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ADMINISTRATIVE PROCEEDING
FILE NO. 3-1

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

THOMAS F. QUINN
 NORMAN B. BABAT
 MARTIN A. FLEISCHMAN
 JACK GREENBERG

FILED

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SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

Sidney Gross
Hearing Examiner

Washington, D. C.
January 21, 1966

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INITIAL DECISION

BEFORE: Sidney Gross, Hearing Examiner

APPEARANCES: J. M. Schwartz of Schwartz, Troiano & Grant for
Thomas F. Quinn

Martin M. Frank and Wynne B. Stern of Feldshuh & Frank
for Norman B. Babat

Frederic Lewis of Lewis & Zaslav for Martin Fleischman

Will B. Sandler and Sidney Gottlieb for Jack Greenberg

Joseph Daley, Charles Snow, Mortimer Gerber and Harvey
Lacon for the Division of Trading and Markets

This proceeding is brought pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"). It was instituted by the order for proceedings issued by the Securities and Exchange Commission ("Commission") dated January 11, 1965, against Thomas F. Quinn ("Quinn"), President, Treasurer, a director and beneficial owner of 10% or more of the common stock of Thomas, Williams & Lee, Inc. ("registrant") during the period from about March 1, 1963 to about October 31, 1963, ("the relevant period"), Norman B. Babat ("Babat"), Sanford H. Bickart ("Bickart"), Martin N. Fleischman ("Fleischman"), David R. Garbiras ("Garbiras"), Sol Ornstein ("Ornstein"), Gary Seidin ("Seidin"), all salesmen employed by registrant during the relevant period and Jack Greenberg ("Greenberg") a salesman employed by registrant at the beginning of the relevant period and until September 1963.

The order alleges, in substance, that during the relevant period the registrant ^{1/} and the respondents, acting singly and in concert, wilfully violated and wilfully aided and abetted violations of the anti-fraud provisions of the Exchange Act and the Securities Act of 1933 ("Securities Act") in the offer, sale and purchase of securities of Kent Industries, Inc. ("Kent") ^{2/} and that registrant, wilfully aided

1/ By order dated January 11, 1965, the Commission permitted a notice of withdrawal of registration filed by registrant to become effective.

2/ The anti-fraud provisions alleged to have been violated are Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder. The composite effect of these provisions as applicable to this case is to make unlawful the use of the mails or means of interstate commerce in connection with the purchase or sale of any security by the use of a device to defraud, an untrue or misleading statement of a material fact or any act, practice, or course of business which operates or would operate as a fraud or deceit upon a customer, or by the use of any other manipulative, deceptive or fraudulent device.

and abetted by Quinn, wilfully violated Section 15(b) of the Exchange Act and Rule 15b-2 thereunder in failing to file corrective amendments to registrant's application for registration to reflect certain injunctions entered against registrant and Quinn.^{3/} The order was amended during the hearings to include an allegation that respondents violated the anti-fraud provisions of the securities laws in that they used "wooden tickets", i.e., sent confirmations to customers and potential customers confirming purchases of securities which the customers or potential customers had not ordered.

Garbiras and Ornstein have filed stipulations and consents on the basis of which the Commission, by its opinion and order of July 26, 1965,^{4/} barred both from being associated with a broker or dealer.

Seidin failed to appear at the hearing thereby constituting his default under Rule 6(e) of the Commission's Rules of Practice. Accordingly, on August 9, 1965, the Commission issued its opinion and order^{5/} barring Seidin from being associated with a broker and dealer.

Bickart's motion to sever the proceeding against him on the ground of protracted illness was granted on condition that the record

^{3/} Rule 15b-2 provides that if information contained in an application for registration as a broker and dealer is or becomes inaccurate, a corrective amendment shall be filed promptly.

^{4/} Securities Exchange Act Release No. 7657.

^{5/} Securities Exchange Act Release No. 7673.

in this proceeding constitute part of the record in the severed proceeding against Bickart.

Babat, Fleischman and Greenberg appeared by counsel. Quinn originally appeared pro se. Thereafter counsel appeared for Quinn but was present at the hearing during the testimony of only one or two witnesses. Quinn, personally, was present throughout the hearing.

Proposed findings of fact and conclusions of law together with supporting briefs have been filed by the Division of Trading and Markets ("Division") and on behalf of Greenberg. Division has also filed a reply brief. It is noted that counsel for respondent Babat requested and obtained an extension of 30 days (which was also made applicable to all respondents) for the filing of such proposed findings, conclusions and brief. However, only Greenberg filed such documents.

Kent was organized under the laws of Utah as the Little May Mining Company in 1901. It's stock had been listed on the Salt Lake City Exchange ("SLCE") since 1911. In 1960 a group of investors purchased the company for the purpose of "bringing in acquisitions" and changed its name twice, Kent being its current name. Kent was described by J. Samuel Garrison ("Garrison"), its president since early 1962, as a "shell". After Garrison became president, Kent had only two part-time employees, its president and a secretary. It shared offices with Garrison Inc., a public relations firm operated by Garrison. Certain unverified financial statements of Kent prepared

from information it furnished to its accountants are in evidence. The most recent such statement is an unaudited balance sheet as of February 1, 1963 which shows assets of \$2,262,298.29 and liabilities of \$1,184,896.27. It is readily apparent from Garrison's testimony, however, that Kent's assets were almost completely illusory. Properties carried on the balance sheet at \$1,311,384^{6/} were purchased without appraisal, at prices arbitrarily fixed at twice the principal amount of mortgages outstanding against the properties. The amounts of the purchase prices over and above the mortgages was paid with Kent stock the value of which was fixed, also arbitrarily, between purchasers and sellers, at \$1 per share. According to Garrison, that figure reflected neither the market nor book value of the shares. All properties shown on the balance sheet were raw, undeveloped land. None of the property was ever developed by Kent. Except for the negligible sum described below, the properties produced no income. Since early 1962, Kent's finances were in such unhappy straits that it could not pay its accountants, the arrearages of principal and interest on its mortgages, the arrearages in taxes due on the St. Augustine and Avon Park properties and, indeed, was even unable to raise the small amount of cash necessary to record its deeds to the last mentioned properties.

Moreover, Kent never took title to property shown on its balance sheet as assets totalling \$881,500.^{7/} Of Kent's remaining assets

^{6/} St. Augustine Park - 653 acres, De Leon Springs-land and Avon Park-land.

^{7/} The Kendall Shopping Plaza and the Building - Miami.

about \$30,000 was merely a figure carried over from the books of Kent's predecessor in respect of mining property Kent never attempted to develop and its president never saw; \$10,000 represented a deposit for the acquisition of a non-existent franchise and appears to be merely an uncollectible account receivable; \$4500 represented an account receivable against a bankrupt whose estate eventually declared a 5% dividend; \$9740 represented property acquired by Kent in return for certain mining stock and the deed to which it transferred as security for a loan which it never received. Kent has not succeeded in recovering the deed. Thus, virtually the entire list of Kent's assets presented on the balance sheet at a valuation of over \$2,250,000 constituted, in fact, little more than a chimera. Other than the sale of a subsidiary for \$3500, Kent sold no properties, raised no funds needed to cultivate its lands, never cultivated its lands, had no citrus groves and engaged in no operations, acquisitions or negotiations after the spring of 1963.

The record discloses further evidence of Kent's financial condition. Its balance sheet reflects an accumulated deficit of about \$390,000. It operated at a deficit of about \$20,000 a year from the summer of 1962 through 1963. During that period Kent's total receipts amounted to \$4,000 consisting of the \$3,500 referred to above which was disbursed for legal fees and expenses incidental to the transaction and a total of about \$500 representing payments on mortgages it held. On the other hand Garrison was to receive a salary of \$250 a week but never received any compensation. Nor was he ever reimbursed by Kent for the salary of the secretary which was paid by Garrison Inc. Kent's rent of \$250 per month for premises it

shares with Garrison Inc. was paid up to late 1962 or early 1963 (when Kent and Garrison Inc. moved their quarters) only through loans made to Kent by one of its stockholders. After the move Kent was unable to reimburse Garrison Inc. in the sum of \$100 per month for its share of the rent. During the period from about the summer of 1962 until May of 1964 when Kent became defunct and its books were turned over to the Commission voluntarily, Kent's operating expenses over and above the salary due Garrison, were paid by Garrison personally. He was never reimbursed by Kent. Over \$10,000 in judgments are outstanding against Kent.

Kent had entered into negotiations with Empire Mutual Insurance Company ("Empire") pursuant to which Kent was to issue and exchange its own debenture bonds totalling \$1,000,000 for Empire's bonds in the amount of \$1,250,000. Kent's bonds were to carry a 5% annual yield as against Empire's 7% yield - a difference of 2% in Kent's favor. However, by April 1963 the negotiations were dropped.

The listing of Kent's stock on the SLCE continued until May 28, 1963 when it was suspended for failure to submit a proper 10-K Report for the year 1962 and for failure to pay arrearages to its transfer agent. Kent stock was never again traded on the SLCE.

Quinn's first contact with Kent occurred in about February 1963, in Florida, when he made one telephone call to Kent and spoke with Garrison. Thereafter Garrison saw Quinn in New York. During these conversations Garrison advised Quinn that Kent had received a notice from the

SLCE advising that it would be suspended from the exchange unless its arrearages to its transfer agent amounting to something less than \$600 were paid and that Kent did not have the funds with which to pay either the transfer agent or its other bills, taxes and mortgage payments coming due. Quinn eventually sent the transfer agent a check for about \$300 which apparently was insufficient to either forestall or revoke Kent's suspension from the exchange.

It is significant that Quinn testified at an investigative examination held on July 15, 1963, that Garrison showed him a financial statement of Kent from which it was apparent that Kent had no substantial income; that he knew Kent had been suspended from the SLCE as of June 1, 1963; that he knew Kent had no earnings; that he knew of no property of Kent that was producing income.

In June 1963 Quinn retained a person experienced in advertising sales promotion and public relations, with brief experience as a securities salesman, to prepare a market letter on Kent stock with specific instructions that the letter be prepared as soon as possible. The letter was completed the next day, its author having relied entirely on reports he found in the public library relating to land in Florida to which was added certain specific information regarding Kent furnished by Quinn. Thus, after the presentation of a variety of reasons why land values in Florida "are bound to move upward" the letter refers to the St. Augustine, De Leon Springs and Avon Park lands as "some of the most important acreage, from an investment standpoint, in the entire state". It offers the investor

"exciting capital gains potential. It refers, among other things, to Kent's "assets of \$3,514,000 vs. total liabilities of \$2,172,657"^{8/}, Kent's "ownership in highly desirable Florida real estate", its "sound financial status", its "high profit potential", the "rapid salability of its land", the "undervaluation of its stock" and concludes with a recommendation of Kent stock "as an excellent buy for the investor interested in substantial capital gains within a reasonable period".

The Division produced five witnesses who had conversations with Quinn regarding Kent stock and had purchased the stock at prices varying between 1-1/2 and 1-3/4. These witnesses testified that representations to them by Quinn between June and September 1963 in respect of Kent and its stock included the following:

(a) The stock would be good for \$2.50 to \$3; it was going to \$5 in a few months; it would rise to \$3 in 6 months; it would increase in value many times; no chance of anything going wrong; the customer will make money; the stock is about to rise - buy now;* no risks involved.*

(b) Kent was a fantastic company; a land development outfit and had a big deal going in Florida; the terrain and citrus crops were unbelievable because they were in the only area not affected by a freeze in Florida; Kent was in process of excavating for building; the land was about to be subdivided and sold at a much higher price;* the value of the land was more than the selling price of the stock;* there would be

^{8/} These figures do not appear elsewhere in the record.

^{9/} L.K., R.P.F., J.C., I.K., J.J.B. Some of these customers also had conversations with other respondents. The conversations of such witnesses with the other respondents will be set forth under that portion of the decision dealing with those respondents.

great income from the sale of the land;* Kent had already realized some profit; Kent would realize about \$400,000 from the sale or lease of property.

(c) Quinn told customers he had visited Kent several times and saw its entire set-up; that registrant had investigated Kent very closely and Quinn had visited a meeting of its board of directors and had discussed the sale of land with them;*

(d) that Kent stock was much better than another issue that had increased in value many times and had gone on to be listed on the American Stock Exchange.*^{10/}

(e) that Kent stock was listed on the SLCE.^{11/}

At least two of these witnesses received copies of the market letter.

Four witnesses^{12/} who purchased Kent stock between June and September 1963 at prices ranging from 1-1/2 to 1-3/4 testified to conversations with Babat regarding Kent stock during the course of which Babat made the following representations:

^{10/} The representations marked with asterisks were made to I.K. and will be referred to infra in connection with respondent Greenberg.

^{11/} Although not all of the representations set forth above were made to each of the witnesses, one or more of the representations were made to each of them.

^{12/} R.P.F., K.K., L.G. and L.K. The latter had spoken with and purchased shares as the result of conversations with Quinn and thereafter spoke with Babat prior to the purchase of additional shares.

(a) It would go to 2-1/2 in two or three weeks; it would be making money in a short time; "in the name of my wife and child I promise you that I will either have a nice profit on this stock in three weeks for you or I personally will take it back"; it was a sure thing;

(b) Members of registrant were in Florida regarding development of Kent; the stock was going at a terrific rate - not too many shares available; the customer would be out of Kent in three weeks; the stock had dropped temporarily because a block of 10,000 shares was being sold - it would go back up after the sale; Kent had made a loan of \$1,000,000 from Empire which would be used to develop Kent's land; Kent was making profits; Kent had income; registrant had investigated Kent in Florida and it was very promising; Management wanted to buy back a lot of stock that would make the price go up; Kent had lush real estate with terrific future and potential;

(c) Kent was listed on SLCE. ^{13/}

An additional witness ^{14/} who dealt with Babat purchased Kent stock in March 1963 at 1-1/4. This witness was told the stock would go up 1 or 2 points in a short time and that Kent had a good amount of money behind it.

At least one of these witnesses received the market letter. Three of them, at Babat's recommendation, sold other securities in order to use the proceeds to invest in Kent. Moreover, two of the witnesses ^{15/} received confirmations of sale of Kent stock to them by registrant, each at 2-1/2 and

^{13/} See fn. 11.

^{14/} A.G.

^{15/} A.G. and L.G.

each bearing trade date September 30, 1963, covering 11,175 shares in one case and 2,500 shares in the other. Neither of these witnesses had authorized the purchase. In each case the witness was the owner of Prosperway shares. Babat had urged L.G. to get out of Prosperway. A.G. had requested Babat to sell his Prosperway shares. In each case the amount of Prosperway shares purportedly sold by the customers was identical to the amount of shares of Kent purportedly bought by them. Despite the fact that both Prosperway sales occurred on the same day, September 24, 1963, the sale price shown on A.G.'s confirmation was 2-1/4 whereas L.G.'s confirmation of sale carried the price 2-1/2. L.G. rejected the transactions. The transactions on behalf of A.G. resulted in an indebtedness to registrant in an amount in excess of \$2,900. A.G. did not insist on cancellation and actually paid \$1,000 on his indebtedness.

Three witnesses ^{16/} testified as to representations made to them by the salesman, Fleischman. One had purchased Kent stock in March, 1963, at 1-1/4, the others in July and August, 1963 at 1-3/4. Representations by Fleischman to the two latter purchasers regarding Kent stock included statements that:

(a) The stock would earn \$.40 a share for the coming year and at a 10 times ratio the price of the stock would be \$4; the stock would go up to at least \$3 or \$4 very shortly because another broker was coming out with a secondary offering in Kent at \$3; the price is going up; the stock might reach \$6 because they were going "to put the squeeze on the

16/ L.L.N., J.L.G. and R.C.S.

other broker from getting any outstanding security"; (and when the customer wanted to sell Kent) that the stock was still going up - it would be \$4 shortly because of the squeeze they were going to put on the other broker; the salesman anticipated the price going to from \$2.50 to \$3.

(b) Kent had sold land recently; the stock was priced low because it had just come off an investigation by the Commission; (and when the customer wished to sell) that the customer would not be able to sell his stock because there is a tender out in the stock and it will remain at 2-3/4 - 3-1/4 during the period of the tender.

(c) That Kent stock was listed on the SLCE.^{17/}

Both witnesses received the market letter.

The witness who had purchased in March 1963 was told that she would surely make a profit and that Kent was backed by a very rich man. Later when she wished to sell, she was forestalled with the assurance that the stock was bound to go up.

^{18/} Three investor-witnesses testified that they had purchased Kent stock in June, July and August 1963 at 1-1/2 after conversations with Greenberg during the course of which he made the following representations to them in respect of Kent stock:

(a) It would probably be selling for \$15 or \$20 in the very near future; the stock may reach \$2.50 or \$3.00 or even go higher;

^{17/} See fn. 11.

^{18/} A.M., J.F. and L.M.C.

the customer would make a profit in a short time; the stock will grow in the next 3 or 4 months and we'll be able to sell and make a profit;

(b) Clients are buying 10,000 and 20,000 shares at a time; we can expect a very profitable report regarding Kent; Kent is making nice profits; Kent has some type of government contracts; it would be another General Land Development Corporation,

(c) Kent stock was listed on SLCE.^{19/}

Two of these witnesses received the market letter. At Greenberg's recommendation, all three sold other securities, the proceeds of which were used to buy Kent shares.

Moreover, one witness^{20/} whose testimony has been included above in respect of Quinn was actually Greenberg's customer. Greenberg telephoned this witness, said there was a great opportunity to buy a stock that was going to increase in value and turned him over to Quinn. The representations by Quinn to this witness are set forth ^{21/}supra. At the end of the conversation Quinn indicated he would send the witness 1,000 shares. The witness asked to speak to Greenberg who then advised the witness to make the purchase. The record discloses that the confirmation of sale of 1,000 shares of Kent stock to this witness carried the initials J.C. as the salesman in this transaction. Under these

^{19/} See fn. 11.

^{20/} I.K.

^{21/} See fn. 10. Quinn's representations to this witness are marked with asterisks.

circumstances the representations by Quinn are also ascribable to Greenberg who bears equal responsibility for them with Quinn.

Of all the witnesses who testified as to representations made by respondents Quinn, Babat, Fleischman and Friedman, one was advised by Fleischman that Kent had no earnings. Otherwise, none of these customers were informed as to Kent's depressed financial condition, its inability to meet even the most modest of its obligations, its operating expenses, its losses, its lack of earnings or income, its outstanding mortgage and tax obligations or that Kent stock had been suspended from the SLCE.

It is clear that the mails were utilized by registrant in transmitting the market letter, confirmations and stock certificates and by the witnesses in transmitting checks in payment of their purchases.

The testimony of the various customer-witnesses set forth above as to misrepresentations and omissions of material facts, the loading of the customers' accounts with Kent stock and the use of "wooden tickets" remains uncontradicted. After having heard these witnesses and observed their demeanor, the Hearing Examiner credits this testimony. Moreover, neither Quinn, Babat, Fleischman or Greenberg testified at the hearing in their own behalf. Their failure to do so is deemed a factor of substantial significance warranting the inference that their testimony would have been adverse.

22/ N. Sims Organ & Co., Inc., 40 S.E.C. 573 (1961); N. Sims Organ & Co., Inc., et al v. S.E.C. 293F 2d 78 (C.A. 2, 1961).

Greenberg's attack on the credibility of two of the witnesses who testified against him has little substance. Neither the attempt of L.M.C., a salesman, at self aggrandizement by referring to himself as a sales engineer, nor J.F.'s misconception of the effect of a telephone conversation with Greenberg as a sale of his Kent stock to either Greenberg or registrant, warrant disbelief or rejection of their testimony as to Greenberg's misrepresentations and omissions. The other asserted bases for the attack on these witnesses are mere trivia.^{23/}

The record discloses that during the relevant period registrant sold slightly less than 230,000 shares of Kent stock. During the course of the Commission's investigation of this case Babat testified he had sold 9,000 to 10,000 shares of Kent and had received commissions amounting to 1/16th or, possibly 1/8th of the sale price. Fleischman testified he had sold 8,000 to 10,000 shares and Greenberg testified he had sold 10,000 to 12,000 shares and received commissions of \$25 for every 1000 shares he sold.^{24/}

^{23/} Nor does the stipulation as to the nature of the testimony of Greenberg's five defense witnesses - in substance, that no fraudulent representations were made to them - adversely affect the credibility of the investor-witnesses produced by the Division. Alexander Reid & Co., Inc., 40 S.E.C. 986 (1962).

^{24/} Portions of this testimony offered by the Division were received in evidence as admissions against interest. The parties stipulated that other portions offered by respondents Greenberg and Fleischman as explanations of the admissions could be received. In each instance, however, the testimony was received only as against the respondent whose examination constituted the exhibit.

It is readily apparent that respondents herein engaged in a scheme to defraud and in transactions and a course of business which operated as a fraud upon investors, embarked upon a concerted effort to sell large amounts of Kent stock through solicitation during which highly optimistic albeit unwarranted and unfounded representations were made without disclosure of adverse information, in most instances without regard to the financial needs of their customers and on various occasions by placing them in a position to make hasty decisions to buy the Kent stock on the basis of respondents' recurrent use of the same type of oral fraudulent representations promising quick profits, all of which constitute boiler-room sales techniques ^{25/} in complete disdain of their obligation for fair dealing in accordance with the standards of the profession. ^{26/}

The record establishes, overwhelmingly, that the representations by Quinn relating to the progress and anticipated development of Kent's properties, the value of its land; the anticipation and actual realization of income and profits by Kent; by Babat regarding Kent's \$1,000,000 loan, its profits, its income, its potential and Kent's management's anticipated repurchase of the stock and the story of the sale of a 10,000 share block; by Fleischman as to Kent's sale of land, the investigation by the Commission

25/ Cf. Hamilton Waters & Co., Inc., Securities Exchange Act Release No. 7725 (October 18, 1965); A. J. Caradean & Co., Inc., Securities Exchange Act Release No. 6903 (October 1, 1962); Albion Securities Company, Inc., Securities Exchange Act Release No. 7561 (March 24, 1965).

26/ Best Securities Inc., 39 S.E.C. 931 (1960)

and the favorable effect of its termination and the outstanding tender for Kent stock; by Greenberg as to 10,000 and 20,000 share purchases, profits by Kent, government contracts and an anticipated very profitable report; together with the statements by all four of these respondents made after the end of May 1963 that Kent stock was listed on the SLCE not only had no factual basis but in many instances were flagrant and deliberate untruths. Quinn, of course, was aware of the suspension since he attempted to pay Kent's arrears to its transfer agent and both Fleischman and Greenberg admitted in their testimony taken prior to the hearing that they knew of the suspension of Kent stock from SLCE. It is equally manifest that the exaggerated promises of a bonanza for the investor contained in the market letter were also fraudulent. Further, Quinn's statement that he had visited and investigated Kent was untrue and both his and Greenberg's comparisons of Kent with other issues without appropriate qualifications were unjustified and misleading.^{27/} Under the circumstances present here the recommendations of Quinn, Babat and Greenberg that their customers sell other securities to purchase Kent stock constituted fraud as, of course, did Babat's "wooden tickets".

In the light of the facts set forth above regarding Kent's assets, its unsound financial condition and its virtually total lack of remunerative activity, it is manifest that the representations and predictions by Quinn,

^{27/} G. J. Mitchell, Jr. Co., 40 S.E.C. 409; Whitehall Corporation, 38 S.E.C. 259, (1958).

Babat, Fleischman and Greenberg did not meet the standards of the anti-fraud provisions of the securities laws that recommendations of a security shall be supported by and, indeed, imply an adequate and reasonable basis in fact.^{28/} Moreover, these respondents' predictions of price rises in Kent stock which ran the gamut from \$2.50 to \$20.00 in a relatively short period of time are clearly unwarranted and unjustified and have been held repeatedly to be a "hallmark of fraud".^{29/}

In addition, these respondents omitted to inform their customers of material facts constituting adverse information regarding Kent's financial condition, its inability to pay its mortgages and taxes, its inability to operate, its lack of income or profits, thus constituting further violations of the anti-fraud provisions of the securities laws.^{30/}

Greenberg urges that predictions of price rises by salesmen are merely opinions and as such constitute violations of the anti-fraud provisions of the securities laws only if the salesman fails to disclose facts known to him which would discount his opinions. The mere statement of respondent's contention demonstrates that, contrary to the concept of full disclosure and fair dealing which applies with equal force to both

28/ Leonard Burton Corporation, 40 S.E.C. 211 (1959); MacRobbins & Co., Inc. 40 S.E.C. 497 (1961); Best Securities, Inc., 39 S.E.C. 931 (1960); Alexander Reid & Co., Inc.; supra; Underhill Securities Corporation, Securities Exchange Act Release No. 7668 (August 3, 1965).

29/ Hamilton Waters & Co., Inc., Securities Exchange Act Release No. 7725, (October 18, 1965); S.E.C. v. Johns, 207 F. Supp. 566 (U.S.D.C., N.J., 1962); Alexander Reid & Co., Inc. 40 S.E.C. 986 (1962)

30/ N. Pinsker & Co., Inc., 40 S.E.C. 291 (1960); Leonard Burton Corporation supra.

registrant and salesman,^{31/} he would reward ignorance and deliberate avoidance of knowledge of pertinent information which should be disclosed to potential investors. Indeed, Greenberg's position seeks an exculpatory "black letter rule" closely resembling that which the Commission rejected in MacRobbins, supra. Moreover, a perusal of S.E.C. v. Rapp.^{32/} S.E.C. v. Broadwall Securities, Inc.,^{33/} and MacRobbins & Co., Inc., supra, readily demonstrates that Greenberg's reliance on these cases is misplaced. In addition, not only has the Commission ruled constantly that predictions of specific, substantial and comparatively rapid price rises made, as here, in respect of speculative securities of unseasoned companies^{34/} are inherently fraudulent^{35/} but, also, that the fact that such statements are couched in terms of "opinion"^{36/} does not negate the fraud inherent in them, nor does confidence justify the fraud".

It is also evident that Greenberg's assertion of reliance on information furnished him by registrant is unfounded. The record discloses no such information which may be deemed to support either his manifestly fraudulent price rise predictions or his other misrepresentations, including his comparison of Kent with General Land Development Corporation. In addition, not only do the extravagant claims of the

31/ A. J. Caradean & Co., Inc., supra.

32/ 304 F. 2d 786 (C.A. 2, 1962).

33/ 240 F. Supp. 962 (U.S.D.C., S.D.N.Y., 1965).

34/ Despite its organization as a mining company in 1901, Kent's venture as a land company did not occur until 1960 and there is no evidence of any meaningful company operations since the inception of its new undertaking.

35/ R. A. Holman & Co., Inc., Securities Exchange Act Release No. 7770, (December 15, 1965).

36/ Isthmus Steamship & Salvage Co., Inc., Securities Exchange Act Release No. 7400 (August 20, 1964).

market letter carry the clear and easily recognizable stamp of fraud, but, further, "there can be little if any justification for a claim of reliance on literature furnished by an employer who is engaged in a fraudulent sales campaign".^{37/} Nor does anything in the record justify his omission to inform his customers that Kent stock had been suspended from the SLCE, which he admittedly knew. And, whether Greenberg informed his customers of the speculative nature of the Kent stock or they knew it otherwise does not "absolve the fraudulent representations".^{38/}

Accordingly, based upon the record and the foregoing, it is concluded that in the offer and sale of Kent stock Quinn, Babat, Fleischman and Greenberg wilfully^{39/} violated and wilfully aided and abetted in registrant's violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder.^{40/}

On March 2, 1964, a judgment was entered against registrant and Quinn^{41/} permanently enjoining them from doing business as a broker and

^{37/} MacRobbins & Co., Inc., supra.

^{38/} Isthmus Steamship & Salvage Co., Inc., Securities Exchange Act Release No. 7400 (August 20, 1964).

^{39/} It is well settled that within the meaning of Section 15(b) of the Exchange Act a finding of wilfulness does not require a finding of intention to violate the law. It is sufficient that registrant knew what it was doing. Hughes v. S.E.C., 147 F.2d 969, 977 (C.A.D.C., 1949); Schuck v. S.E.C., 264 F.2d 358, 363 n. 18 (C.A.D.C., 1958); Thompson Ross Securities Co., 6 S.E.C. 1111, 1112 (1940).

^{40/} As one of registrant's principal officers and stockholders, Quinn also wilfully violated these anti-fraud provisions through registrant's and his obvious failure to adequately supervise its salesmen. Reynolds & Co., 39 S.E.C. 902 (1960).

^{41/} S.E.C. v. Thomas, Williams & Lee, Inc., and Thomas F. Quinn, Civil Action File 63 Civ. 275 (U.S.D.C., S.D.N.Y.).

dealer while out of compliance with the Net Capital Rule. Further, the Supreme Court of the State of New York entered an order of preliminary injunction July 20, 1964,^{42/} enjoining registrant and Quinn, among others, from engaging in the securities business within the State of New York and on October 8, 1964, an order and judgment of permanent injunction was entered in that case. Registrant failed to amend its B-D application for registration as a broker-dealer to reflect these injunctions. Accordingly, registrant wilfully violated Section 15(b) of the Exchange Act and Rule 15b-2 thereunder and Quinn wilfully aided and abetted such violation.^{43/}

Public Interest

Greenberg argues that the bar from association with any broker and dealer sought by the Division is too severe in the light of the nature of his violations and, if the allegations of the order for proceedings should be sustained, any sanction imposed upon him should not exceed a 90-day suspension. He refers to three Commission decisions^{44/} in which the respondent was suspended rather than barred for violations he asserts are similar to those alleged here.

Di Giacoma involved an underwriter who failed to make the necessary reasonable and diligent inquiry which would have revealed that the offering circular contained false and misleading statements, obviously a dissimilar case. In Goddard, the price of unregistered securities obtained from control persons by registrant, a broker-dealer and investment adviser,

42/ State of New York v. Thomas, Williams & Lee, Inc. et al, Index No. 40931 - 1964.

43/ Scott, Harvey & Co., Inc., Securities Exchange Act Release No. 1566 (April 27, 1965)

44/ Albert J. Di Giacomo, Securities Exchange Act Release No. 7572 (April 12, 1965); Jerome Goldberg, Securities Exchange Act Release No. 7619 (June 3, 1965); J. H. Goddard & Co., Inc., Securities Exchange Act Release No. 7616 (June 4, 1965).

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was manipulated and sold through the use of market letters which contained untrue and misleading statements. ^{45/} Both decisions resulted from offers of settlement providing for suspension which were recommended by the Division. In agreeing to accept the proposed sanction in Goddard the Commission took cognizance of the fact that registrant and its predecessor had been in the securities business for over 30 years and the individual involved for over 40 years without having previously been the subject of disciplinary proceedings. The Goldberg decision arose out of the review of disciplinary proceedings before the National Association of Securities Dealers ("NASD") which had ordered suspension. Respondent was held to have made sales to insiders during distribution pursuant to an underwriting in violation of the NASD free riding and withholding interpretations. ^{46/} The Commission held that the sanction imposed was not excessive. Apart from dissimilarity with the instant matter, it is pertinent that Section 15A(h) of the Exchange Act, which prescribes the Commission's jurisdiction on review of disciplinary action taken by a registered securities association against its member, does not appear to authorize the Commission to increase the penalty imposed by the association.

In any event, each case must stand on its own facts in respect of the sanction to be imposed. In Federal Communications Commission v. Woko, Inc., ^{47/} where the respondent complained that deceptions similar

^{45/} The nature of the false statements in Goddard are not disclosed in the Commission's opinion.

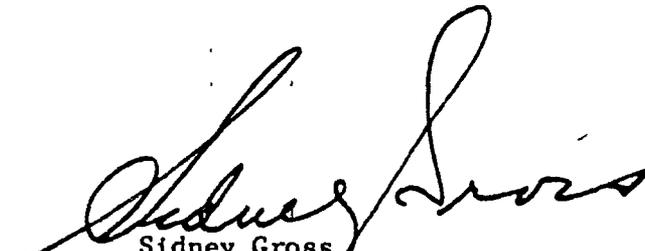
^{46/} See NASD Manual pp. G-23 et seq.

^{47/} 329 U.S. 223, 228 (1946)

to those attributed to it have been dealt with less severely in other cases, the United States Supreme Court said:

"*** but we cannot say that the Commission is bound by anything that appears before us to deal with all cases at all times as it has dealt with some that seem comparable".

In view of the flagrant fraudulent practices demonstrated by the record and the reckless and deliberate abandonment by these respondents of their duty toward their customers, the Hearing Examiner finds no justification in the public interest in withholding the ultimate sanction as to any of them. Accordingly, Quinn, Babat, Fleischman and Greenberg should be barred from being associated with a broker or dealer. ^{48/}



Sidney Gross
Hearing Examiner

Washington, D. C.
January 21, 1966

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