ADMINISTRATIVE PROCEEDING
FILE NO. 3-1660

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

JESS H. NEALY

(Pickard & Company, Incorporated, et al.)

(8-10500; 801-3605)

INITIAL DECISION

June 2, 1970
Washington, D.C.

Sidney Ullman
Hearing Examiner

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APPEARANCES: Paul Chernis, Chief Attorney, New York Regional Office, Bertram Cyril Singer, Dennis J. Block, and Ralph R. Scott, Attorneys, for the Division of Trading and Markets.

Wynn B. Stern, Jr., of Feldshuh & Frank, for Respondent Jess H. Nealy (withdrew as counsel following the hearing).

BEFORE: Sidney Ullman, Hearing Examiner

Nature of the Proceedings

These proceedings were instituted by order of the Commission dated August 5, 1968 ("Order") issued pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(d) of the Investment Advisers Act of 1940 ("Advisers Act") against Pickard & Co., Inc., ("Registrant" or "Pickard") its officers, John Sackville-Pickard ("John Pickard"), Peter Sackville-Pickard ("Peter Pickard"), and Joseph V. Shields, Jr. ("Shields"), and employees who served as salesmen, cashier and assistant cashier of the Pickard firm. As issued, the Order charged Registrant and 13 other respondents with violations of the Exchange Act, of the Advisers Act, and of the Securities Act of 1933 ("Securities Act"). However, at several stages of the proceedings and at various times commencing prior to a pre-hearing conference and ending at a time subsequent to the termination of the hearing itself, all of the respondents with two exceptions submitted offers of settlement which were accepted by the Commission, and agreed to sanctions imposed by the Commission. 1/ One exception was a former manager of Registrant's Miami Beach branch office, as to whom the proceedings have been dismissed by the Commission. The second is the respondent Jess H. Nealy, with respect to whom this initial decision is written.

The Order as originally issued alleged a large number of violations by one or more of the 14 respondents during the period from on or about November 1, 1963 to on or about May 20, 1968. However,

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1/ See page 2, following.

1/ Registrant, without admitting or denying the allegations of the Order, consented to revocation of its broker-dealer and investment adviser registrations, and to being expelled from membership in the National Association of Securities Dealers, Inc. ("NASD"). Securities Exchange Act Release No. 8447 (November 14, 1968); John and Peter Pickard, officers, directors and principal stockholders of Registrant, admitted for purposes of these proceedings the allegations in the Order and consented to their being barred from being associated with a broker-dealer and from being investment advisers. Securities Exchange Act Release No. 8433 (October 24, 1968) as amended by Commission order of November 6, 1968; respondents Flittman and Bendall admitted certain allegations in the Order and consented to being barred. Securities Exchange Act Release Nos. 8449 (November 14, 1968) and 8448 (November 14, 1968); respondent Morelli admitted certain violations and consented to being suspended for two months from such association,with employment thereafter to be only in a clerical non-supervisory position. Securities Exchange Act Release No. 8484 (January 3, 1969); respondents Baldwin and Barkley admitted certain violations and consented to being barred from such association except that after one year the Commission would consider their re-entry in non-supervisory positions and under appropriate supervision. Securities Exchange Act Release No. 8484 (January 3, 1969); respondent Shields, without admitting or denying the allegations, consented to a finding of failure to supervise and to his being barred except that with Commission approval he might after one year be associated in a non-supervisory position under proper supervision and after three years become associated as a partner, officer or director. Securities Exchange Act Release No. 8484 (January 3, 1969); respondent Rudich admitted certain violations and consented to being suspended for six months with a right to be employed in a limited non-supervisory clerical position after one month, and after the six month period Commission approval would be required for his employment in a supervisory position. Securities Exchange Act Release No. 8484 (January 3, 1969) as amended by Securities Exchange Act Release No. 8492 (January 13, 1969); and respondent Luca, without admitting any allegations, consented to suspension for six months except that after one month he might also be employed in a limited non-supervisory clerical position and after six months he might under certain conditions be employed in a supervisory position. Securities Exchange Act Release No. 8484 (January 3, 1969) as amended by Securities Exchange Act Release No. 8492 (January 13, 1969); respondent Osment admitted certain allegations in the Order and consented to being barred from association with a broker or dealer. Securities Exchange Act Release No. 8658, (July 25, 1969).

because of the ultimate disposition of these proceedings against all respondents except Jess H. Nealy, the relevant period of the Order, absent the amendments noted hereafter, would have been May 25, 1967 to August 17, 1967. Nealy was alleged during this period (1) to have wilfully violated and wilfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act in connection with offers, sales and delivery of the common stock of Dyna Ray Corporation ("Dyna Ray") when no registration statement was in effect as to said securities; and (2) to have wilfully violated and wilfully aided and abetted violations of the anti-fraud provisions of the Securities Act and of the Exchange Act and Rules thereunder in connection with transactions in the Dyna Ray common stock. However, pursuant to motions of the Division which I granted at the hearing, the terminal date of the relevant period with respect to the sale of unregistered stock in violation of the Securities Act (paragraph IIB of the Order) and also with respect to one aspect of alleged anti-fraud violations under the Securities Act (paragraph IIC(6)(a))was extended from August 17, 1967 to November 26, 1968, a date almost four months subsequent to the commencement of these proceedings.

The sole issues remaining before me are the alleged violations by Nealy, and the question of what if any remedial action with respect to Nealy is appropriate in the public interest or for the protection of investors, if the alleged violations or any of them are supported by the evidence.

The hearing was held in New York City commencing December 5, 1968, and continued with adjournments as to time and place until

April 11, 1969. Nealy was represented by counsel, and in accordance with the post-hearing procedures of the Commission's Rules of Practice at the conclusion of the hearing counsel for the Division and counsel for the then-remaining respondents, Nealy and Osment, were given a schedule for the submission of proposed findings of fact, conclusions of law and briefs. Following the termination of the hearing, however, Osment submitted an offer of settlement consenting to findings and to an order barring him from association with a broker or dealer. The offer was accepted by the Commission, as indicated in footnote 1, supra.

The Division filed its post-hearing documents. Thereafter, Nealy's counsel wrote to the Secretary of the Commission, asking permission to withdraw from the case in view of the fact that the firm had not been paid an agreed fee and assertedly was not in a position to spend the necessary time preparing post-hearing documents without compensation. The Secretary wrote to Nealy inquiring whether, in light of these changed circumstances, he wished to continue a defense against the charges in the Order. Nealy's reply was that although he was unable to afford further counsel fees he desired an initial decision. No post-hearing documents have been submitted on his behalf. 2/

After review of the record, including the post-hearing documents filed by the Division, and with recognition of the fact that

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2/ On March 11, 1970 Nealy wrote to the Secretary of the Commission requesting the early issuance of an initial decision in order that he might plan his future employment.

Nealy is no longer represented by counsel looking after his interests and that no post-hearing documents have been filed on his behalf, I have concluded, nevertheless, that the charges alleged in the Order have been proven and that the public interest requires that respondent should be barred from association with a broker or dealer.

Registrant and Nealy

Registrant was a Delaware corporation which became registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act on March 13, 1962, and as an investment adviser pursuant to Section 203(c) of the Advisers Act on November 24, 1964. It was a member of the New York Stock Exchange, the American Stock Exchange, and of the NASD. The firm suffered severe financial reverses and at the time of the hearing was in liquidation by a liquidator appointed by and under the auspices of the New York Stock Exchange, pursuant to an agreement by the firm, its voting stockholders and the Exchange.

Nealy became regional manager of Registrant's Phoenix branch office in March 1967 and remained with that firm until about February or March 1968. Thereafter he was a registered representative with Hornblower & Weeks, Hemphill-Noyes. Some of his alleged violations took place in or very close to the offices of the latter firm in the area of Los Angeles, California, apparently after that relationship terminated. The latest violations took place when Nealy was representing himself as a financial advisor or consultant to Dyna Ray, assisting it in raising capital by selling investment or letter stock.

Dyna Ray (and its Predecessor)

Dyna Ray was originally organized as Tobin Craft, Inc., a builder

of small boats. The company was incorporated in Delaware in 1959. Its name was changed to Dyna Ray Corporation in June 1967.

In January 1960, Tobin Craft sold 75,000 shares of Class A common stock to the public under a Regulation A exemption from registration under the Securities Act.[3/] All of its Class B stock was held privately. No registration statement had ever been filed for either Tobin Craft or Dyna Ray.

Tobin Craft ceased doing business in 1961 and was a dormant corporate shell without assets until early 1967. In December 1966 one Mac Elrod bought 52,500 shares of the total 55,250 authorized and outstanding shares of the corporation's Class B common stock for the sum of $15,000 and became its assistant secretary-treasurer and also its largest stockholder. He subsequently became president of the corporation and remained such until two weeks before the commencement of the hearing in these proceedings. On November 22, 1968, he resigned and was succeeded by Jack Ralston, of Denver, Colorado.

Elrod and Nealy had known each other since the latter part of 1966, and in May 1967 they became intimately associated and involved in the trading of Tobin Craft and then of Dyna Ray stock. Their activity resulted in substantial price rises during the relevant period. In March 1967 the price of the Tobin Craft Class A stock was quoted at 15 cents per share bid. By the end of May the bid price had risen to $4 per share, and the price continued its upward advance to a sale price of $7½ per share as Tobin Craft on June 21, 1967, and following the name change to a sale price of $10.25. The evidence shows that sales at

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3/ 7,500 shares appear to have been under option to the underwriter which was exercised, in which event the total outstanding Class A shares were 82,500.

these prices were made from the account, among others, at Registrant's Phoenix office, entitled "Mrs. Joyce Whitterick, nominee" which is discussed, infra.

On August 17, 1967, the Commission, commenting on the price rise of the Dyna Ray stock, ordered the temporary suspension of over-the-counter trading in it, inasmuch as

> "No current public information is available concerning the company's operations, financial condition, product lines, plant location or place of business, and recent efforts to communicate with company officials have been unsuccessful.
>
> It appeared that, under the circumstances, the Dyna Ray stock could not be evaluated by public investors on an informed and realistic basis." 4 /

The suspension was continued from time to time until a Commission order of October 12, 1967 5 / permitted the resumption of trading as of October 15, 1967, following the issuance by the company to stockholders and other interested parties of a release reflecting, among other things, that Elrod, then president and controlling stockholder, owned 747,700 shares of the company's 1,192,052 outstanding shares; that the company had $10,000 in cash; and that its only other assets included certain interests in subsidiaries which were not profitable ventures.

The evidence disclosed that at that time Dyna Ray had no product, no operating facilities and no employees other than its officers and directors. Between May 1967 and November 1968 it made investments in several small, totally unrelated developmental enterprises, none of which

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4 / Securities Exchange Act Release No. 8147

5 / Securities Exchange Act Release No. 8178

related to the boating industry, so that at one time during this period business was conducted through the following subsidiaries: Susan Roberts Enterprises, Ltd., one of whose operations was that of manufacturer of cosmetics; Ultrasonic Devices, Inc., a company which was in the developmental stage; Sani-matic Corporation, a subsidiary formed in late 1968, which was to (and later did) manufacture and sell portable toilets; Translaidor Corporation, which had for its purpose the translation of foreign languages into English and the assets of which were certain patent rights to a plastic card language converter; [6/] and a substantial stock interest (subject, however, to adverse claim) in Video Color Corporation, a non-public company engaged in the manufacture of fibre optics and special-purpose cathode ray tubes, and the operations of which included experimentation with a thin color television tube which was never in production commercially. None of the subsidiaries had any earnings and none had ever contributed funds to the parent corporation. Elrod, through Nealy, utilized the sale of equity securities to members of the public as a major source of financing, and the only funds received by the corporation came from the sale of its stock, discussed below, and from advances by Elrod, all or substantially all of which were repaid to him.

Conversely, the parent had lost money as a result of the operations of its subsidiaries. For example, it advanced to one subsidiary cash in

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6/ For a 51% interest in Translaidor Corporation, the company issued to the transferror, Mac Elrod, 700,000 shares of its common stock.

an amount substantially in excess of $100,000 during the period October 1, 1967 and September 30, 1968. Additional advances to or investments in other subsidiaries were made by the parent company, no part of which was ever repaid or returned. The total amount approximated $141,000 during the fiscal year ended September 30, 1968, and during the same period the expenses of Dyna Ray and its subsidiaries exceeded their income by a very substantial amount above this figure.

Nealy and Elrod

Nealy testified on August 22, 1967, in a pre-hearing investigation conducted by members of the Commission's staff, that he met Elrod for the first time in the latter part of 1966. In May 1967 Elrod interested him in a merger or acquisition of Video Color by Tobincraft. Nealy testified that he visited the Video Color plant with Elrod in El Segundo, California, and learned that Video Color needed substantial funds for equipment. He stated that he proceeded to assist in raising funds by offering the sale of Tobincraft stock. He stated that the shares belonged to Elrod and that Elrod advised that they'd been registered with the Commission and could be traded. The initial price at which sales were to be negotiated was $3,885 per 1,000 shares. Nealy further stated that he made no specific arrangement with Elrod for his compensation for selling the stock: at one point he said he expected Elrod would be reasonable, and at another he stated that he was expecting that he'd be given, for Pickard, any underwriting that might later be undertaken by the corporation. In any event, substantial amounts of money discussed, infra, were received by Nealy, initially in connection with profits from transactions in Tobincraft,

subsequently from sales of Dyna Ray, and eventually from other sales including Dyna Ray "investment" or "letter" stock belonging to Elrod and offered and sold as "management" stock. Large sums were paid by checks of Dyna Ray signed by Elrod and deposited in Nealy's bank account. Such payments, discussed in more detail below, are listed on Dyna Ray's books as commission to Nealy and were payment for the sale of its stock. The payments were not made to Pickard & Co. but to Nealy directly, although Nealy testified at the investigation of August 22, 1967, that as of that time Pickard had received the commissions and that he was paid 40 percent of Pickard's commissions. Nealy also received from Elrod and from Dyna Ray substantial blocks of stock, discussed below. The precise details of any specific arrangement between the two men, however, were never testified to. They were not obtained in Nealy's pre-hearing testimony, and when Nealy was called as a Division witness at the hearing he refused to testify, claiming his privilege under the Fifth Amendment.[7/] Elrod, apparently a sick man at the time of the hearing, was unable, according to his doctor, to travel to New York City from California.[8/] No witnesses were called to testify on behalf of Nealy. However, one witness who purchased "management" or "investment" stock from Nealy on October 4,

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7/ His testimony at the pre-hearing investigation on August 22, 1967 was in some respects evasive and in some respects at variance with the facts.

8/ Near the close of the hearing, Division counsel requested a further adjournment in order to elicit this testimony from Elrod. Because of the financial burden on Nealy, who had travelled from his home in California on several occasions in connection with these proceedings, and for other reasons not necessary to detail, I denied the application. I also denied a Division application to take Elrod's testimony by deposition at that juncture of the proceeding. The information disclosed by counsel indicated that Elrod was, indeed, a very sick man at the time.

1968 was told by Nealy that his job was to raise capital for the company and that he received a commission based on the amount of capital he was able to raise.

The "Joyce Whitterick, nominee" Trading Account

On or about May 29, 1967, Nealy opened an account in the Phoenix Branch office of Pickard & Co. in the name of "Joyce Whitterick, nominee." In his investigative testimony Nealy concealed, by devious answers to questions, the fact that Joyce Whitterick was the maiden name of his wife, from whom he was estranged. When Mrs. Joyce Whitterick Nealy was called by the Division to testify as to the circumstances of Nealy's opening this account under a power of attorney prepared by a lawyer in Texas to whom Nealy had sent her, Nealy's counsel objected to her competence to testify against her husband. Counsel's argument that Mrs. Nealy was totally incompetent to testify in this proceeding was rejected, and I stated, with a view to recognizing a privilege against the disclosure of confidential communications between husband and wife, that I would rule on objections made to specific questions asked of the witness. Objections were sustained or overruled on that basis. (The testimony of Mrs. Nealy was given voluntarily, and no question of her privilege was involved). Respondent's counsel persisted in his objections and moved to strike the wife's testimony. I requested and received briefs from counsel on this issue and on May 23, 1969, issued a memorandum ruling denying this motion and admitting into evidence certain letters between the husband and wife with respect to which

I had reserved decision. A footnote in my ruling stated:

> "24/ There is no intention herein to evaluate or pass upon the credibility of the testimony or documentary evidence under discussion. No such determination can or should be made prior to the receipt of post-hearing documents from the parties and consideration of the entire record in the proceeding."

Now, after having reviewed the record and the prehearing testimony of Nealy, I have no doubt about the correctness of an allegation of fraud in the Order that Nealy

> ". . .effect[ed] transactions in the common stock of Dyna Ray by and through an account allegedly of a customer of the firm when in fact such offers and transactions were being made by Nealy and said account was being used as a trading account for Nealy. . . ."

Entirely apart from the wife's testimony, I now find that there is no question but that Nealy controlled the account, used it (and other accounts discussed below) in buying and selling Tobincraft and Dyna Ray stock, and received proceeds or profits generated by transactions in the account.[9/] These proceeds totalled at least $18,360, and this amount

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9/ During the course of the hearing I overruled objections of respondent's counsel which were predicated on the difference in names, viz, Tobincraft and Dyna Ray.

was paid for by four checks drawn to the order of "Joyce Whitterick, nominee" between June 19, 1967 and July 7, 1967.[10/] James Grimm, an employee of Pickard who did the banking as well as some filing for the firm, and who also ran errands for the firm and for Nealy (including picking up and returning Elrod to and from the airport), actually cashed the checks after Nealy endorsed them, and obtained at Nealy's request, bank cashier checks and cash which he delivered to Nealy and on one occasion to Elrod. He also testified that on occasion he saw Nealy and Elrod share or split up large batches of such cash.[11/]

The nominee account also was used by Nealy to accomplish purchase and sale transactions which not only generated profits for Nealy but also helped to increase the price of the stock being traded. Between May 31 and June 7, 1967, Nealy acquired from customers or other persons who visited registrant's office, 3,020 shares of Tobincraft Class A common stock which he placed in the Whitterick account. Moreover, from the date May 29, 1967, when the nominee account was opened, to August 17, 1967, Nealy purchased for that account approximately 9,000 shares of Tobincraft or Dyna Ray stock. The Division's exhibits also show that during the same period Nealy sold from the Whitterick account

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10/ The proceeds were received by Nealy, except to the extent of a small "closing balance" paid to Mrs. Nealy who was then living in Houston, Texas. She testified that she received no confirmations of trades, nor monthly statements on the nominee account, and no proceeds except for a check received in December 1967, when the account was closed. I discredit testimony by Mrs. Spearnock, former cashier of registrant's Phoenix branch office, that Mrs. Nealy was present at that office at the time of delivery of the first of the four checks, inasmuch as I believe her memory was faulty on this one point.

11/ Elrod visited the Phoenix office of Pickard & Co. and conferred with (continued)

a total of approximately 12,000 shares of such stock. Thus, the source of the above proceeds paid to Nealy from the Whitterick account may be found in Division exhibits consisting of Pickard's records on the nominee account.

Control of the Market Price

In May 1967, Nealy spoke with Ira Alpert, one of registrant's order clerks at its main office in New York City, and advised that registrant would be making a market in Tobincraft, would be taking an interest in and buying the stock, and that he wanted Alpert to keep him posted on the stock and to keep registrant's bid price higher than that of other brokers trading the stock. Nealy spoke with Alpert by telephone about a half dozen times a day with respect to Tobincraft (and Dyna Ray) prices during the period May 1967 until the suspension of trading in Dyna Ray in August 1967. Alpert bought or sold shares only on instructions from Nealy as to price and quantity.[12/] Tobincraft, or Dyna Ray, Alpert testified, was a "special situation," and most purchases were made on Nealy's instructions for two accounts: Whitterick and Domb.[13/] He usually obtained from

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11/ Nealy several times during and after May 1967. Nealy had a telephone on his desk which was reputed to be solely or at least primarily for calls to or from Elrod, who was then living in New York City. Unquestionably, it was used for discussions of Dyna Ray transactions.

12/ There were rare exceptions. For example, the telephone operator at the New York office bought 100 shares of Dyna Ray and the shares were obtained for her from a Pickard customer without indication of Nealy's participation in the transaction.

13/ Domb had been recommended to Nealy by Elrod.

Nealy, either prior to the market opening or after the close on the day before, the prices at which trades might be made at the opening. Alpert testified:

> "There were about four other brokers making a market in the stock. I would have to call each one of them and find out how their market was. I would have to go and bid a higher price when other people called us up."

These were Nealy's instructions.[14/]

Despite the deplorable financial picture of Tobin Craft in May 1967 and the absence of any operating earnings of the company, Nealy was successful in raising the market price from $3.50 on May 29, 1967, when he began his accumulation of stock by purchasing 300 shares for the Whitterick account, to the selling price of Dyna Ray stock at $10.25 on August 14, 1967, just prior to the suspension

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14/ John Hansgen, manager of the Phoenix branch office and a subordinate while Nealy was the regional manager, testified that Dyna Ray was not traded in the normal way utilized in over-the-counter trading in that he would not request New York to fill a purchase order unless he'd been informed by Nealy that stock was available. He also testified that Nealy would buy stock through the trader in New York and would then solicit Phoenix representatives, inquiring whether they could use it. Often purchases were made by Alpert for Nealy without indication of a customer's name. The Division argues that the account was used for the purpose, among others, of "parking" Dyna Ray stock to maintain its price. The evidence supports this argument.

of trading. In addition to the trading activity of registrant which was engaged in at Nealy's direction, he utilized the Pickard name in its "pink sheet" quotations to raise the price, and he employed fraudulent selling practices described below. And apart from the Whitterick account, he also used accounts at the Phoenix office in the name of Domb and of "Mac Elrod in trust for Dyna Ray," as well as other Elrod accounts to assist in accomplishment of the manipulative activities.

The evidence shows that at the instigation of Nealy, Pickard placed quotations in the "pink sheets" on Dyna Ray commencing May 22, 1967. During the period June 6, 1967 to August 17, 1967, the date of trading suspension, Pickard bids appeared every trading day except August 7, 1967. And during this period its bids were high on 27 days, tied for high with another broker-dealer on 12 days, and on the 13 other trading days they were lower than the bids of that same broker-dealer. On May 25, 1967, the first day of the relevant period, registrant's bid was $3.00 per share; on the day trading was suspended its bid was $8.75. A schedule prepared from the "pink sheets" by a Division investigator shows that shortly after Nealy's instructions to Alpert and between the dates June 1 and June 12, 1967, registrant's bid and ask quotes moved as follows on the trading dates indicated:

Date	Registrant's Quotes
June 1	3 - 4
June 2	3-3/4 - 4-1/4
June 5	No Quotes
June 6	4-1/4 - 5-1/4
June 7	4-7/8 - 5-7/8
June 8	5-3/8 - 6
June 9	6-1/8 - 6-7/8
June 12	7-1/2 - 8-1/2

Thereafter the quotes were substantially constant or somewhat lower until July 11, when registrant bid 8½ - 9, an increase of 1-3/8 in bid and ask prices over those of the previous day. Slowly and sporadically quotes were thereafter increased to 9½ - 10½ on August 8 through August 11, approximately one week prior to the suspension order of August 17. Registrant was obviously the principal market maker in Dyna Ray stock, and the varied activities, including the sales methods exemplified below by evidence from several investor witnesses demonstrated aspects of Nealy's technique in defrauding members of the public by selling unregistered securities by a fraudulent scheme and device.

Fraudulent Sales of the Stock

Nealy generated considerable interest in the stock among the registered representatives at the Phoenix office. At one time he showed them a brochure with pictures of the thin television tube of Video Color, and spoke about the proposed merger of Tobin Craft with the manufacturer of the tube and the proposed acquisitions of other companies. He stated that this activity would raise the price of the stock considerably; that it would go up $25 per share or better when the announcements were made.

James Grimm, described above as the employee who cashed for Nealy the Pickard checks payable to the "Joyce Whitterick, nominee" account also testified that Nealy spoke of Dyna Ray's

> ". . . fantastic product which was a TV set, portable, and light, very thin and could be stuck almost anywhere, and it was easy to carry, lightweight."

He also testified that sometime later Nealy said the stock could possibly go up to $100, like Teledyne and Itek, in a relatively short time.

JJF, of Prescott, Arizona, is a correspondent for the Arizona Republic. He met Nealy for the first time at the Phoenix Airport in early 1967, and Nealy stated that he was going to the Pickard firm and would have some good speculative stock. JJF visited Nealy on several occasions at Registrant's office.

On June 15, 1967, JJF bought 100 shares of Dyna Ray at $7.50 per share. He was told by Nealy about the color television tube of National Video; that Dyna Ray controlled National Video; that other companies such as RCA would undoubtedly be interested in the tube when it was fully developed; and that Nealy was one of the "principal underwriters" of Dyna Ray and had helped to bring to it other acquisitions. Nealy also stated that the stock was "highly speculative, and that it could go to $100 a share very easily." The customer was told nothing of Dyna Ray's lack of earnings or financial condition. He had trusted Nealy and stated at his deposition taken in Phoenix during the course of the hearing:

". . . if you can't trust your broker, who in the hell can you trust"?

The witness testified that on May 8, 1968, Nealy told him that the stock was 8½ - 9½ and that in 60 to 90 days it should be "up considerably." On May 29, 1968, JJF was thinking about liquidating his interest in the stock and spoke with Nealy. Nealy advised that the stock was then 9½ - 10, that an article would appear in Time Magazine on Video Color the following week, and that "so far as Dyna Ray was concerned they were over the hill now." The witness testified that the article did not appear in Time.

As indicated above, the fraudulent selling activities of Nealy continued long after his departure from Pickard in February or March 1968, at about which time he went with Hornblower & Weeks, Hemphill-Noyes in Glendale, California. Following that employment he was "on his own" serving as "financial consultant" to Dyna Ray. The Division's motions to extend the terminal date of the relevant period from August 17, 1967 to November 26, 1968 for the Section 5 violations and, as indicated below for anti-fraud charges under Section 17(a) of the Securities Act, were granted on the basis of counsel's contentions that during this latter period the violations continued until approximately the November 26 date.[15/] I find that those contentions are supported by credible evidence which has not been

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15/ No evidence of violations after that date was offered or received, and Division counsel related the November 26, 1968 date to the fact that on November 22, 1968, the Commission instituted an action in the United States District Court for the Southern District of

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controverted. During this later period a significant aspect of the plan was to sell "management"stock of Elrod at a fraction of the over the counter market price to which Dyna Ray had risen.

D.W.P., an attorney living in Glendale, California, heard of Dyna Ray from friends sometime in the summer of 1968, but was advised not to buy. In October 1968, he heard that the stock had appreciated considerably in price and now had much greater potential. He testified that it was selling in the low twenties or high teens. He also heard that "management"stock or "letter stock" was available, that one and one-half million dollars of such stock would be sold by Dyna Ray and that if he wanted some at $5.50 per share he should contact Nealy.

The witness found Nealy in Glendale and asked him to come to his office and discuss a purchase of "management" stock. After a brief discussion and Nealy's display of "this little bit of literature, very limited . . . on the type of work that Dyna Ray was in; land development, hotels, gas and oil are the three things that I recall,"[16] the attorney bought 4,000 shares at $5.50 per share.

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15 / (continued)
New York seeking to enjoin the sale of Dyna Ray stock by Nealy and others, including Dyna Ray Corporation and Mac Elrod, in violation of Sections 5(a) and 5(c) of the Securities Act. Nealy, without admitting or denying the allegations of the complaint with respect to prior violations, consented to the entry of a final judgment of permanent injunction and was so enjoined by order of the court entered on December 10, 1968.

16 / With the contemplated change in management when Elrod was to be succeeded by Ralston as president, the company plan was to dispose of its assets and invest or operate only in gas and oil or natural resources ventures. Although Ralston took over as president in November 1968, he became active in Dyna Ray in August or September and his plan to dispose of subsidiaries in non-related fields was already being implemented in various negotiations.

Nealy stated that he hoped the stock would some day be registered with the SEC, and that it would remain available for purchase for only a few weeks. Nothing was said about the company's financial condition, earnings, or assets. (The attorney testified he was not interested in earnings, and had previously heard the company had none.) He signed an investment letter and paid by check in the amount of $22,000. He testified that the primary consideration motivating the purchase was the recent rise in the over-the-counter price of Dyna Ray and the fact that it was then selling for about four times the price of the investment stock.

C.B. Jr., a fireman living in Glendale heard of Dyna Ray from a co-worker at the fire station in 1968, and in July he bought some shares from a broker-dealer other than Pickard. He testified that in October 1968 his friend told him that if he wanted to buy Dyna Ray,

> ". . . a fellow by the name of Nealy would be at a particular coffee shop on my way home, so I stopped by there to see him and -- well, that is when I purchased it."

Nealy was speaking with several people when C.B. Jr. approached him, and the substance of the conversation with C.B. Jr. was Nealy's response that he "guessed" he had 1,000 shares of Dyna Ray the fireman could buy and that he would meet him at (or near) the office of Hornblower and Weeks. The fireman went home for his check book, and found Nealy speaking on the telephone at (or near) the office

of Hornblower & Weeks. While continuing his telephone conversation, Nealy handed the customer a form of investment letter for signature and told him to make his check for $5,500 payable to Dyna Ray. No further discussion took place. The fireman testified that he was induced to make the purchase largely because of the difference between the over-the-counter market price and the $5.50 price of the "letter stock." He testified

> ". . . this was $5.50 per share, the stock was selling for $10, or something, I don't know what it was selling for, a lot more than that at the time."

Dr. J. W.B., also of Glendale, had just begun to practice dentistry in the summer of 1968. He was advised by friends that Dyna Ray investment stock was available at far below the market price but only in blocks of $25,000, inasmuch as it could not be sold to more than twenty-five persons. Thereafter, in early October he saw Nealy outside the office of Hornblower & Weeks and arranged to meet him on the second floor of the same building. Nealy showed the dentist some pamphlets concerning the company (and its subsidiaries or investments in other companies and their products). The witness testified, as to their conversation:

> "Well, he -- of course, he said that he hoped to see the stock in the area -- it sounded fantastic -- two to three hundred dollars within a few years.
>
> Of course, you kind of take it with a grain of salt, but he hoped to see the stock out of registration in the area of the forties; when it was out of registration in the area of the forties."

He also testified that Nealy was optimistic that this would be registered stock in a few months; that he stated that Video Color had a contract with one of the military forces (the witness thought the Navy) for some tube, and that Nealy said nothing about the assets or earnings of the company. Nealy did say, however, that with the projected acquisitions and spin-offs of companies by Dyna Ray the ultimate value of the stock might be worth $200 to $300. He also stated that Video Color stock was about to be spun-off and if the purchaser wanted to participate, the Dyna Ray stock had to be bought "right away." The customer asked for one thousand shares, signed an investment letter, and gave Nealy a check for $5,500. He also testified that three of his friends, J.E., D.W., and F.P. also bought investment stock from Nealy.

Miss A.M.H., of Glendale, an accountant and office manager, purchased 200 shares of Dyna Ray in May or June 1968 in an over-the-counter transaction handled by a neighbor, Eugene Ashbrook, apparently a registered representative with Hornblower & Weeks. In late September or early October 1968 she met Nealy at the home of Ashbrook, who introduced Nealy as a man working with Dyna Ray, helping to put the company together and obtaining finances for it through the sale of "management" stock. Although Nealy had with him some literature relating to Dyna Ray and its activities, Miss H. did not spend much time reviewing the material and was not familiar with the contents. There was little or no discussion of Dyna Ray's financial condition, and no discussion of per share earnings or income. However, Miss H.

was told that the Dyna Ray stock would be registered in the near future, that this stock would be sold only to sophisticated investors, and that this was the final offer of management stock at $5.50 per share. At the time of this meeting, Dyna Ray was selling in the over-the-counter market at $14 or $15 per share. Nealy told the customer that the value of Dyna Ray stock and of the companies it would be spinning-off should total $150 to $200 per share within approximately 18 months. Here, again, the substantial difference between the price of the "management" stock and the stock trading over-the-counter was a consideration underlying the purchase. Miss A.H. bought 2,000 shares at $5.50 per share. This purchase was made with the roommate of Miss H. as co-owner, and both she and the roommate signed an investment letter for Nealy.

R.M.J., of Tujunga, California, Senior Sales Representative of Lockheed of California, purchased 100 shares of Dyna Ray stock in the over-the-counter market on May 5, 1968 at $7.50 per share. After conversations with a co-worker, R.W.R., he became interested in the possibility of buying "management" stock and invited Nealy to his office on October 4, 1968. Nealy stated that Dyna Ray was trying to acquire additional funds to support a subsidiary company; that Dyna Ray was trying to raise $2,000,000, but that sale of "management" stock would be limited to 100 persons. The witness was impressed by the price rise in the stock he purchased on May 5, 1968 for $7.50 to its price of $14 to $15 per share on October 4, 1968.

Nealy described the various products of Dyna Ray and mentioned particularly the fact that Video Color products were in use in some Lockheed vehicles. The customer knew this,generally, and after the purchase described below he ascertained that cathode ray tubes manufactured by Dyna Ray were supplied to Stromberg-Carlson for certain units used in a particular military aircraft. During the conversation Nealy stated that Dyna Ray contemplated a spin-off within 30 days of Video Color stock at the rate of 6/10ths of a share of Video Color for each share of Dyna Ray, and that he anticipated that the Video Color stock would then sell for approximately $10 a share in the over-the-counter market. Nealy also advised that management hoped to spin-off Sani-matic stock, probably in January 1969, but said nothing about the price at which such stock might be sold. He did state that Sears Roebuck was the key distributor of Sani-matic products, that Dyna Ray had acquired five oil companies, and that he expected the price of Dyna Ray stock to rise to $40 per share by January 1969, (including the value of spun-off stock) and to $200 per share within one year, if everything went great. Nealy also stated that Dyna Ray intended to file a registration statement with the SEC for the "management" shares by November 15, 1968; that the Video Color and Sani-matic spun-off stock would in any event be freely tradable without registration and would recover for the customer his investment in the "management" stock. He also said that within one week from October 4, 1968, the price of those shares would go from $5.50 per share to $8 per share. R.M.J. purchased 2,000 shares at $5.50 per share and signed

a letter of investment. This purchase was made in a joint venture with two other individuals who signed no letters of investment but were present throughout the discussion. Nealy's explanation of the purpose for selling unregistered shares was that the company wanted to raise the additional capital without the delay entailed in registration with the SEC, but that registration of the stock would follow as indicated above.

RWR, of Glendale, graduate of Princeton University, was employed by Lockheed California Company for approximately 28 years and at the time of his testimony was its Director of Marketing Administration. He heard of Dyna Ray Corporation in May 1968 from a subordinate employee and bought 1,000 shares at $8 per share. He watched the price rise in over-the-counter trading to approximately 15 - 16, and on October 2, 1968, he received a call from Ashbrook, who told him that neither he nor his firm could get involved but that if RWR was interested in an opportunity to buy Dyna Ray investment stock he should contact Nealy at a telephone number which Ashbrook supplied. Following a telephone call Nealy came to his office at Lockheed later that day. Also present was FCC, the Director of Finance at Lockheed California. Nealy reviewed some brochures and described some of the divisions or companies of Dyna Ray and their activities, products and prospects. He stated that Video Color had a thin (one inch) television tube which was still in a developmental phase, but that three of the tubes had been sold to the Navy under

a development contract, two color tubes and one black and white. He also described the small card device of Translaidor Company and spoke of exploratory oil drilling activities with gas-producing wells. He stated that Sani-matic's product was being sold by Sears Roebuck, and that both Sani-matic and Video Color stock would be spun-off by Dyna Ray; one of them in one month and the other in January 1969. The rate of exchange for Video Color was to be 6/10th of a share for each share of Dyna Ray.

Nealy also stated that after the spin-off he expected Video Color to open for trading at about $10 per share, and it followed that purchasers of "management" stock could recover their investments purely on the basis of selling the spun-off stock, the sale of which would not be restricted. Nealy said nothing and showed nothing to RWR or FTC about the financial condition of Dyna Ray, its assets, or its lack of earnings.

In response to a question, Nealy stated that he had been employed by Hornblower & Weeks but was currently an investment banker engaged in raising capital for Dyna Ray. He stated that the total offering of investment shares amounted to $2,000,000 and that he had $100,000 of stock remaining, which he would sell at $5.50 per share. He also stated that the United States Trust Company had purchased

50,000 shares at that price one week earlier, that the price of investment shares would increase to $8.50 per share in the following week and that Dyna Ray would file for registration of the shares within one month.

R.W.R. and F.C.C. advised that they would buy 3,000 shares and 1,000 shares, respectively. Nealy responded that he was limited to 25 separate sales of the stock, and accordingly a purchase of 4,000 shares was arranged, with R.W.R. taking 75% of the purchase as a joint venture and F.C.C. the remaining 25%. R.W.R. gave Nealy a check for $22,000, received a form of investment letter which he had his secretary type and which he signed and returned to Nealy. F.C.C. did not sign this or any other investment letter.

R.W.R. indicated that he had little confidence in what he was told by Nealy at this meeting and that his purchase was premised primarily on the bargain price of $5.50 per share at a time when the outstanding shares such as those he bought in May were selling over-the-counter for $16 per share. He subsequently received 2,000 shares of Video Color stock in the spin-off, at the rate of ½ share to 1.[17/] The only evidence in the record with respect to the price of the Video Color stock is an indication that at one time shortly before R.W.R.'s testimony at the hearing he was

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17/ Video Color never came under the control of Dyna Ray, but Dyna Ray's holdings were actually spun off to shareholders at the rate indicated.

advised by Ashbrook that it was 2-3/4 bid.

After his purchase R.W.R. advised R.M.J., whose testimony with respect to his purchase of investment stock is discussed above, of the opportunity to buy such stock.

Additional Compensation to Nealy.

The salesof Dyna Ray stock by Nealy in September and October 1968 were the basis for substantial payments to him in October and November 1968. The cash disbursements journal of Dyna Ray reflected the issuance to him, as commissions, of the following checks on the dates indicated:

October 15	$ 5,000
October 21	30,000
October 27	15,000
November 8	5,082
Total	$ 55,082

In addition, the Division's summary from the records of Dyna Ray's transfer agent show that on November 4, 1968, 4,000 shares of Elrod's stock was transferred to Nealy. Another summary of such records shows that on October 10, 1968, 7,000 shares of Dyna Ray original issue shares were transferred to Nealy. These payments and transfers are consistent with the testimony mentioned above to the effect that Nealy stated that his commission was based on the amount of stock he sold.

The Division's exhibits and testimony reflect, from the records of the transfer agent, Register and Transfer Corporation, that during the period June 27, 1967 to November 22, 1968, there

were transferred out of Elrod's account a total of 588,545 shares of Dyna Ray stock to approximately 40 transferees. It should be pointed out, however, that of this amount almost 450,000 shares were transferred on November 13, 1968 to Timkin C.A. of Caracas, Venezuela, apparently in exchange for oil and gas or natural resource properties during the process of changing the nature of Dyna Ray's ventures; that 10,000 shares were transferred to Jack Ralston on November 16, 1968, apparently in connection with his take-over of the management of Dyna Ray; and that at an earlier date, December 23, 1967, 40,000 shares had been transferred to L.R. Schruben, apparently in connection with the disputed acquisition by Dyna Ray of its interest in Video Color Corporation. Also included are the 4,000 shares transferred to Nealy, as mentioned above. Nevertheless, over 100,000 shares were transferred to purchasers of the shares, including several hundred shares to Pickard which probably were ultimately purchased by members of the public.

The schedule also shows that on July 14, 1967, 3,000 shares of Elrod's stock were transferred into three named accounts in the Pickard office: 1,000 shares to R.N.E.; 1,000 shares to R.E.K., and 1,000 shares into the Whitterick, nominee account. These shares were the subject of testimony by Nealy at the pre-hearing investigation in which he stated that in May 1967, Elrod had asked him to dispose of 20,000 or 21,000 shares at $3,885 per thousand shares but that only 600 or 700 shares had been sold out of Elrod's trust

account for Dyna Ray as of August 22, 1967. The schedule shows, however, that as of that date several thousand shares had already been transferred out of Elrod's account.

Another schedule taken from the records of the Register and Transfer Company reflected the issuance of original issue (authorized but unissued) shares of Dyna Ray during the period June 27, 1967 to November 22, 1968. (One issuance which took place subsequent to the terminal date of the relevant period has been disregarded). Approximately 2,237,859 shares of such stock were issued to approximately 140 transferees during this period.

Conclusions

Violations in the Sale of Unregistered Stock

The Order, as amended, charges that during the period May 25, 1967, to on or about November 26, 1968, Nealy violated Sections 5(a) and 5(c) of the Securities Act in offering, selling, and delivering after sale, using means of interstate commerce or the mails, Dyna Ray shares when no registration statement was in effect as to such securities. The evidence of sales of thousands of shares of the stock to a host of customers, indicated above, leaves no doubt that he violated these sections during the relevant period.

The record is replete with uncontroverted evidence of interstate sales, long-distance telephone calls, transmission of confirmations and stock certificates[18/] through the mails, payment for stock by

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18/ Employees of Pickard testified to packages of such certificates addressed to Nealy being received through the mails at the Phoenix office from Elrod, then living in New York City.

checks of customers, as well as other evidence of interstate activity by Nealy in the sale of the stock. As indicated above, it was established beyond dispute that no registration statement had ever been filed for Dyna Ray shares. The burden to prove an exemption from the registration requirements of the Securities Act is on one who would rely on it.[19/] Here no plea or effort to claim exemption or to deny interstate aspects of the trading has been made and none is discernable from the evidence apart from the fact that, as noted above, a relatively small number of Tobin Craft shares were sold under a Regulation A exemption in 1960. Moreover, as president and principal shareholder, Elrod was clearly a control person of Tobin Craft and of Dyna Ray, and registration of his shares in the distribution was a requirement to their being offered or sold to the public.[20/]

There seems little doubt that Nealy, an experienced salesman, knew that the massive distribution of original issue stock and of the so-called "management" stock of Elrod to a large number of persons in the fall of 1968 (at times he said sales could be made to no more than 25 persons: at another time to no more than 100 persons), was in blatant disregard of the provisions of Sections 5(a) and 5(c). This was, of course, an integral part of the fraudulent scheme. Nealy

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19/ SEC v. Ralston Purina Co., 346 U.S. 119, 126 (1953); Gilligan, Will & Co. v. SEC, 267 F.2d 461 (C.A. 2, 1959).

20/ Ira Haupt & Company, 23 SEC 589 (1946).

wilfully violated the provisions of Sections 5(a) and 5(c), under the well-recognized principle that as long as a respondent knows what he is doing, his acts are wilful.[21/] Apart from that, and of further significance, it is my conclusion that his violations of the Section were planned and intentional.

Anti-Fraud Violations

The Order, as amended, charges in effect that from approximately May 25, 1967 to on or about August 17, 1967, Nealy wilfully violated Section 17(a) of the Securities Act and Sections 10(b) and 15(c) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder, in effecting, through the use of interstate commerce and the mails, over-the-counter transactions in Dyna Ray, by means of untrue statements and omissions of material facts, and that he engaged in fraud and deceit by acts and a course of conduct described in the Order in six numbered subparagraphs of paragraph IIC. As to the sixth subparagraph, the Division moved to extend the terminal period August 17, 1967 to November 26, 1968, with respect only to alleged Section 17(a) violations and not with respect to anti-fraud violations under the Exchange Act.[22/] My order granted the motion, with the result that the relevant period of Nealy's selling activities was extended to November 26, 1968, insofar as Nealy

> "(6) [made] untrue, deceptive and misleading statements of material facts and [omitted] to state material facts to purchasers and prospective purchasers of common stock of Dyna Ray concerning, among other things:

21/ Thompson Ross Securities Co., 6 SEC 1111 (1940).

22/ The purpose of the Division's motion was to include as fraudulent those sales by Nealy which took place during the period August 17, (continued)

(a) the financial condition, business operations, products, offices, officers, and principals of Dyna Ray."

The first of the six subparagraphs spelling out in some detail the nature of the alleged fraud asserts that from on or about May 25, 1967 to on or about August 17, 1967, Nealy did:

(1) recommend the purchase of, offer and sell to customers the speculative and unseasoned securities of Dyna Ray without having first made reasonable and diligent inquiry and in disregard of information as to the past and present financial condition and business operations of Dyna Ray.

Except as to the time element, the nature of the fraud charged in both of these subparagraphs is essentially the same and is proven by credible and uncontroverted evidence of above-described sales activity (in both Glendale and Phoenix as to subparagraph (6)), and in Phoenix as to subparagraph (1). Nealy disregarded the business history of Dyna Ray and the fact that it was sustaining losses and could generate no revenue except through the sale of its stock; he

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22/ (Continued) 1967 to November 26, 1968, as to which period the Section 5 allegations had been extended earlier in the year.

I see no practical difference in this limitation to Section 17(a) of the Securities Act, for the Section includes offenses similar to the anti-fraud provisions of the Exchange Act. It makes it unlawful, in the offer or sale of securities by interstate means,
"(1) to employ any device, scheme, or artifice to defraud, or
(2) to obtain money or property by means of any untrue statement of a material fact or any omission 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 transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

And even in the rare situation where Section 17(a) alone was relied upon in charging fraud in the sale of securities, the court held not only that it adequately charged the fraud but also that its provisions were not circumscribed by the fact that the particular securities were exempt from registration. Newman v. Weinstein, 299 F. Supp. 440 (S.D. Ill. 1964).

misrepresented the extent of Dyna Ray's control of Video Color and the experimental and unproven state of its tube.[23] Moreover, the predictions of price rises were utterly unfounded and without basis in fact, and constituted reckless misrepresentations. Time and again the Commission has found such conduct to be fraudulent.[24]

Subparagraph (2) charges that Nealy did

"(2) maintain, dominate, control and manipulate the the market for securities of Dyna Ray";

and subparagraph (4) charges in effect that Nealy used the name and prestige of Pickard in connection with trading Dyna Ray securities by arranging for "pink sheet" quotations without regard for the financial condition of the company, its products, or personnel.

I believe that enough has been said above to indicate that the charges in both subparagraphs have been proven, and that the evidence demonstrated that Nealy deliberately embarked on a campaign to quote and sell Dyna Ray stock without regard to its intrinsic value or investment worth.[25]

Subparagraph (3) charges an arrangement between Nealy and Elrod under which Elrod would make available to an account controlled

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23/ As stated above, Dyna Ray never acquired control of Video Color; and that company had sold one tube to the Navy, and the Navy was "in the process" of ordering another, according to the testimony of Ralston.

24/ Best Securities, Inc., 39 SEC 931 (1960); Alexander Reid & Co., 40 SEC 986 (1962).

25/ Cf. Gob Shops of America, Inc., 39 SEC 92 (1959), and cases cited therein. In Thompson Ross Securities Co., 6 SEC 1111 (1940, the Commission stated at 1121:

'"Market price' connotes a price which represents the natural interplay of independent individual appraisals as to the value of securities. Artificial restraints or stimuli are foreign to the concept of a 'market price.' It is materially misleading to represent that securities are being sold at the 'market' (cont'd)

by Nealy, Dyna Ray stock at prices substantially below the prices Nealy and (other) broker-dealers were selling the stock to the public. While the exact nature of an agreement was not determined, there is no doubt that Nealy's arrangement with Elrod was a scheme which would and did produce large profits for Nealy through the use of the Whitterick account, the availability of stock for sale, and the substantial transfers of stock from Elrod to Nealy for sale at substantial and artificial prices.

Subparagraph (5) charges the fraud by Nealy in using the Joyce Whitterick account as a trading account, and the failure to disclose his beneficial interest therein. As stated above, I have no doubt concerning the validity of this change.

The evidence clearly supports the conclusion that Nealy's activity in connection with what was initially a shell corporation was in disregard of the conduct which the anti-fraud provisions of the Securities Act were designed to prevent and violated the special relationship that a securities dealer occupies to a purchaser.[26/] A speculative and unseasoned security was offered, sold, and purchased in a massive distribution and in trading activity which included false and misleading representations and omissions. This constituted one part of a central scheme which produced for Nealy and Elrod large profits at the expense of the public investors. The earlier

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25/(continued)
when the supply of the security is being artificially restrained or the demand artificially stimulated."

26/ SEC v. Great American Industries, Inc., 407 F.2d 453, 460 (C.A. 2, 1968).

sales were made, as indicated in the Commission's order of suspension of August 17, 1967, despite the fact that no current public information was available concerning any aspects of the company or its operations, and the evidence shows that efforts by one or more registered representatives of Pickard to obtain financial data by requesting it from Nealy were unavailing. 27/ The later sales of "management" stock at a relatively low percentage of the over-the-counter market price to which Dyna Ray had been projected was a somewhat different aspect of the total scheme. The statements to investors regarding the imminent filing of a registration statement for Dyna Ray, the value of shares to be spun off, the need for haste in purchasing, and the representation that United States Trust Company had purchased 50,000 shares were only some of the false statements constituting violation of Section 17(a) of the Securities Act during the extended portion of the relevant period.

Public Interest, Sanctions, and Order

From the above, it is clear that Nealy violated the provisions of Sections 5(a) and 5(c) of the Securities Act, as indicated above, during the period from on or about May 25, 1967 to on or about November 26, 1968; that he violated the anti-fraud provisions of Section 17(a) of the Securities Act and Sections 10(b) and 15(c) of

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27/ In his pre-hearing testimony Nealy indicated that he knew the financial condition of Dyna Ray, i.e. "that it had nothing in it."

John Hansgen, then manager of the Phoenix office, testified, also, that sometime after the suspension of trading and as he recalled after early September 1967, "Jess mentioned something to me about some hitch should come into the acquisition of Video Color."

the Exchange Act and Rules 10b-5 and 15c1-2 thereunder during the period from on or about May 25, 1967 to on or about August 17, 1967; and that he violated the provisions of Section 17(a) of the Securities Act from on or about May 25, 1967 to approximately November 26, 1968.

All of these violations were wilfull and intentional. They were numerous and serious, and they continued long after the institution of these proceedings. Nealy has had many years of experience in the securities business and at the time of his offenses was a knowledgeable and intelligent person. Unfortunately, his knowledge and intelligence were used in a fraudulent scheme. I find no mitigating factors in this case and I conclude that the public interest requires that Nealy be barred from association with a broker or dealer.

Accordingly, IT IS ORDERED that Jess H. Nealy is barred from being associated with any broker or dealer.

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(f) 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. If any party timely files a petition for review or if the Commission takes action to review as to a party, this initial decision shall not become final with respect to such party. 28/

Sidney Ullman
Hearing Examiner

June 2, 1970
Washington, D.C.

28/ To the extent that the proposed findings and conclusions submitted by the Division are in accordance with the views expressed herein they are accepted; to the extent they are inconsistent therewith they are rejected.