ADMINISTRATIVE PROCEEDING
FILE NO. 3-1987

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

L. A. FRANCES, LTD. (8-11635)

A. FRANK SIDOTI
LAWRENCE MARTIRE
LOUIS BENJAMIN MEADOWS dba
LOUIS B. MEADOWS & CO. (8-12887)

INITIAL DECISION
(Private Proceeding)

Sidney Gross
Hearing Examiner

Washington, D. C.
April 3, 1970

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BEFORE: Sidney Gross, Hearing Examiner

APPEARANCES: Irwin L. Germaise of Germaise, Cooper & Quinn for L. A. Frances, Ltd., A. Frank Sidoti and Lawrence Martire.

Efrem A. Gordon for Louis Benjamin Meadows d/b/a Louis B. Meadows & Co.

David M. Greenberg, Dennis J. Block and Paul Chernis for the Division of Trading and Markets.

This is a private proceeding brought pursuant to Section 15(b) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), by order of the Securities and Exchange Commission ("Commission") dated May 7, 1969, to determine what, if any, remedial action is appropriate in the public interest against L. A. Frances, Ltd. ("Frances"), A. Frank Sidoti ("Sidoti"), Lawrence Martire ("Martire"), Louis Benjamin Meadows ("Meadows") doing business as Louis B. Meadows & Co., a sole proprietorship of Meadows, as the result of alleged wilful violations of the securities laws during the period from about December 1, 1966 to about February 28, 1967 ("the relevant period").

The order for proceeding alleges that during the relevant period all respondents other than Martire wilfully violated and aided and abetted wilful violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") in connection with the offer and sale of the common stock of Vista Industries Corporation ("Vista") while no registration statement was filed or in effect;[1/] that Martire failed reasonably to supervise Sidoti in the operations of Frances with a view to preventing the violations of the Federal securities laws alleged above and that Frances and Sidoti were preliminarily enjoined from further violations of Sections 5(a) and 5(c) of the Securities Act in the offer and sale of the stock of Vista by order of the United States District Court for the Southern District

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1/ Sections 5(a) and 5(c) of the Securities Act, as applicable here, make it unlawful to use the mails or interstate facilities to sell or deliver a security unless a registration statement is in effect as to such security.

of New York dated October 27, 1967, in S.E.C. v. Harry Vogel, et al., 67 Civil Action File No. 3270.[2/]

All parties to the proceeding were represented by counsel. Proposed findings of fact, conclusions of law and briefs have been filed by all parties and the Division of Trading and Markets ("Division") has filed reply briefs.

In addition, by letter dated December 18, 1969, counsel for Frances, Martire and Sidoti submitted to the Hearing Examiner a memorandum by Judge Thomas F. Croake of the United States District Court for the Southern District of New York in the same action in which the respondents Frances and Sidoti had been preliminarily enjoined. Thereafter, by letter dated January 29, 1970, the Hearing Examiner advised the Division that he intended to take official notice of Judge Croake's memorandum and offered the Division an opportunity to comment. The Division responded by its letter of February 4, 1970.

On the basis of the record in this proceeding including the testimony of witnesses, documentary evidence, proposed findings of fact and conclusions of law and briefs together with the Division's replies and the documents referred to in the preceding paragraph the Hearing Examiner makes the following findings and conclusions.

2/ As pertinent here, under Sections 15(b)(5)(C) and 15(b)(7) of the Exchange Act, if a broker or dealer or any person associated with a broker or dealer is permanently or temporarily enjoined from any activity in connection with the sale of any security, the broker or dealer may be censured, its registration may be suspended for a period not exceeding twelve months or revoked and the Commission may censure, bar or suspend for a period not exceeding twelve months such person from being associated with a broker or dealer.

Frances is a New York corporation and was registered as a broker-dealer with the Commission on August 30, 1963. Since its inception Martire has been its president and principal stockholder and Sidoti has been its manager.

Louis B. Meadows & Co. was operated as a sole proprietorship owned by Meadows and having its place of business in Springfield, Massachusetts. Its registration with the Commission as a broker-dealer became effective on July 1, 1966. The order for proceedings alleges and the Commission's records establish that in December 1967 withdrawal of its registration became effective. It was succeeded by Louis B. Meadows & Co., Inc. 3/

At the beginning of the relevant period Harry Vogel was president of Vista, Philip Levy was its vice-president and each owned 260,000 shares of its common stock. Eugene Vogel was Vista's secretary and owned 120,000 of its common shares. At that time Vista had about 2,000,000 of its shares outstanding none of which had ever been the subject of a registration statement which became effective. 4/

3/ Meadows is the corporation's president and the only person owning 10% or more of its stock. Assuming it develops that the imposition of sanctions is warranted, no useful purpose would be served by imposing them against a sole proprietorship which was non-existent at the time the order for proceedings was issued. Nor may sanctions be imposed against the corporate successor since it has been registered as a broker-dealer since June 1967 and has not been named as a respondent.

4/ However, in 1959, Trans Central Petroleum Corporation, a predecessor of Vista, distributed 1,000,000 of its shares to the public at 1¢ per share pursuant to the provisions of Regulation A of the General Rules and Regulations under the Securities Act.

Vista was its own transfer agent. Eugene Vogel supervised the transfer department.

Sidoti knew the Vogels and Levy were officers and directors of Vista. He first met the Vogels early in 1960. Frances had begun trading in Vista stock early in 1965. Thereafter and prior to February 1967 Sidoti visited the offices of Vista on as many as ten occasions for the purpose of discussing Vista's affairs with its officers. He met Levy there in 1966.

Late in December, 1966, Sidoti received an order from Harry Vogel to sell 5,000 shares of Vista stock held in the name of Norman Natko. Natko is Harry Vogel's son-in-law. Sidoti did not speak to Natko and does not remember whether he asked Harry Vogel how Natko acquired the stock. He was not told by Harry Vogel of the latter's relationship to Natko nor does the record reflect that he made any inquiry which would have adduced that information. Sidoti called Levy after being advised by Harry Vogel that Levy had a friend who also wished to sell Vista stock. Levy told Sidoti that he desired to sell 10,000 shares which were held in the name of Anna Caterina. The latter is Levy's mother-in-law. Sidoti asked Levy if it was good stock "because it was a large piece." Levy replied in the affirmative. Sidoti was not told of the relationship between Levy and Caterina. He made no inquiry designed to acquire such information nor did he ask how Caterina acquired the stock. Sidoti was aware that Vista was its own transfer agent.

The record is clear that the Natko and Caterina sales were actually made on behalf of Harry Vogel and Levy, respectively, and that Natko and Caterina were merely their nominees. By letters of instruction to the Transfer Department of Vista dated December 28, 1966, the stock was transferred by Harry Vogel and Levy to the names of these nominees obviously for the purpose of the sales. The trade dates reflected on Frances' confirmations were December 27, 1966 for the Natko sale and January 19, 1967 for the Caterina sale. Both Harry Vogel and Levy admit that they received the proceeds of the sale.

Frances sold the aforesaid 15,000 shares of Vista stock to the public.

Charles J. Sheils was employed as a trader in an over-the-counter securities firm during the relevant period. At about the end of 1966 or the beginning of 1967 he received a telephone call from Harry Vogel [5/] about a substantial block of Vista stock. It developed that this "substantial block" consisted of 15,000 of Harry Vogel's shares, 20,000 of Eugene Vogel's shares and 10,000 of Levy's shares.

5/ Sheils does not remember whether the first call came from Sidoti or one of the Vogels. Harry Vogel testified he didn't remember through whom he had sold the stock. But in his investigation testimony on May 27, 1967, he testified he had asked Shiels to sell the stock.

The Hearing Examiner reserved decision on the admissibility of Harry Vogel's testimony taken on May 27, 1967. Harry Vogel is a witness not a respondent. At the hearing Harry Vogel testified he had no recollection of the matters to which he had testified earlier. However, since he affirmed at the hearing that he had told the truth in his investigation testimony, that testimony may be considered "not only as bearing on the credibility of the witness but as affirmative evidence," United States v. Barelli, 336 F. 2d 376, 391 (C.A. 2, 1964). Accordingly, it is concluded that Harry Vogel's investigation testimony is admissible.

Sheils was told that the sellers wanted to sell Vista stock but did not wish to pay New York State stock transfer taxes on the transactions. Harry Vogel also said that he, his brother and his partner owned the stock and that he had an opinion letter covering the stock. Sheils was told that Harry Vogel was an officer of Vista. He has no recollection about similar information regarding Harry Vogel's brother and partner.

Thereafter Sheils called Morton Kantrowitz who he believed worked for Meadows, a Massachusetts firm, and asked whether Meadows could handle the transaction. Sheils advised Kantrowitz of the name of the stock, the number of shares involved, the names of the sellers, the existence of the opinion letter and "thinks" he told Kantrowitz of the sellers' connection with Vista.

Kantrowitz testified he was employed by a firm who had a direct wire to Meadow's office and made a market in New York for Meadows. Sheils called him to ascertain whether Meadows would be interested in a transaction which the customer wanted consummated outside of New York in order to save transfer taxes. Kantrowitz was told the trade involved approximately 50,000 shares of Vista stock and that the stock would be accompanied by a "no action" or "opinion" letter.[6/] Sheils told Kantrowitz who the sellers

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6/ Kantrowitz is not sure of the difference.

were, that the trade date would be "as of" an earlier date, that the confirmations would indicate that the trade was "Courtesy of L. D. Sherman," Sheils' firm. Sheils indicated the amount of commission to be charged, which was less than such transactions would normally require. Sheils also designated Frances as the firm to which Meadows would resell the stock.

Kantrowitz called Meadows and repeated what he had been told by Sheils. Upon being asked by Meadows for his opinion of the transaction he responded that he could not see anything wrong with it. Meadows agreed to handle the trade.

Meadows testified that he resolved any doubt as to the legitimacy of the trade by questioning Kantrowitz who advised him that it was "okay". Although Meadows had the names of the Vogels and Levy, he did not know that they were connected with Vista. Through conversations with the sellers and through customers' cards that were filled out by Eugene Vogel and Levy, Meadows ascertained that they all were connected with Vogel's Dairy.

At or about the time Sheils first spoke to Kantrowitz he communicated with Sidoti with a view to having Frances purchase the 45,000 shares of Vista stock from Meadows. Sheils informed Sidoti of the number of shares involved and of the existence of an opinion letter. He called Sidoti because he knew Frances traded the stock.

Meadows confirmed to Philip Levy and Harry Vogel their orders for the sale of 10,000 and 15,000 shares of Vista, respectively, at

$.75 per share, trade date February 6, 1967, as of January 30, 1967.[7] Meadows confirmed to Eugene Vogel his order for the sale of 20,000 shares of Vista stock at 3/4, trade date February 10, 1967. Meadows' confirmations of the sale of these securities to Frances were identical as to number of shares, price and trade dates. Unlike Meadows' confirmations, however, Frances' confirmations to Meadows were in the form of one confirmation for 25,000 shares at 3/4 showing a trade date of January 30, 1967 (presumably covering the Harry Vogel & Levy shares) and three confirmations in the respective amounts of 1,000, 17,700 and 1,300 shares, each at 3/4 and each bearing trade date of February 10, 1967, presumably covering the 20,000 shares sold by Eugene Vogel.

When Sidoti first heard from Sheils that the stock was being sold by someone from Vista, he called Harry Vogel to ask why the stock was being sold and if anything had gone wrong with the Company. He was informed that the sellers merely wanted to raise money, that they had opinion letters covering the stock and that it was good stock. During his investigation testimony Sidoti testified that he knew the Vogels and Levy were the sellers of the stock. Sidoti saw the opinion letter covering the proposed sale of 15,000 shares by Harry Vogel but can't say he saw all the opinion letters.[8]

Frances sold all 45,000 shares of Vista stock to its customers.

7/ The reason for the "as of" trade date remains unexplained.

8/ There were three identical opinion letters, each dated February 1, 1967, covering the proposed sale of 15,000 shares of Vista stock by Harry Vogel, 10,000 shares by Levy and 20,000 shares by Eugene Vogel.

The Commission has been concerned for some time with the distribution by broker-dealers of unregistered securities, particularly those of relatively obscure and unseasoned companies where all of the circumstances surrounding the proposed distribution was not known to the broker-dealer. In Securities Act Release No. 4445 (February 2, 1962), the Commission discussed what steps the broker-dealer should take to assure that he is not participating in an illegal distribution in violation of Section 5 of the Securities Act. The Commission made two observations which have particular relevance to this case. It said:

> "Consequently, a dealer who offers to sell, or is asked to sell a substantial amount of securities must take whatever steps are necessary to be sure that this is a transaction not involving an issuer, person in a control relationship with an issuer or an underwriter. For this purpose, it is not sufficient for him merely to accept 'self-serving statements of his sellers and their counsel without reasonably exploring the possibility of contrary facts.'"
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> " * * *, when a dealer is offered a substantial block of a little-known security,[9/] either by persons who appear reluctant

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9/ The mere fact that Vista had 5,000 to 7,000 stockholders hardly takes its securities out of the "little known" class.

> to disclose exactly where the securities came from, or where the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for."

Certainly the need for searching inquiry is most obvious where the sellers are controlling persons. Here, although Sidoti knew the sellers were controlling persons, he saw only the opinion letter covering the 15,000 shares proposed to be sold by Harry Vogel. Even apart from any deficiency in that letter, an investigation as to 15,000 out of 45,000 shares hardly represents the searching inquiry required of the broker-dealer. Moreover, as Securities Act Release No. 4445 makes explicit, Sidoti should have made his own inquiry to determine the basis for the exemption claimed by the letter he did see.[10/]

Sidoti also omitted to make the most obvious and fundamental inquiry regarding the relationships between Natko and Harry Vogel and between Caterina and Levy, the response to which most certainly would have indicated the necessity for further investigation in connection with the sale of those 15,000 shares. Nor, as to all 60,000 shares, especially since Vista was its own transfer agent, did the sellers' assurances that the shares were "good shares," and free for trading, upon which Sidoti allegedly relied, relieve him of his responsibility to

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10/ See also Century Securities Company, Securities Exchange Act Release No. 8123 (July 14, 1967).

investigate the facts.[11/] The sellers' self-serving statements may not be accepted without reasonably exploring the possibility of contrary facts.[12/]

Regardless of whether Kantrowitz spoke of a no action or opinion letter, the record is plain that Meadows asked about the legitimacy of the transaction and relied entirely on Kantrowitz. Meadows had never before traded Vista stock. Through his conversations with all three sellers he ascertained that they were all employed by Vogel's Dairy together with other information necessary for his customers' cards. But he made no inquiry as to any connection they might have had with Vista. Indeed, it would appear that Meadows was satisfied to accept this no risk transaction at a reduced commission with a minimum of the inquisitiveness which the Commission deems mandatory to avoid violation of Section 5 of the Securities Act.

Sidoti, Frances and Meadows are chargeable with knowledge of those facts which a reasonable inquiry would have disclosed.[13/] They

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11/ Assurance Investment Company, Securities Exchange Act Release No. 7862 (April 15, 1966). Sutro Bros., 41 SEC 470, 479 (1963).

12/ Securities Act Release No. 4445, supra. The prior distribution of 1,000,000 shares of the stock of Trans Central Petroleum Corporation is a small comfort to the respondents since the policy of full disclosure, i.e. registration, attending a distribution "is equally applicable to the distribution of a new issue and to a redistribution of outstanding securities which 'takes on the characteristics of a new offering by reason of the control of the issuer possessed by those responsible for the offering.'" Ira Haupt & Co., 23 SEC 589, 595 (1946).

13/ SEC v. Mono-Kearsarge Con. Min. Co., 167 F. Supp. 248, 259(U.S.D.C., D. Utah, 1958), SEC v. Bond & Share Corp., 229 F. Supp. 88, 97 (U.S.D.C., W.D. Okla. (1963)).

knew or should have known that they acted as underwriters within the meaning of Section 2(11) of the Securities Act and participated in a distribution of Vista stock.[14/]

Counsel for Frances, Sidoti and Martire insists that the Division has failed to prove a violation of Section 5 of the Securities Act. But the sale of 60,000 unregistered shares of Vista stock by control persons adequately establishes the Division's prima facie case. Counsel overlooks the well-established principle of law that a person claiming the benefit of an exemption, whether he be the issuer or a controlling person or a broker or dealer, has the burden of proving entitlement to it.[15/]

Indeed, counsel appears uncertain as to whether an exemption should be claimed.[16/] However, to eliminate any doubt, it should be noted that the opinion letters did not, in fact, establish the basis for a valid exemption. They maintained that the stock had been held for investment since 1960 and a sale at this time, i.e. February 1, 1967, would not violate the provisions of Section 4(2) of the Act. This assertion ignored the fact that the holders of the stock were controlling

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14/ SEC v. Culpepper, 270 F.2d 241, 250 (C.A. 2, 1959); Cf. Assurance Investment Company, supra.

15/ SEC v. Ralston Purina Co., 346 U.S. 119 (1953); Gilligan, Will & Co. v. SEC, 257 F (2), 461 (C.A. 2, 1959), cert. den. 361 U.S. 896; Strathmore Securities, Inc., Securities Exchange Act Release No. 8207 (November 13, 1967).

16/ Counsel's brief at pages 66 and 67 reads:
"Is there the possibility that [the opinion letter] was valid? That even unknowingly, as with the Natko and Catherina shares, the same may have been legally transferred? x x x What of Section 4(b) of the Securities Act of 1933 and Rule 154 defining the terms therein. That was obviously the aim of [the] opinion letter which the Division never showed to have been incorrect."

persons. The letters also stated, further, that under Rule 154 of the General Rules and Regulations under the Securities Act each of the sales, although made by a controlling person, represented less than 1% of the outstanding shares of Vista and would therefore not be subject to restriction. Here the letter ignored the provisions of the rule relating to "group distributions."

The relevant provisions of Rule 154 declare that the sale of securities by the same person within the preceding six months shall not constitute a distribution if the total of the securities sold does not exceed one percent of the shares outstanding. The Commission has taken the opportunity on at least two occasions to clarify questions and to interpret and define Rule 154. Securities Act Release No. 4669 (February 17, 1964) repeats the one percent rule referred to above as a ready guide for routine cases to distinguish trading from distributions. The release cautions, however, that

> "Consideration must be given not only to sales by the specified control person but also the question whether such sales are, or may be, a part of a distribution being effected by a group of closely related persons of which the particular individual is a member, (sometimes hereinafter referred to as 'associate'). Rule 154 does not provide an exemption for portions of group distributions. If such a distribution is in progress, the offering by the group as a whole would have to be included in a single computation under Rule 154(b), and if this exceeded the amount specified, it could make the exemption unavailable."

In Securities Act Release No. 4818 (January 21, 1966), the Commission, among other things, repeated much of the foregoing from Release No. 4669 and added:

> "The broker is at least obligated to question his customer to obtain facts reasonably sufficient under the particular circumstances to indicate whether his customer is engaged in a distribution or is an underwriter."

It has been stated, heretofore, that Vista had outstanding about 2,000,000 shares. Within less than 45 days each of the three controlling persons sold 20,000 shares or about 1% of the total outstanding shares. There is no doubt that the Vogels and Levy were each aware of the activities of the others in the sale of the 45,000 Vista shares through Meadows. It is also obvious that on December 28, 1966, all three were preparing for initial sales of their stock.[17/] Overall, as a group, they sold 60,000 shares of Vista common stock or about 3% of the total outstanding shares in direct contravention and violation of Rule 154 and of Section 5 of the Securities Act. No registration statement under that section had been filed or was in effect with respect to those shares and no exemption from registration was available.

Meadows contends that the necessary finding of wilfulness cannot be made in support of the allegation of the violation of Sections 5(a) and (c) of the Securities Act since there must be specific proof of knowledge by Meadows that he was selling stock which was owned by a control person and that he knew the stock was unregistered. The Commission has so often defined the term "wilfulness" as used in the statute

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17/ On that date Harry Vogel transferred 5,000 shares to Natko, Levy transferred 10,000 shares to Caterina and Eugene Vogel broke his single certificate in the amount of 58,334 shares into two certificates - one for 5,000 shares - albeit it does not appear that he attempted to dispose of the 5,000 shares.

as to make it unnecessary to review and distinguish the criminal cases presented by Meadows in support of his position.

"It has been uniformly held that 'willfully' in this context means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the Rules or Acts."[18/]

The mails were used in connection with the aforesaid transactions in Vista stock. L. A. Frances, Ltd. is, of course, responsible for the wilful violations of the securities laws by its agent and manager.[19/] It is concluded, therefore, that during the relevant period respondents L. A. Frances, Ltd., A. Frank Sidoti and Louis Benjamin Meadows wilfully violated and wilfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act in the offer and sale of the common stock of Vista Industries Corporation when no registration statement had been filed or was in effect with the Commission as to said securities pursuant to the Securities Act.[20/]

18/ Tager v. SEC, 344 F.2d 5, 8 (C.A. 2, 1965); Norman Pollisky, Securities Exchange Act Release No. 8381, p. 5 (August 13, 1968); Hughes v. SEC, 174 F.2d 969 (C.A.D.C., 1949).

19/ Armstrong, Jones & Co., et al. v. Securities and Exchange Commission, unreported, C.A. 6, January 23, 1970.

20/ Moreover, even assuming reliance by Sidoti upon the advice of counsel, such reliance does not preclude a finding of willfulness within the meaning of Section 15(b) of the Exchange Act. Morris J. Reiter, 41 S.E.C. 137, 141 (1962).

Martire is the president and principal stockholder of Frances. Sidoti testified that Martire is Frances' sole stockholder and that the extent to which Martire concerns himself with the business of Frances is to telephone daily to consult with Sidoti as to "what is going on" * * * "what problems we have. The whole scope of things * * *." During the relevant period Martire visited Frances' office "two, three, four times a week" and would stay an "hour, two, three." Although Martire spoke with Sidoti, he did not examine any firm papers, accounts or other documents. Sidoti operated Frances and had complete authority to run the business.

The order for proceedings charges Martire with failing to supervise Sidoti in the operations of Frances with a view to preventing the violations of the Securities Laws found above. Section 15(b)(5)(E) of the Exchange Act provides:

> "For the purposes of this clause (E) no person shall be deemed to have failed reasonably to supervise any person, if
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> (i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and
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> (ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with."

It is abundantly clear that Martire's attendance at Frances and his communication with Sidoti as described in the record was not conducive to the type of supervision contemplated by Section 15(b)(5)(E)

of the Exchange Act.[21] Manifestly, Martire did not establish procedures necessary to prevent and detect the violations found above and accordingly, as charged, Martire has failed reasonably to supervise Sidoti in the operations of Frances with a view to preventing the violations of the securities laws found above.[22]

As heretofore indicated in SEC v. Vogel, et al., on October 27, 1967, Frances and Sidoti were preliminarily enjoined from further violations of Section 5(a) and 5(c) of the Securities Act. Apparently the court records indicate that neither Frances nor Sidoti filed answers to the complaint. On October 28, 1969, after the hearing in these proceedings had been concluded, plaintiff attempted to obtain a permanent injunction against Frances and Sidoti based upon their earlier defaults. However, counsel for Frances and Sidoti moved, by order to show cause, to set aside the defaults and for permission to enter a defense in the proceedings. On December 11, 1969, Judge Thomas F. Croake of the United States District Court for the Southern District of New York filed his "Memorandum" granting Frances' and Sidoti's motion, setting aside their defaults and permitting them to file an answer. In effect, therefore, the temporary injunction has been reopened.

21/ This 1964 amendment to the Exchange Act represented a codification of standards theretofore established by the Commission. Paine, Webber, Jackson & Curtis, Securities Exchange Act Release No. 8500 (January 22, 1969).

22/ Aldrich, Scott & Co., Inc., 40 S.E.C. 775 (1961); Luckhurst & Company, Inc., 40 S.E.C. 539 (1961); Paine, Webber, Jackson & Curtis, supra; Richard J. Buck & Co., Securities Exchange Act Release No. 8482 (December 31, 1968).

Public Interest

Respondents Sidoti, Martire and Frances urge that the public interest does not require the impositions of sanctions. Their brief cites several cases in which the Commission and the Courts have imposed mild sanctions. Division's brief goes to some pains to distinguish these cases. The short answer to respondents' argument, however, is found in the Commission's opinion in Century Securities Company; supra:

> "The remedial action which is appropriate in the public interest depends upon the facts and circumstances of each particular case and cannot be precisely determined by comparison with action taken in other cases."

Sidoti has been engaged in the securities business since 1955. He became president of his own firm in 1959. The firm went out of business in 1963 and he became manager of Frances in that year.

The instant proceeding is not Sidoti's first experience with disciplinary proceedings. District No. 12 of the National Association of Securities Dealers Inc. ("NASD"), on December 31, 1963, issued its "Findings, Opinion and Decision" in respect of complaints against V. S. Wickett & Company, Inc. and A. Frank Sidoti, its president. Sidoti was severely censured, his registration as a registered representative with the NASD was suspended for a period of one year and he was fined $1,000. The sanctions were predicated on violations of Regulation T, dual agency transactions and net capital violations.

At the time Sidoti purchased the 15,000 shares of Vista stock held in the names of Natko and Caterina, he was already well acquainted

with the Vogels and Levy as officers and directors of Vista. He had been trading in Vista stock for Frances, had made a number of so-called "due diligence" visits to the Vista offices and was fully aware that Vista was its own transfer agent. Under these circumstances it was not sufficient for Sidoti to accept the self-serving statements of the seller as to the transferability of these securities "without reasonably exploring the possibility of contrary facts."[23/] Indeed, Sidoti's shortcomings in this respect are emphasized by his neglecting to ask the most obvious questions before Frances made the first purchase of 15,000 shares, i.e., the relationships of Natko and Caterina to the controlling persons and how Natko and Caterina acquired their stock. In respect of the later transactions involving 45,000 Vista shares, whatever significance Sidoti may have attached to the opinion letters, the record establishes that he examined only the opinion letter covering Harry Vogel's 15,000 shares.[24/]

Sidoti's conduct in respect of the purchase and sale of 60,000 Vista shares demonstrated a gross indifference to the "searching inquiry"

23/ Securities Act Release No. 4445, supra.

24/ That Sidoti's relationship to Vista was something other than arm's length is apparent not only from his early acquaintance with the Vogels and his "due diligence" visits to Vista in connection with Frances activities as a trader in Vista stock but also from the fact that shortly after these transactions were consummated and on or about March 3, 1967 Mrs. Sidoti acquired an option to purchase 20,000 shares of Vista stock from Vista at 50 cents a share and made a down payment of $2500. The option was exercised in December 1967. At the end of March, 1967 Sidoti also purchased 40,000 shares of Vista at 20 cents per share from one Abraham Katz.

called for under the circumstances present in this case and, in general, a deliberate disregard of the duties and responsibilities of a broker-dealer. In the light of Sidoti's previous history of disciplinary action and the need to maintain the required standards of honest dealing and compliance with the securities laws, the public interest requires that Sidoti should be suspended from association with any broker or dealer for one year.

L. A. Frances, Ltd. bears responsibility for all of the foregoing activities of Sidoti and its registration as a broker or dealer should be suspended for 20 days.

Martire obviously had made no real attempt to establish supervisory procedures or in any way to supervise the activities of Frances. Under these circumstances and in view of the nature of the violations which occurred by reason of his failure in this respect Martire should be suspended from association with any broker or dealer for two months.

Louis B. Meadows has been in the securities business since 1959.[25/] He was a salesman until 1963 when he became an officer and director of a broker and dealer. Meadows is not a stranger to disciplinary proceedings. In a decision dated January 29, 1969, involving a broker and dealer of which Meadows was an officer and director, the Board of Governors of the NASD affirmed a decision of the District Business Conduct Committee finding that the broker-dealer had been in extensive violation of the net capital rule, among other things, and

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25/ File No. 8-12887-1, of which official notice is taken.

concluding that Meadows was among the principals responsible. Meadows was censured, fined $500 and suspended from the NASD for thirty days.

Meadows' asserted reliance on Kantrowitz because of the latter's greater experience hardly furnishes a basis for exculpation. At that time Meadows had been in the securities business for seven years not only as a salesman but also as an officer, director and owner of a broker-dealer. He knew or should have known what was required of him. Even if Meadows' explanations are accepted, they establish a clear case of abandonment of his functions and responsibilities. If is, of course, in Meadows' favor that he had no prior acquaintance with Vista's officers. He was engaging in a no risk transaction with a predetermined purchaser at a less than normal commission. But the public interest does not absolve Meadows' neglect or refusal to make the pertinent inquiries, the answers to which would have disclosed the sellers' relationship to Vista. Under these circumstances, and in the light of the prior disciplinary action against Meadows, he should be suspended from association with a broker or dealer for two months. Accordingly,

IT IS ORDERED that the registration of L. A. Frances, Ltd. be, and it hereby is, suspended for twenty days; and

IT IS FURTHER ORDERED that A. Frank Sidoti be, and he hereby is, suspended from association with any broker or dealer for one year; and that Lawrence Martire and Louis B. Meadows be, and they hereby are, suspended from

association with any broker or dealer for two months.[26/]

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

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within 15 days after service thereof on him. Pursuant to Rule 17(b) this initial decision shall become the final decision of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or 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 to review or the Commission takes action to review as to a party, this initial decision shall not become final as to that party.

Sidney Gross
Hearing Examiner

Washington, D. C.
April 3, 1970

26/ 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.