IN THE MATTER OF

NORMAN POLLISKY

ALLAN HARRIS

AARON J. GABRIEL

File No. 3-364. Promulgated August 13, 1968

Securities Exchange Act of 1934—Sections 15(b) and 15A

BROKER-DEALER PROCEEDINGS

Grounds for Suspension from Association with any Broker-Dealer

Where, in connection with sale of securities by registered broker-dealer, individuals made misleading representations concerning, among other things, future earnings, price increases, and quality of investment, *held* under all circumstances, including fact that individuals were not participants with registrant in scheme to defraud customers, in the public interest to suspend individuals for a period from association with any broker-dealer.

Practice and Procedure

Administrative broker-dealer proceedings under Securities Exchange Act are remedial and not penal in nature, and in such proceedings willful violations of securities acts need not be proved "beyond a reasonable doubt" or by "clear, unequivocal and convincing evidence", but only by fair preponderance of evidence.

Findings in initial decision issued in administrative proceedings need not specifically rule on each proposed finding so long as they indicate rulings "in some way" and are sufficiently explicit to enable parties to ascertain basis of decision.

There is no requirement that the Commission appoint counsel for respondent in administrative proceedings under Securities Exchange Act, although it may be desirable for examiner to give some assistance to respondent appearing *pro se*.

It is within scope of hearing examiner's functions to aid in clarification of facts being developed on record, although he should not intervene in examination of witnesses to extent which would create appearance of advocacy or partialiy.

APPEARANCES:

Robert G. Willner, Michael P. Stern, Richard F. Fleischmann,

and *Donald Malowsky*, of the New York Regional Office of the Commission, for the Division of Trading and Markets.

Davis J. Stolzar, for Allan Harris and Aaron J. Gabriel.

Gerald H. Goldsholle, of Kronish, Lieb, Shainswit, Weiner & Hellman, for Norman Pollisky.

FINDINGS AND OPINION OF THE COMMISSION

The order instituting these proceedings pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 included allegations that Waldman & Co. ("registrant"), then a registered broker-dealer, and 14 individuals had willfully violated anti-fraud provisions of the Exchange Act and of the Securities Act of 1933 in the offer and sale of the common stocks of Development Corporation of America ("DCA") and United Utilities Corp. of Florida ("UUF") during the period from January 1964 to November 1965. Following hearings the hearing examiner issued his initial decision in which he concluded, among other things, that registrant and eight individual respondents[1] had willfully violated the anti-fraud provisions and that registrant's registration should be revoked[2] and the individual respondents should be barred from being associated with any broker or dealer.

The issues now before us relate to three of the individual respondents, Norman Pollisky, Allan Harris and Aaron J. Gabriel, who took exception to the hearing examiner's initial decision and filed petitions for review which we granted. These respondents and our Division of Trading and Markets submitted briefs, and we heard oral argument. Our findings are based upon an independent review of the record.

BACKGROUND

Registrant became registered as a broker-dealer in May 1963. DCA, organized in 1960, engaged in the development of communities and construction of residences in Florida; in 1961 it made a public offering of its common stock at $3 per share. UUF was formed in 1961 as a wholly-owned subsidiary of DCA and, among other things, installed gas, sewer and water lines in areas in

[1] The other six individual respondents had been barred from association pursuant to their consent or on the basis of their default in failing to file answers or appear at the hearings. Securities Exchange Act Release Nos. 7784, 7943 and 7971 (January 5, August 25, and October 7, 1966).

[2] The examiner's order revoking registrant's registration and barring five individual respondents from association with any broker or dealer was declared effective by us in March and April 1967, following their failure to file petitions for review as provided in our Rules of Practice. We had previously suspended registrant's registration pending final determination of the issue of whether it should be revoked. *Waldman & Co.*, 42 S.E.C. 852 (1966).

Florida which DCA had an interest in developing. In 1962 DCA distributed the 325,000 shares of UUF common stock to DCA stockholders.

The examiner found that registrant engaged in a high-pressure campaign to sell DCA and UUF shares and that in connection with the offer and sale of such shares, various of registrant's salesmen made misrepresentations with respect to, among other things, increases in the prices of the stocks and in the earnings of the issuers, the payment of dividends, listing on an exchange, and the safety of the investment.

Pollisky and Harris were salesmen for registrant for short periods during the time registrant was engaged in the sales of DCA and UUF stocks. Pollisky testified that he began his employment with registrant about the beginning of January 1965 and left about the middle of March 1965. Harris began about the end of July 1965 and left about October 14, 1965. Although Gabriel denies that he was ever a salesman for registrant, under Section 15(b)(7) of the Exchange Act we may bar or suspend from association with a broker or dealer any person who willfully violated provisions of the securities acts, regardless of whether or not he was associated with a broker or dealer as a salesman or in any other capacity when he committed those violations. The question of the extent to which Gabriel made misrepresentations as charged, however, is commingled with the question of his relationship to registrant and we accordingly consider first the charges against Pollisky and Harris.

MISREPRESENTATIONS BY POLLISKY AND HARRIS

One customer who purchased 100 shares of DCA stock at 3¾ in March 1965 testified that Pollisky stated that DCA had "a good record" and he "expected it to grow rapidly," that he expected the stock to rise in price to 6 within six months or so because the company "was doing better," and that she should "get in right away." Two other customers testified as to their purchases from Pollisky of UUF stock at 5-3/4 in the same month. One, who purchased 50 shares, testified that Pollisky told her that he believed the company's earnings would increase, that the stock presented "a good chance" to make a "good" gain, that it might go up "a couple of points" in about six months because the company seemed "to be doing good," and that he thought it was a good investment. The other, who purchased 400 shares, testified that Pollisky told him UUF's business was greatly expanding and its earnings should appreciate quite a bit.

Two customers testified respecting their purchases from Harris

of 50 shares each of DCA stock at 5½ around July 1965. The first, Mrs. B, stated that Harris told her that DCA was a good stock, that as a friend he advised her to buy, and that it would go up and she would make money. The second, Mrs. K, testified that Harris told her that DCA would be a good investment on which she would make money, that DCA was not speculative, and that an investment fund had about 40,000 DCA shares.

There was no reasonable basis for the representations and predictions made. As we have repeatedly held, predictions of specific and substantial increases in the price of speculative securities within short periods of time are inherently fraudulent and cannot be justified.[3] DCA had consolidated net income of about 25 cents per share in 1960, which declined to 3 cents per share in 1962, rose to 1½ cents per share in 1963, and declined again to around 3 cents per share in 1964. Although DCA did have a backlog of contracts of about $8,000,000 during 1965 and it predicted substantially better earnings for that year,[4] its own 1961 prospectus had stated that business activity in the home construction industry is subject to fluctuations which lend a speculative character to investments in companies in this field. And while in 1965 DCA's president and two other stockholders tendered 25,000 of their unregistered shares of DCA stock for shares of a mutual fund, the fund declined to complete the exchange assertedly on the ground it felt it could not take any additional unregistered stock into its portfolio. UUF's annual reports to stockholders showed net income for 1963, 1964 and 1965 of $1,441, $778 and $2,022, respectively, and "Contribution in Aid of Construction"[5] in those years of $103,000, $18,750 and $27,500, which together were stated to represent per share increases in stockholders' equity of 32 cents, 6 cents and 9 cents in those respective years.

Pollisky denies any willful violations. He asserts that he reasonably considered the DCA and UUF stocks to be good speculations; that he furnished his customers all available information and reports about the companies; and that the customers realized they were speculating in low-priced stocks and were given an opportunity to read the reports and consult other brokers. He further denies that he represented the price of the securities would double. He stated that he was concerned about statements made by other salesmen, called them to registrant's attention, repeatedly inquired as to registrant's plans to sell other securities besides DCA and

[3] See, e.g., *Crow, Brourman & Chatkin, Inc.*, 42 S.E.C. 938, 944 (1966).

[4] DCA's annual report subsequently filed showed consolidated net income for 1965 of $71,175 or 10 cents per share.

[5] These contributions were received, primarily from DCA, pursuant to a practice whereby real estate developers in effect pay for the installation of utilities on the land being developed.

UUF, and finally left registrant's employ voluntarily in March 1965, after only about ten weeks, because he did not like the nature of registrant's operations.

Harris contends that the testimony of the two witnesses against him was questionable and that the record does not support findings of willful violation against him. He noted that Mrs. B had previously purchased other securities through him and that he had spoken to her a number of times in an unsuccessful effort to persuade her to sell one of the prior purchases in order to obtain a profit. Harris further contends that at the most any statements by him constituted "puffing." Mrs. K, who had dealt with Harris for about four years prior to the DCA purchase, testified that she considered all stocks "speculative" and that she made some additional purchases of DCA stock through another respondent salesman after Harris left registrant.

The hearing examiner rejected Pollisky's denials that he made representations as testified to by the customers. As to Harris, the examiner was of the opinion that, accepting the contention that the testimony of Mrs. B and Mrs. K was "vague and even confused in certain respects," such testimony was creditable on the salient points as to Harris' representations. Under all the circumstances we see no reason for not accepting the hearing examiner's conclusions as to these witnesses' testimony.

We cannot agree with the other contentions of Pollisky and Harris. We have held that the doctrine of *caveat emptor*, from which the concept of "puffing" is derived, can have little application under the anti-fraud provisions of the securities acts designed to protect investors against sharp practices.[6] Nor does a finding of a willful violation require a showing of an intent to violate the law; it is sufficient that the person charged with a duty intends to do the act which is violative of the statute.[7] Misrepresentations are no less improper because a salesman may have had personal contacts or previous dealings with his customer or because the salesman considered the stocks to be good speculations or because a customer knew that the stocks were speculative.[8] And the fact that only one or a few witnesses testified against a salesman cannot excuse his misconduct.[9]

Under all the circumstances we conclude that Pollisky and Harris willfully violated or willfully aided and abetted violations of

[6] *Irving Friedman*, 43 S.E.C. 314, 318 (1967); *Aircraft Dynamics International Corp.*, 41 S.E.C. 566, 570 (1963); *B. Fennekohl & Co.*, 41 S.E.C. 210, 215–6 (1962).

[7] See *e.g.*, *Biesel, Way & Company*, 40 S.E.C. 532, 536 (1961).

[8] See *James De Mammos*, 43 S.E.C. 333, 336 (1967). *aff'd* as to De Mammos, Doc. No. 31469 (C.A. 2, October 13, 1967); *Billings Associates, Inc.*, 43 S.E.C. 641, 645 (1967).

[9] *J. P. Howell & Co., Inc.*, 43 S.E.C. 325, 331 (1967), *aff'd sub nom Vanasco* v. *S.E.C.*, 395 F.2d 349 (C.A. 2, 1968).

the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b–5 and 15c1–2 thereunder.

MISREPRESENTATIONS BY GABRIEL

As previously noted, Gabriel denies that he was ever employed by registrant, and he denies that he offered or sold DCA or UUF stock or mad any representations as to them. On the basis of our review of the record, we find that it does not establish that Gabriel was employed by registrant or that, with the exception of one instance which involved misrepresentations, he engaged in the solicitation or sale of those stocks or made any representations as to them.

Gabriel testified that some time before October 1964, during the pendency of a ruling revoking his registration with the National Association of Securities Dealers, Inc. ("NASD") as a representative of A. J. Gabriel Co., Inc. ("Gabriel Co.") of which he was sole stockholder,[10] he arranged with one of registrant's partners, with whom he had previously been associated, to sublet half of a room which registrant was leasing on the floor below its principal offices, and that he shared that office with one Seymour Forrest whom registrant engaged as a salesman following his suggestion. Gabriel further testified that he used that room for carrying on a consulting business under the name of National Business Consultants, Inc. and also to service old customers of Gabriel Co.[11]

Forrest testified that Gabriel had said he (Gabriel) "was supposed to have gotten $200 a week" from registrant; that Gabriel had made numerous telephone calls in the course of which he offered and sold DCA and UUF stock, identifying himself as Forrest and, after Forrest left registrant's employ, as Rubin Ehrlich, another salesman of registrant who was sent downstairs in place of Forrest; and that a young woman employed by registrant to make telephone calls to potential customers turned leads over to

[10] The ruling had been rendered in the summer of 1964 by a District Business Conduct Committee of the NASD. It was based on findings of violations of NASD rules by Gabriel and Gabriel Co. and also provided that Gabriel Co. should be expelled from membership in the NASD. The effectiveness of those sanctions was stayed throughout the period here involved by appeals to the NASD's Board of Governors and to us.

[11] Although Gabriel and Gabriel Co. were not under a legal disability fromsengaging in the securities business, he testified that he did not sell or offer to sell securities during the pendency of the NASD proceedings, but only provided former Gabriel Co. customers services such as supplying quotations, information about past transactions, and copies of confirmations. On September 3, 1965, we affirmed the NASD action in revoking Gabriel's registration as an NASD registered representative and expelling Gabriel Co. from the NASD but stated that the public interest did not require that Gabriel be prohibited from employment in the securities business under adequate supervision. *A. J. Gabriel Co., Inc.*, 42 S.E.C. 755. Following this decision Gabriel became employed with a broker-dealer other than registrant. Gabriel Co.'s withdrawal of its broker-dealer registration was permitted to become effective in March 1966.

both Gabriel and Ehrlich to follow up. Forrest also testified that in one instance when Forrest had a long-time customer of his, Dr. R., on the telephone, Gabriel entered into the conversation to recommend DCA stock, and then told Forrest to "write the order out," following which Forrest wrote an order from Dr. R. to buy 1,000 shares of DCA stock.

The hearing examiner found that Forrest was biased against Gabriel,[12] and we cannot find Forrest's testimony adequate to establish that Gabriel was a salesman for or employed by registrant. His testimony is in conflict not only with that of Gabriel, but of registrant's partner who stated that neither he nor registrant at any time employed Gabriel in any capacity, and of Ehrlich, who stated that the partner told him Gabriel was renting space and that he never heard Gabriel offer to sell DCA or UUF stock. Also the record shows that Gabriel moved his own furniture and files into the office, had the names of his own consulting business and Gabriel Co. on the door,[13] and was active in his consulting business.[14] No customer solicitation or sale, other than that pertaining to the transaction by Dr. R., was shown which could be attributed to Gabriel in his name or in the name of Forrest.[15] Registrant's records show no transactions as effected by Gabriel and only two sales as made in Forrest's name, one admittedly made by Forrest, and the other to Dr. R. We cannot consider Gabriel's injection into a single conversation between Forrest and Dr. R., during which social matters among other things were discussed,[16] as evidencing Gabriel's employment by registrant.

We therefore are unable to find that Gabriel participated in any sales efforts on behalf of registrant. However, the record does show that in the telephone conversation with Dr. R., Gabriel did make various misstatements concerning DCA stock as a result of

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[12] Forrest left registrant's employ after about a month; thereafter he frequently visited the office he formerly shared with Gabriel, assertedly to "keep an eye" on Gabriel, for whom he said he had co-signed a promissory note for $4,800. Following the issuance of the initial decision herein, Forrest wrote a letter admitting his prejudice against Gabriel stemming from his co-signing such note, and stating that his testimony against Gabriel was "not precisely accurate and in fact, in some instances, possibly inaccurate" and contained "questionable statements of fact."

[13] At the outset the two names were the only names on the door, and registrant's name was added only when one of the registrant's partners became disturbed when he noticed its absence.

[14] When Ehrlich replaced Forrest, Ehrlich became so interested in and devoted so much time to Gabriel's consulting activities that registrant threatened to fire Ehrlich and finally vacated the office, leaving Gabriel to pay the entire rent for the month of September 1965, after which he left the premises too.

[15] The young woman who according to Forrest telephoned potential customers and turned over leads to Gabriel was not called as a witness, nor did any other witness testify as to any conversations with Gabriel.

[16] Gabriel had been previously acquainted with Dr. R., and Dr. R. admitted that Gabriel had made various inquiries and comments with reference to Dr. R.'s family.

which Dr. R. upon resuming his conversation with Forrest ordered the purchase of that stock. While Gabriel denies making any representations or recommendations about DCA, and the testimony of both Forrest and Dr. R. is inconsistent in various respects and they were both unable to remember certain details, the hearing examiner who observed the witnesses concluded that Gabriel had made the following statements to Dr. R.: that DCA was a low-priced stock that was going to go up in a very short time; that DCA would shortly spin-off a hardware company; and that Gabriel had just returned from Florida where he had looked into the situation and felt it was a good one "to get into." We sustain the examiner's findings in these respects.

As we have indicated in our prior discussion relating to the representations by Pollisky and Harris, there was no reasonable basis for these representations. In addition to the reasons previously mentioned, we note that DCA did not spin-off a hardware company subsidiary, and about the time of the conversation with Dr. R. it had abandoned consideration of the possibility of such a spin-off which had been informally discussed by it.

We conclude that Gabriel made materially misleading statements in connection with the offer and sale of DCA stock to Dr. R., and that accordingly he willfully violated and willfully aided and abetted violations of the above anti-fraud provisions of the securities acts.

PUBLIC INTEREST

Respondents urge that any violations found warrant at most only a censure in the public interest. They assert that they were not, as the hearing examiner found, participants in any high pressure campagin to sell DCA and UUF stocks engaged in by registrant and other salesmen.[17] Respondents also stress that they have not been the subject of any disciplinary proceedings by us other than the instant proceedings, that they have been employed in the securities business with other firms for some time since 1965 without any further complaints, and that Pollisky's and Harris' good conduct is attested by statements from customers in-

[17] None of the respondents now before us were named as respondents in an action brought by this Commission in which a preliminary injunction was issued against registrant and various of its salesmen based on offers and sales of DCA and UUF stocks. (May 13, 1965, United States District Court, S.D.N.Y., thereafter said action was dismissed without prejudice pursuant to stipulation [65 Civil Action File No. 1198]). Pollisky left registrant's employ prior to the issuance of the complaint, and Harris' short period of employment took place after the period dealt with in the injunction action and the period in which the examiner found that transactions in DCA and UUF stocks accounted for the bulk of registrant's business. Gabriel, who had not been an employee of registrant, became a sub'essee in office space leased by registrant during the period covered by the allegations in the injunction action.

cluding some who testified in these proceedings. Pollisky also states that he has suffered expense and injury as a result of these proceedings, and that he is now particularly aware of his obligations under the securities laws.

We have considered the various factors urged by respondents in mitigation. The representations attributed to these respondents were not generally of the same character as many of those found by the examiner to have been made by other respondents in these proceedings, and in our opinion the record does not support the hearing examiner's finding that they acted in concert with the registrant and other respondents in a scheme to defraud customers. However, we cannot condone their conduct, which in the case of Pollisky and Harris included sales to customers of modest income. As we have noted, Pollisky made misrepresentations to customers, involving predictions of specific price increases, which we have consistently held to be improper, and he is not exculpated by the fact that he left registrant after about ten weeks because of his dissatisfaction and disagreement with registrant's operations. Harris' representations, particularly that DCA stock was not speculative, were made irresponsibly under the circumstances. And while Gabriel was not a salesman and was involved in only one conversation relating to DCA stock, in view of his past experience he should have understood the risks in making representations and recommendations respecting a security without reliable information based on an adequate inquiry. Under all the circumstances, we conclude that it is in the public interest to suspend Pollisky and Harris from association with any broker or dealer for 60 days, and to suspend Gabriel for 30 days.

Respondents have requested that any suspension or bar order which we might issue be stayed pending judicial review. In order to provide respondents with an opportunity to appeal before the suspensions begin to run, we shall make the suspensions effective as to each respondent as of the opening of business on September 9, 1968, unless he files a petition for review pursuant to Section 25(a) of the Exchange Act prior to that time. If any respondent does so, the suspension as to him shall be stayed pending final determination of such petition.

OTHER MATTERS

We have in this review of the hearing examiner's initial decision made an independent reevaluation of the whole record, and on a number of issues we have reached a different conclusion as to what is a fair preponderance of the evidence. We again reject respondents' contention that the allegations of fraud against them

must be proved "beyond a reasonable doubt" or at least by "clear, unequivocal and convincing evidence." We conclude, as we have previously in this case, that in proceedings under the Exchange Act such as these, which are remedial rather than penal in nature, allegations of willful violations of the securities acts need be proven only by the preponderance of the evidence.[18] This has been the standard of proof consistently used in broker-dealer administrative proceedings,[19] and it satisfies the requirements of the Administrative Procedure Act that administrative agency action be supported by "the reliable, probative, and substantial evidence."[20]

A different conclusion is not required by the decision of the Supreme Court in *Woodby* v. *Immigration and Naturalization Service*.[21] In determining that the appropriate standard in deportation proceedings is "clear, unequivocal, and convincing evidence" the Court stressed the extreme harshness of the sanction involved, amounting to banishment, and also that Congress had not specified what degree of proof is required in deportation proceedings.[22] Both the majority and the minority opinions, however, recognized that the "preponderance" standard is generally appropriate in other administrative proceedings.[23] The application of this standard here is also consistent with the decisions holding that the securities acts are remedial in nature and are to be broadly construed for the protection of public investors.[24]

We find no merit in the further contention of Gabriel and Harris that the examiner's decision, which was in narrative form, failed to comply with the requirements of our rules, the Administrative Procedure Act and due process that it include findings and conclusions with supporting reasons upon all material issues and

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[18] *Norman Pollisky, et al.* O, 43 S.E.C. 458 (1967). We there remanded this matter to the examiner to make findings as to these respondents expressly based on the preponderance of the evidence, because of the uncertainty in the examiner's initial decision created by his reference to the less stringent "substantial evidence" standard, which defines the scope of judicial review. In his subsequent decision now before us the examiner, however, specifically recited that his findings were in fact based on the preponderance of the evidence and there is no merit in the contention that despite this he did not apply that standard.

[19] See, *e.g.*, *James De Mammos*, 43 S.E.C. 333, 338 (1967), in which we specifically held that willful violations of the anti-fraud provisions of the securities acts need be proved only by a preponderance of the evidence. On appeal to the United States Court of Appeals for the Second Circuit, where this question was raised and argued, the Court of Appeals without opinion affirmed our order (*De Mammos*, v. *S.E.C.*, Docket No. 31469, October 13, 1967).

[20] 5 U.S.C. § 556(d).

[21] 385 U.S. 276 (1966).

[22] *Ibid*, at pp. 284–286.

[23] *Ibid*, at pp. 284–285, 288–289. A footnote reference in the *Woodby* case to the high standard of proof imposed in certain cases involving allegations of civil fraud (385 U.S. at 285, n. 18) was based upon a citation of 9 Wigmore, *Evidence*, § 2498 (3d ed. 1940). A review of the cases cited in Wigmore indicates that the Court's reference to cases "involving allegations of civil fraud" was not intended to include remedial proceedings under the securities acts.

[24] See *e.g.*, *S.E.C.* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963).

make clear which proposed findings have been adopted.[25] Findings may be in narrative form and need not specifically show the ruling on each proposed finding and conclusion so long as they indicate such rulings "in some way."[26] The examiner's decision, which stated that all proposed findings and conclusions had been considered and had been accepted to the extent they were consistent with his decision, was sufficiently explicit to enable the parties and us to ascertain the basis of his decision.[27]

Pollisky, who appeared *pro se* throughout the hearing and post-hearing stages until after the examiner's first decision, assertedly because he could not afford counsel, also argues that we had a duty to appoint counsel for him. He also contends that the examiner demonstrated a lack of impartiality in that he sought by extensive cross-examination of Pollisky to elicit testimony adverse to him and thereby assumed an improper prosecutory role.

As Pollisky himself recognizes, the decisions do not support his claim of a right to counsel. The United States Court of Appeals stated in *Boruski* v. *S.E.C.*: "We know of no requirement that counsel be appointed in these administrative [broker-dealer and investment adviser] proceedings. The orders [of revocation and denial], although serious in their effect, are not criminal judgements." [28] We have, nevertheless, indicated that it may be appropriate, in certain circumstances, for a hearing examiner to assist a respondent appearing *pro se* in the conduct of his defense, although we have also recognized that the examiner cannot be expected to act as a respondent's counsel.[29]

Cross-examination of witnesses by an examiner is a proper exercise of his function in order to obtain clarification of facts being developed in the record.[30] Of course, an examiner should not intervene in the examination of a witness to such an extent that he takes on the posture of an advocate and compromises or sacrifices his impartiality. We have reviewed the record, and we cannot find that Pollisky was prejudiced by the examiner's cross-examination or was in any way limited in presenting his defense, or that Pollisky did not receive a fair hearing.

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[25] Rule 17 CFR 201.16 of this Commission's Rules of Practice; Section 8(b) of the Administrative Procedure Act (5 U.S.C. § 557(c)).

[26] See Attorney General's Manual on the Administrative Procedure Act, p. 86 (1947); see also *NLRB* v. *Sharples Chemicals, Inc.*, 209 F.2d 645, 652-3 (C.A. 6, 1954).

[27] In making findings against Pollisky the examiner adequately separated the evidence against him, contrary to the latter's contention, and in any event, our findings against Pollisky are based solely on the evidence applicable to him.

[28] 340 F.2d 991, 992 (C.A. 2, 1965), *cert. denied*, 381 U.S. 943, 944. See also *David T. Fleischman*, 43 S.E.C. 371, 384 (1967).

[29] *Irving Friedman*, 43 S.E.C. 314, 322 (1967); *James De Mammos*, 43 S.E.C. 333, 338 (1967), *aff'd* without opinion *De Mammos* v. *S.E.C.*, C.A. 2, Docket No. 31469, October 13, 1967.

[30] *Cf. NLRB* v. *Stackpole Carbon Co.*, 105 F.2d 167, 177 (C.A. 3, 1939), rehearing denied 105 F.2d 179, *cert. denied*, 308 U.S. 605.

We have considered other procedural issues raised by Pollisky and find them without merit. Thus, the fact that the examiner filed his decision following our remand to him, without waiting until we had disposed of certain motions submitted by Pollisky, did not constitute an abuse of discretion. By the same token, Pollisky's request for leave to adduce additional evidence relating to the public interest was filed long after the close of the evidentiary record, and was addressed to our discretion, and the limitation embraced in the permission given him to file such evidence only in "affidavit form" was an exercise of that discretion. The statements filed by him pursuant to such permission, including his own and those of certain customers and of a member of our staff, have been considered by us on the question of the public interest.

We have considered the initial decision of the hearing examiner and the exceptions thereto, and to whatever extent such exceptions involve issues which are relevant and material to the decision of this case, we have by our Findings and Opinion herein ruled upon them. We hereby expressly sustain such exceptions to the extent that they are in accord with the views set forth herein, and we expressly overrule them to the extent that they are inconsistent with such views.

An appropriate order will issue.

By the Commission (Commissioners OWENS, BUDGE, WHEAT and SMITH), Chairman COHEN not participating.