to place heavy reliance upon its contention that respondents fraudulently misled Stephens, Inc. and the NASD

^{35/} As already indicated above, these arrangements seem sensible under the circumstances in view of the fact that Registrant was dormant or inactive and had an uncertain future. The connections are too minor and peripheral to establish any real identity of interest between Registrant and the branch office.

^{36/} The Division appears to concede that though Tom and Bob Summers (but not Bishop) signed the stipulation, the stipulation's terms restrict only what the Registrant may do. In any event, the stipulation by its terms in no wise restricts what the individual signers thereof may do as individuals, so long as they are not really acting for Registrant in contravention of the stipulation.

into believing that the restrictions contained in the June 11, 1970 stipulation no longer applied to Registrant after the hearing examiner's decision, by failing to call to their attention the Commission's Memorandum Opinion and Declaratory Order of November 9, 1971, holding that such restrictions were still in effect as a result of the appeals the parties had taken.

The record establishes that neither Stephens, Inc. nor the NASD was or could have been misled as to the continued applicability of the stipulation's restrictions to the Registrant.

When Bishop and Tom Summers talked to Stephens in Minneapolis they fully apprised him orally of the restrictions that Registrant was subject to. A copy of the hearing examiner's initial decision was shown to and left with Stephens or Newman and they were both told orally that all parties, including the Division, had taken appeals to the Commission. Pages 27 and 28 of the initial decision set forth "boiler plate" language indicating that under the Commission's rules the decision does not become effective as to parties who take timely appeals. While the Commission's Declaratory Order of November 9, 1971, was not specifically called to the attention of Stephens or Newman, it was made entirely clear to them that Registrant was subject to the restrictions of the stipulation. In their discussions Newman specifically raised the question of possible conflicts over whether Stephens, Inc. or Registrant would be trading a particular stock and he and Stephens were given assurances that there was no problem since Registrant was "dormant" and would not be trading, even though all its owners wanted to continue to keep Registrant licensed (under NASD requirements) to do business by

keeping an office address and a telephone listing.

The applications to the NASD submitted by Stephens, Inc. to register Tom and Bob Summers, which had been drafted by Bishop, and later reviewed, dated, signed, and submitted by mail by Newman, likewise indicated clearly that Registrant was subject to restrictions under a stipulation with the Division and that such stipulation was still in effect. The applications enclosed pages 27 and 28 of the initial decision (the "order" portion of it). While the text of the order, among other things, revoked the stipulation, it went on to state that the initial decision under the Commission's rules does not become final as to a party who takes a timely appeal. The applications submitted on behalf of the Summers brothers to the NASD expressly advised that the initial decision had been appealed both by Respondents and by the Fort Worth Regional Office of the Commission. It is concluded, therefore, that neither Stephens, Inc. nor the NASD was deceived or misled as to the existence of restrictions on Registrant under the stipulation.

Moreover, the Division does not show in any convincing way why it would have made any difference to the legal legitimacy of the Stephens, Inc. branch office in Oklahoma City whether Stephens, Inc. and the NASD knew or did not know of the restrictions applicable to the Registrant. The Division seems to urge that Stephens, Inc. would not have established the office had they known of the restrictions and that the NASD might not have accepted the registrations of Bishop or the Summers brothers. Assuming, arguendo, that that were true

(there is no proof of it in the record) it would appear to be totally irrelevant to the central issue, i.e. whether the branch office in fact established in Oklahoma City was a legitimate branch office of Stephens, Inc. or an alter ego of Respondent.

On the entire record, it is concluded that Stephens, Inc. established and operated a legitimate branch office in Oklahoma City during the period found above and that neither that branch nor the Bishop-Summers group was an alter ego of the Registrant. It is further concluded that the establishment of the branch office was not a sham or a fraud in contravention of the stipulation.

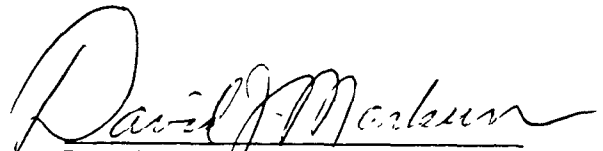
Accordingly, it is concluded that Registrant has not breached the stipulation of June 11, 1970, wherefor

IT IS ORDERED that the motion of the Division of Trading and Markets that the registration of the Registrant be suspended pending final determination of this proceeding be, and the same hereby is, 37/ denied.

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice as modified by Rule 19.

37/ In view of the conclusion reached on this issue it is not necessary to consider the further, contingent, question presented by the Commission's order of June 7, 1972, as to what additional sanctions, if any, might be indicated if a violation of the stipulation were found.

This initial decision shall become the final decision of the Commission as to each party who has not, within three (3) days after receipt of the initial decision, filed a petition for review of this initial decision pursuant to Rule 17(b) as modified by Rule 19(c). If a party timely files a petition for review the initial decision shall not become final with respect to that party.^{38/}


David J. Markun
Hearing Examiner

^{38/} To the extent that the proposed findings and conclusions submitted by the parties are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the issue presented.