

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :  
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HALE SECURITIES CORP. :  
: :  
JOSEPH ELKIND :  
: :  
RICHARD GREENBERG :  
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INITIAL DECISION

April 10, 1975  
Washington, D.C.

Ralph Hunter Tracy  
Administrative Law Judge

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HALF SECURITIES CORP. :  
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APPEARANCES: Franklin D. Ormsten, Charles B. Pearlman,  
Joel S. Forman of the New York Regional Office  
for the Division of Enforcement

Irwin S. Lampert for Joseph Elkind

Richard Greenberg, pro se

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

This public proceeding was instituted by Commission order (Order) of July 3, 1973, as amended August 6, 1974, pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act) to determine whether the respondents named therein committed various charged violations of the Securities Act of 1933 (Securities Act) and the Exchange Act and regulations thereunder, as alleged by the Division of Enforcement (Division) and the remedial action, if any, that might be appropriate in the public interest.

The proceeding has been determined as to <sup>1/</sup>4 respondents; offers of settlement are presently pending before the Commission with respect to <sup>2/</sup>4 others; and the Division has been unable to obtain service on one, <sup>3/</sup>so that this initial decision is applicable only to Joseph Elkind and Richard Greenberg, <sup>4/</sup>although, in view of the nature of the charges and the factual circumstances it will, necessarily, involve findings with respect to some or all of the other respondents.

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- 1/ These determinations are reflected in respective Securities Exchange Act Releases as follows: Hale Securities Corp., 10922, July 22, 1974; Associated Investors, Jay Polonsky and Jeffrey Schnipper, 11035, October 3, 1974.
- 2/ William Hyman, Edward Curtin, Louis Mancuso and Laurens Tartasky.
- 3/ Alan Gompers has left the United States and could not be served with notice of the proceeding.
- 4/ Richard Greenberg was the subject of 2 other broker-dealer proceedings as a result of which the Commission has barred him from association with any broker or dealer. Securities Exchange Act Release No. 11228, February 6, 1975.

With respect to Hale Securities Corp.,(Hale), Joseph Elkind (Elkind) and Richard Greenberg (Greenberg) the Order alleges that from on or about January 1, 1972 to July 3, 1973, Hale willfully violated and Elkind and Greenberg willfully aided and abetted violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder in that Hale failed to comply with the record-keeping requirements pursuant to such rules and regulations. The Order alleges, also, that from on or about January 1, 1972, to on or about May 31, 1972, Hale willfully violated and Elkind and Greenberg willfully aided and abetted violations of Section 7(c)(1) of the Exchange Act and Regulation T promulgated thereunder.

Further the Order charges that from on or about November 1, 1972 to July 3, 1973, Hale, Elkind and Greenberg willfully violated and willfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in offering, selling, purchasing and effecting transactions in the common stock of Proof Lock International, Inc. by employing devices, schemes and artifices to defraud and by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

In addition, Elkind is charged with failing reasonably to supervise, with a view to preventing the violations alleged in the Order, persons who were subject to his supervision and who committed such violations.

The evidentiary hearing was held in New York, New York. Elkind was represented by counsel and Greenberg appeared pro se. All parties filed proposed findings of fact, conclusions of law and supporting briefs. The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

#### FINDINGS OF FACT AND LAW

##### Respondents

Hale Securities Corp., was registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act on March 15, 1970. Its principal place of business was 366 North Broadway, Jericho, New York, although it had a branch office for a time in Westchester, New York. Hale was a member of the National Association of Securities Dealers, Inc. (NASD).

Hale was named as a respondent in this proceeding but failed to appear at the hearing. Accordingly, Hale was deemed in default and findings were made on the basis of the allegations

in the Order which were deemed to be true. In Securities Exchange Act Release No. 10922, dated July 22, 1974, the registration as a broker and dealer of Hale was revoked and it was expelled from membership in the NASD.

Elkind, who is now about 28 years old has been employed in the securities industry since 1964 when he went to work as a stock record clerk for American Securities after 1 year of high school. In 1968 he went with Weinberg, Ost & Hayton as a record supervisor and in 1969 with Lincoln Securities as a cashier and registered representative. In November 1970 he joined Hale as a cashier later becoming a principal. He became president of Hale in June 1971 and continued in that capacity until June 1973.

Greenberg, who is now about 33 years old, has been in the securities industry since 1965 when he began working with Weinberg, Ost & Hayton as a part time registered representative. In 1969 he was with Lincoln Securities as a partner and in 1970 with Kenneth Bove & Co. as a registered representative. He joined Hale in March 1971 as a registered representative and was office manager from June 1971 until October 1972. On October 20, 1972, he was convicted of violating Sections 15 U.S.C. 78j(b) and 18 U.S.C. 371 by the United States District Court for the Southern District of New York. On February 6, 1975, following

two other administrative proceedings in which he was named a respondent, the Commission barred Greenberg from association with any broker or dealer. (Securities Exchange Act Release No. 11228).

#### Anti-Fraud Provisions

The Order charges that from on or about November 1, 1972 to July 3, 1973 Hale, Elkind and Greenberg willfully violated and willfully aided and abetted violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5<sup>5/</sup> thereunder.

The Order charges that Hale, Elkind and Greenberg sold and effected transactions in the common stock of Proof Lock Corporation, Inc. (Proof Lock) by employing directly and indirectly devices, schemes and artifices to defraud and by means of untrue statements of material facts and omissions to

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<sup>5/</sup> Section 10(b) as here pertinent makes it unlawful for any person to use or employ in connection with the purchase or sale of a security any manipulative device or contrivance in contravention of rules and regulations of the Commission prescribed thereunder. Rule 10b-5 defines manipulative or deceptive devices by making it unlawful for any person in such connection: "(1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person . . ." Section 17(a) contains analogous antifraud provisions.

state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. As part of the aforesaid conduct Hale, Elkind and Greenberg, among other things, would and did:

1. Maintain, dominate and control the market for Proof Lock stock;
2. Induce customers to purchase and as principals offer to sell customers Proof Lock stock at prices which were excessive and unreasonable;
3. Sell Proof Lock short without disclosing that Hale did not own such stock; and
4. Make false and misleading statements of material facts and omit to state material facts concerning, among other things:
  - a. the speculative nature of Proof Lock stock;
  - b. the profitable operations of Proof Lock;
  - c. the nature of the business operations in which Proof Lock engaged; and
  - d. the existence of current and accurate financial statements and other information concerning Proof Lock.

Proof Lock International, Inc. (Proof Lock) filed a registration statement with the Commission on March 3, 1969 covering 130,000 shares of its .01¢ par value common stock to be sold at \$5 a share. The registration statement became effective on October 2, 1969, and was a firm underwriting by Graham Loving & Company.



Proof Lock is a New York corporation which ostensibly was engaged in the business of manufacturing pick-proof locks. However, Proof Lock could not survive financially on the sale of this lock, so in August 1971, it acquired an office supply company, H.K. Brewer, and in August 1972, acquired another office supply company, Pope & Bernum, Inc. As a result of these acquisitions Proof Lock became a holding company with two office supply subsidiaries.

In 1971 Proof Lock had total sales of \$180,000, of which less than \$10,000 was attributable to the lock, and for the year a loss of \$170,000. For 1972 Proof Lock had total sales of \$570,000 and again, sales attributable to the lock were less than \$10,000 and the loss was approximately \$35,000.

Its stock being registered with the Commission, Proof Lock was required to file annual and periodic reports with the Commission, but as of January 1973, its periodic financial reports on Form 10-Q had not been filed for the years 1971 and 1972. On September 17, 1973, Proof Lock was enjoined from further violations of Section 15(b) of the Securities Act and rules thereunder for failure to file with the Commission timely and proper reports on Forms 10-K, 10-Q and 8-K. As of January 1973 the most current or recent financials that Proof Lock had were those of 1970.

Early in January 1973, Hale became a market maker for Proof Lock. On or about January 8, 1973, the president of Proof Lock, Ming-Hsu (Hsu) called William Hyman, a principal at Hale, who informed him that as of that date Hale had orders for approximately 20,000 shares of Proof Lock and would make a market in Proof Lock.

Hyman had been president of Hale and the registered principal with the NASD but upon having charges brought against him by the SEC he became vice president and Elkind was substituted as the registered principal and, also, named president of Hale by Hyman and Greenberg, among others. He was admittedly a figure-head and received \$75.00 a week while serving as President from June 1971 until June 1973. Elkind was informed of the interest which Hale was taking in Proof Lock and told the salesmen that Hale would become a market maker.

During the period January 15, 1973 through March 5, 1973, a total of 32,230 shares of Proof Lock were sold to the public and of this 26,430 shares were sold by Hale to 65 customers thereby accounting for 87% of all retail sales of Proof Lock during this period. During this same period 5,765 shares of Proof Lock were traded between market makers and Hale was the purchaser of 3800 of these shares. There was no buying interest in Proof Lock other than that generated by Hale.

Four investor witnesses testified that during the pertinent period in which Hale was the market-maker, they purchased a total of 2,000 shares of Proof Lock and that they were told by salesmen, variously, that Proof Lock would have a contract to sell its locks to Russia; that Proof Lock was negotiating with the Japanese for the production of the lock for Japanese cars; that a discount of \$1 per share would be given if 1,000 or more shares were purchased from Hale; that there was a big New York City contract lined up for Proof Lock; that the company was being taken over by a large Japanese firm, Mitsubishi; that the price of the stock would double as soon as the Japanese company acquired Proof Lock; that the lock was being manufactured and that the company was making money. None of these statements was true. The investors were not told that Proof Lock was in poor financial condition; that it was dependent upon its subsidiary office supply companies for most of its income; that it had only sold about 300 locks over a three-year period; that it was delinquent in its filings with the Commission; and that Hale was a market-maker in the stock.

During the period that Hale was making the market in Proof Lock, Elkind, as president of Hale, was checking all of the order tickets and was arranging with Hsu, the president of Proof Lock, for the transfer of Proof Lock stock. He was, also, responsible for the due diligence files of Hale and was fully

aware of the fact that Proof Lock was delinquent in its filings and had no up-to-date financial statements.

During the pertinent period Greenberg was the trader and office manager at Hale and was actively engaged in selling Proof Lock and had knowledge of the boiler-room type activity which was being engaged in by Hale's salesmen. Greenberg testified that he was aware that salesmen at Hale were soliciting their customers to purchase Proof Lock stock, and that while he believed it was "a piece of junk" he determined the price for transactions in Proof Lock. Many of the sales made by Hale to its customers were short sales. For example, on January 16, 1973, Hale retailed 2,300 shares of Proof Lock at  $3 \frac{1}{4}$  per share to three customers. These shares were sold short by Hale from its trading account. On January 17, 1973, Hale covered its short position by purchasing 2,000 shares of Proof Lock at  $2 \frac{1}{4}$  per share. These shares were purchased from other broker-dealers who were selling Proof Lock for relatives of Hsu, the president of Proof Lock. On January 18, 1973, Hale sold 2,000 shares of Proof Lock at  $3 \frac{1}{8}$  to 6 customers. On January 19, 1973, Hale purchased 1,800 shares of Proof Lock at  $1 \frac{1}{2}$  per share, again from broker-dealers who were selling Proof Lock for relatives of Hsu.

Schedules of sales of Proof Lock for Hale shows that the markups of the sales price to customers over costs from other dealers ranged from approximately 30% to 116%. (Exs. 15, 20, 23). This markup was excessive and was made possible by Hale's domination and control of the market in Proof Lock stock.

The Commission has long held that as part of his conduct a broker-dealer is required to sell securities at prices which are reasonably related to the current market price.<sup>6/</sup> Excessive and unreasonable markups are contrary to the duty of a broker-dealer to deal fairly with his customers and, therefore, are in violation of the anti-fraud provisions of the Federal Securities<sup>7/</sup> Laws.

The Commission has found in broker-dealer revocation proceedings that markups over the prevailing market of lesser percentages than were used here were fraudulent; 5% in Linder Bilotte & Co., Inc., 42 S.E.C. 807, 809 (1965); 5.2% in J. A. Winston & Co., Inc., 42 S.E.C. 49 (1964); 5.4% in Powell & McGovern, Inc., 41 S.E.C. 933 (1964). The fraud lies in the failure of a broker-dealer to adhere to the implied representation that his customers will be dealt with fairly and honestly. Duker v. Duker, supra at p. 388.

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6/ Duker v. Duker, 6 S.E.C. 386 (1939).

7/ Barnett v. United States, 319 Fed. 2d 340 (8th Cir., 1963).

The principal argument made by respondents is that Hale did not maintain, dominate or control the market for Proof Lock but performed the same as four or five or market makers in the stock.

Elkind claims that he never purchased or sold any stock and was not aware of the misrepresentations being made by the salesman. Greenberg, who was responsible for establishing the price of Proof Lock, claims that the Division has misinterpreted the markup of prices and that they were not excessive. While Elkind professes to have no knowledge of short sales, Greenberg states that the short sales actually benefited customers because it enabled Hale to fill orders placed by salesmen at a lower price than customers would have otherwise had to pay. Upon review of the record it is concluded that the evidence <sup>8/</sup> fully supports a finding that Hale, Elkind and Greenberg willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder as alleged in the order.

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<sup>8/</sup> It is well established that a finding of willfulness does not require an intent to violate the law; it is sufficient that the person charged with the duty knows what he is doing. Billings Associates, Inc., 43 S.E.C. 641, 649 (1967); Biesel, Way & Company, 40 S.E.C. 532 (1961); Hughes v. S.E.C., 174 F. 2d 969, 977 (CA DC 1949).

Bookkeeping Violations

Rule 17a-3, which was adopted pursuant to Section 17(a) of the Exchange Act requires that every registered broker-dealer make and keep current certain books and records specified therein. As a registered broker-dealer registrant was subject to and required to comply with that rule.

On June 1, 1972 and intermittently until July 19, 1972, NASD examiners performed an examination of Hale during which time they also interviewed Elkind and Greenberg. It was determined that Elkind was responsible for the back-office functions at Hale including its books and records and that Greenberg was responsible for general review of the back-office procedures. Among other things, the examiners found that Hale's customer ledger was incomplete; that it failed to maintain customer account cards for some 35% of its accounts which were sampled; and that out of over 1,000 customer new account cards which were checked only 4% were signed by a principal of Hale. It was, also, determined that Hale did not maintain an associated persons file for employees handling securities or funds in its back-office as required by Rule 17a-3(12)(B). Elkind states that he did not have any knowledge of the deficiencies in the books and records at Hale. Greenberg states that he had no responsibility to see that the books and records were accurately made or properly kept.

Testimony of an NASD examiner and the evidence in the record establish that Hale did not make and keep current some of the required books and records during the period from about January 1, 1972 to July 3, 1973, and that Hale willfully violated and Elkind and Greenberg willfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 and 17a-4 thereunder as alleged in the order.

Regulation T

In the course of the inspection of registrant's customers' accounts in 1972, 28 instances occurring during the period of January 1 through May 13, 1972 were found where Hale failed to promptly cancel or otherwise liquidate transactions in the special cash accounts of customers who did not make full payment within seven business days as required by Regulation T promulgated by the Board of Governors of the Federal Reserve System pursuant to Section 7(c) of the Exchange Act. Elkind was responsible for Regulation T extensions and was the only person at Hale requesting them. Greenberg was also responsible for supervision of the back-office and reviewed extensions for Regulation T. The violations of Regulation T were discussed with Elkind in July 1972 and he agreed that there were violations of Regulation T.



It is clear from the record that during the period, as alleged by the Division, Hale willfully violated and Elkind and Greenberg willfully aided and abetted violations of Section 7(c) of the Exchange Act and Regulation T promulgated thereunder.

### Supervision

The Order, also, charged that Elkind failed reasonably to supervise persons subject to his supervision with a view to preventing violations alleged in the Order. However, such a finding would be inconsistent with the active role Elkind played in this situation. Failure of supervision -- which may result in derivative responsibility for the misconduct of others -- connotes an inattention to supervisory responsibilities, a failure to learn of improprieties when diligent application of supervisory procedures would have uncovered them. Here, having found violations on the part of Elkind it is inappropriate and inconsistent to find him responsible for a failure of supervision with respect to the same misconduct.<sup>9/</sup>

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9/ In the Matter of Anthony J. Amato, Securities Exchange Act Release No. 10265 (June 29, 1973). See, also, Securities Exchange Act Releases as follows: Adolph D. Silverman, 10237 (August 6, 1973); Fox Securities Company, Inc., 10475 (November 1, 1973); Charles E. Marland & Co., Inc., 11065 (October 21, 1974).

PUBLIC INTEREST

The remaining issue concerns the remedial action which is appropriate in the public interest with respect to Elkind and Greenberg. The Division, asserting that Elkind as the president and a director of Hale willfully violated and willfully aided and abetted the violations herein urges that protection of the public interest requires that Elkind be barred from further association with any broker-dealer. On the other hand, it is urged on behalf of Elkind that his only mistake was becoming president of Hale and that he was simply a figure-head president and that it is not in the public interest to take away his livelihood.

As concerns Greenberg, his record of violations has been previously described and the Division urges that as a convicted stock manipulator, it is in the public interest to bar him from any further association with any broker-dealer, investment company or investment adviser. Upon careful consideration of the record, it is concluded that Elkind should not be permitted to associate with any broker-dealer in a principal or supervisory position. It appears appropriate, however, to give consideration to allowing him a nonsupervisory position with a broker-dealer after one year. In the case of Greenberg, it appears appropriate to bar him from association with any broker-dealer, investment company or investment adviser.

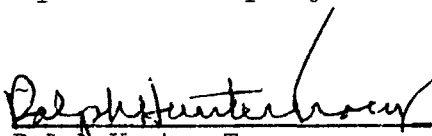
Accordingly, IT IS ORDERED that Joseph Elkind is barred from association with any broker-dealer, except that after one year from the effective date of this order, he may apply to the

Commission for permission to become associated with a broker-dealer in a nonproprietary and nonsupervisory position wherein his activities would receive adequate supervision.

IT IS FURTHER ORDERED that Richard Greenberg is barred from association with any broker-dealer, investment company or investment adviser.

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

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c) determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.<sup>10/</sup>

  
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Ralph Hunter Tracy  
Administrative Law Judge

Washington, D.C.  
April 10, 1975

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10/ To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected.