ADMINISTRATIVE PROCEEDING
FILE NO. 3-4547

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
EDWARD J. MAWOD & COMPANY (8-14068)	:
EDWARD JOSEPH MAWOD	:
JOHN WILLIAM AIRSMAN	:

INITIAL DECISION

Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.
April 12, 1976

ADMINISTRATIVE PROCEEDING
FILE NO. 3-4547

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	
EDWARD J. MAWOD & COMPANY (8-14068)	
	INITIAL DECISION
EDWARD JOSEPH MAWOD	
JOHN WILLIAM AIRSMAN	

APPEARANCES: John E. Jones and Keith G. Galitz, Attorneys of the Denver Regional Office of the Commission for the Division of Enforcement.

Richard J. Leedy for Edward J. Mawod & Company.

Edward J. Mawod, pro se.

John William Airsman, pro se.

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

This is a public proceeding instituted by Commission Order (Order) dated August 29, 1974, pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act) to determine whether the above-named respondents, among others, [1/] committed various charged violations of the Securities Act of 1933 (Securities Act) and the Exchange Act and regulations thereunder, as alleged by the Division of Enforcement (Division), and the rememdial action, if any, that might be appropriate in the public interest.

The Order alleges, in substance, that the remaining respondents in this proceeding, Edward J. Mawod & Company (Registrant), Edward Joseph Mawod (Mawod) and John William Airsman (Airsman) wilfully violated Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-6 thereunder; that Registrant wilfully violated and Mawod wilfully aided and abetted violations of Sections 17(a) and 7(c)(1) of the Exchange Act and Rule 17a-3 and Regulation T, respectively, thereunder.

Registrant was represented by counsel throughout the proceedings. Mawod and Airsman appeared pro se. Proposed findings of fact and conclusions of law and supporting briefs were filed on behalf of all parties except Airsman.

1/ The Commission has accepted offers of settlement from the following named respondents and has issued its findings and orders imposing remedial sanctions: Associated Underwriters, Inc., Exchange Act Release No. 11225/ February 5, 1975; Continental Securities, Inc., Melvin H. Kingsbury and Gordon S. Crofts, Exchange Act Release No. 11363/April 22, 1975; Universal Underwriting Service Inc., Grant Eldredge Mann, Gordon O'Dell Bigler,, Colonel Scott Burris, Monte Chester Hansen, Kenneth Dean Pace, Bruce Allen Jensen, Allan James McNichol and Donnell Gary Ramsey, Exchange Act Release No. 11485/June 18, 1975; Carl Wesley Martin, Exchange Act Release No. 11568/August 1, 1975.

The Commission has directed that these proceedings be discontinued as to Joe Cameron O'Quinn, Exchange Act Release No. 12221/March 17, 1976; and David Rex Yeaman and Michael William Strand, Exchange Act Release No. 12258/ March 25, 1976.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

The findings herein are applicable only to Registrant, Mawod and Airsman and are not binding on any of the other respondents named in the Order.

FINDINGS OF FACT AND LAW

Respondents

Registrant is a partnership of which Mawod is the general partner holding a more than 75 percent interest. It was registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act on September 11, 1968, as Parker-Mawod & Co. Its name was changed to its present form on May 15, 1972. Registrant filed a Notice of Withdrawal of its registration on November 28, 1973,[2/] and has not been actively engaged in the securities business since then. It resigned its membership in the NASD on January 31, 1974.

Edward Joseph Mawod (Mawod) holds an AB degree from Stanford University and has been in the securities business since 1950. He has been with Parker-Mawod and Registrant since its inception in 1968. Prior to that he was with Dempsey, Tegeler & Co. from 1957 until 1968, as a trader and registered representative. He has not been active in the securities business since November 1973.

2/ This notice has not become effective pursuant to Rule 15b-6.

John W. Airsman was a registered representative and sales manager for Registrant during the relevant period of time alleged in the Order. He was, also, president of Capital Transfer, a stock transfer firm.

Violations

The Order alleges that during the period from July 28, 1972, to about September 1973, Registrant, Mawod and Airsman wilfully violated Sections 5(a) and 5(c) of the Securities Act by offering to sell and selling common shares of Epoch Corporation (Epoch) when no registration statement was filed or in effect; that during the same period Registrant, Mawod and Airsman wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by effecting transactions in Epoch stock by employing devices, schemes and artifices to defraud and by making untrue statements of material facts and omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; that during the period from November 27, 1972 to July 18, 1973, Registrant, Mawod and Airsman wilfully violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder by, among other things, bidding for and purchasing for accounts in which they had a beneficial interest and inducing others to purchase the common stock of Epoch, while participating in a distribution of Epoch common stock prior to the completion of such distribution; that during the period from March 1, 1973 to September 1973, Registrant, wilfully aided and abetted by Mawod, wilfully

violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder by failing to accurately make and keep current certain required books and records and that Registrant, wilfully aided and abetted by Mawod, wilfully violated Section 7(c)(1) of the Exchange Act and Regulation T promulgated thereunder, concerning the arranging, extending and maintaining of credit to and for customers on securities.

Background

The allegations set forth in the Order involving Registrant, Mawod and Airsman arose from their participation in an alleged scheme to defraud public investors which involved 4 brokerage firms and 16 individuals who engaged in varying degrees in the issuance and distribution of the common stock of Epoch.

Epoch Corporation (Epoch) is a Utah corporation organized February 9, 1972, for the primary purposes of acquiring, selling and/or operating income producing real estate properties, undeveloped real estate properties and business operations. The incorporators and officers were Lawrence Riddle, president, his wife, Alice Riddle, secretary-treasurer and Mrs. Ila Peterson, vice-president. They were all named as directors and promoters although none of them had had any experience in organizing or conducting a business. Lawrence Riddle had been a plastics salesman and later athletic coordinator of the Salt Lake City Police Department. Mrs. Riddle is an elementary school teacher and Mrs. Peterson is a housewife and has been an apartment manager.

David Yeaman (Yeaman) is a financial advisor acting under the name of Capital General Corporation. He assisted in forming Epoch which took

place in his office where space was "donated" for the use of Epoch. Yeaman secured an attorney and acted as notary on the articles of incorporation.

On March 24, 1972, Epoch filed a notification under Regulation A covering 500,000 shares of its $0.01 par value common stock at 20 cents a share to be offered through Transamerican Securities, Inc., Salt Lake City, on a best efforts basis for 6 months with the proceeds being escrowed until a minimum of $25,000 had been received. In other words, at least 125,000 shares had to be sold for a total of $25,000 within 6 months or purchasers would be refunded their money. Form 2-A filed on November 9, 1972, showed that the offering commenced on July 28, 1972 and was completed on October 27, 1972, with 187,000 shares being sold to the public for $37,400. Capital General Corporation (Yeaman) received a consulting fee of $3,700.

The Epoch offering turned out to be slow and sticky so in order to meet the minimum underwriting requirement Yeaman enlisted the aid of a friend, Stanford Hale (Hale), who was in mobile home sales in Salt Lake City. On September 27, 1972, Hale purchased 125,000 shares of Epoch with $25,000 which he obtained in 2 cashier's checks from Resource Dynamics Corporation (Resource). Resource was the surviving entity of a merger with Fortune Exploration Corp. (Fortune). Yeaman had been vice-president, a director and promoter of Fortune when it had a Regulation A offering of 4,000,000 units of its $0.005 par value common stock at $0.09 per unit on January 20, 1972.

The 125,000 shares of Epoch purchased by Hale were issued in 15 certificates numbered 1 to 15 in amounts of 5,000, 10,000 and 20,000 in the names of Hale and 14 nominees.

Sometime between July 28, 1972 and October 27, 1972, Yeaman acquired 22,500 shares of Epoch which were put in his name and that of 5 nominees; Duane Jensen, president of the underwriter, Transamerican, 3/ purchased in his name and the names of relatives 7,000 shares of Epoch; and Gordon Crofts, the trader and a principal at Continental Securities, Inc., purchased 5,000 shares of Epoch in his name and names of nominees.

In the early spring of 1973 Yeaman arranged a private sale of 120,000 of the 125,000 shares of Epoch purchased by Hale to Carl Martin (Martin) for 25 cents a share. The sale of the 120,000 shares was made on the basis of 10,000 shares a week for $2,500. Yeaman took possession of the shares and, also, the weekly payments from Martin which were deposited in Yeaman's account.

As a result of the foregoing transactions, 159,500 shares of Epoch stock were "parked" which effectively restricted the supply available to the public. Between November 27, 1972 until at least March 20, 1973, Transamerican dominated and controlled the market for Epoch as there was practically no trading and it was the only broker-dealer quoting Epoch in the pink sheets. By means of three inhouse trades at Transamerican between November 1972 and January 1973, the price of Epoch rose to 50 cents a share. The fourth trade, with an outside broker-dealer on March 21, 1973, raised the price to $1.00 a share.

3/ Transamerican's registration as a broker-dealer was revoked by the Commission on November 14, 1973, and Duane Jensen was barred from association with a broker-dealer for 2 years. Exchange Act Release No. 10497/November 14, 1973.

Epoch never commenced operations within the purposes for which it was formed. On July 12, 1972, Epoch executed an Acquisition Agreement and Plan of Reorganization with Osterloh & Durham Insurance Brokers of North America, Inc., a Delaware corporation engaged in the sale of a full line of insurance coverage. Epoch acquired all of the assets, subject to liabilities, of Osterloh & Durham in exchange for 2,000,000 shares of Epoch's common stock. Epoch was required to change its name to Osterloh & Durham upon completion of the merger on October 1, 1973. On October 2, 1973, Michael Strand (Strand) who had been active in the reorganization of Osterloh & Durham had a $9,000 finder's fee from the reorganization delivered into Continental Securities. Melvin Kingsbury, a principal at Continental Securities testified that at Strand's instructions $5,000 of this was immediately delivered out to Yeaman.

On March 4, 1974, the Commission ordered the temporary suspension of Epoch's Regulation A exemption. On April 3, 1974, the successor company, Osterloh & Durham requested a hearing. This request was subsequently withdrawn and on October 30, 1974, the Commission issued an order permanently suspending the exemption. Securities Act Release No. 5535.

Section 5 Violations

The Order charges that Registrant, Mawod and Airsman wilfully violated Sections 5(a) and 5(c) of the Securities Act by effecting transactions in shares of Epoch common stock when no registration statement was filed or in effect with respect to such securities.

Following the acquisition of 122,000 [4/] shares of Epoch by Martin,

---

4/ In addition to the 120,000 shares from Hale, Martin purchased 2,000 shares from Crofts. See, supra, p. 6.

Strand, a friend and close associate, and O'Quinn, together with Martin began to entice brokers to make a market and enter quotations in the pink sheets for Epoch. During the summer of 1973, Strand paid for securities transactions in certain customer accounts controlled by Martin in which Epoch stock had been traded at Universal, Associated and other brokers.

During the first part of April 1973, Strand and O'Quinn appeared at Registrant's offices for the purposes of opening an account for Strand and reactivating O'Quinn's account. Mawod testified that he was reluctant to open an account for Strand because of previous unfavorable experience but eventually he did allow Strand to open accounts in his name and those of nominees. Thereafter, from the middle of May through the end of June 1973, Strand spent a large part of each working day in Registrant's trading room with Mawod and Gay Lynn Hemmingway (Hemmingway) the assistant trader at Registrant. While in the trading room Strand was able to direct trades in Epoch as orders were received.

During the course of the distribution of Epoch stock by Yeaman, Strand, O'Quinn and others in 1973, Yeaman arranged for Strand, with whom he was acquainted, to meet Riddle, the president of Epoch, for the purpose of negotiating a loan. On June 22, 1973, a certified check for $20,000 from Epoch, payable to Registrant, was delivered into the O'Quinn account at Registrant and used to purchase Epoch stock. This $20,000 represented a purported loan to O'Quinn and came out of Epoch's proceeds from the offering, without prior approval of the Board of Directors or the stockholders of Epoch.

John Airsman (Airsman) was the account executive at Registrant for many of the transactions executed for Strand and O'Quinn. Mawod was the trader on most of the transactions. Airsman, also, allowed the account of his firm, Capital Transfer to be used for Epoch transactions and placed orders in the account of his son at another brokerage firm.

On the basis of facts in the record, as described above, the shares of Epoch being offered to the public were not registered nor was an exemption under Regulation A available. At least 159,500 shares had been parked so that distribution to the public had not been completed as stated in the Form 2A Report. It is well established that the burden of proof as to the availability of an exemption is on the one claiming it. 5/ It has not been sustained in the instant proceeding.

Strand, who actively participated in arrangements for the reorganization of Epoch and the merger with Osterloh & Durham, also participated in the distribution of Epoch shares originally purchased by Hale and sold in a private transaction to Martin. Some of these original issue shares were physically delivered into brokerage houses by Strand (certificate No. 8 to Continental and certificate No. 15 to Registrant). Strand then began selling these shares and soliciting brokers to make a market for them. In view of the facts herein and the surrounding circumstances, it is found that Strand's intention when he acquired the Epoch shares was to resell them to the public. Accordingly, Strand was an underwriter. 6/

5/ Securities and Exchange Commission v. Ralston-Purina Co., 346 U.S. 119 (1953).

6/ Section 2(11) of the Securities Act defines an underwriter as:

"any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security."

It has previously been emphasized by the Commission:

> "that individual investors who are not professionals in the securities business may be 'underwriters' within the meaning of that term as used in the Securities Act if they act as links in a chain of transactions through which securities move from an issuer to the public." Quinn & Co., Inc., 44 S.E.C. 461, 464; Securities Act Release No. 4997, page 15 (September 15, 1969); aff'd. 452 F.2d 943 (C.A. 10, 1971), cert. denied, 406 U.S. 957 (1972).

As to Registrant, Mawod and Airsman, it is clear that they too, by effecting transactions for an underwriter are, also, underwriters. As stated in The Wheat Report[7/], page 224:

> "If, however, the broker sells securities for the account of a shareholder who is, in fact, an underwriter of the securities under Section 2(11), the broker, however innocent, is also an underwriter. No rule exists which grants the broker absolution in such a case." See, also, Quinn & Co., Inc., supra.

The dealers' and brokers' exemptions contained in Section 4 of the Securities Act cannot be claimed by registrant as those exemptions are inapplicable to transactions involving an underwriter. Since the transactions effected by Registrant for Strand in the present case involved an underwriter (Strand), the exemptions are not available.[7a/]

Respondents argue that they did not violate Section 5 because Strand was not an underwriter as no distribution was proven. However, it has already been concluded that Strand was an underwriter. (Supra, p. 9). A distribution to the public does not have to be completed or accomplished for a person to be an underwriter. Quinn & Co., Inc., supra. A

7/ Report of the Disclosure Policy Study (1969), authorized by the Commission under the direction of Commissioner Francis M. Wheat

7a/ Quinn & Co., Inc., supra; Andrews v. Blue, 489 F.2d 367, 374 (C.A. 10, 1973).

distribution has been defined as:

> "The entire process by which in the course of a public offering the block of securities is disbursed and ultimately comes to rest in the hands of the investing public." Lewisohn Copper Corp. 38 S.E.C. 226, 234 (1958).

Respondents take the position that even if there was a distribution taking place they had no knowledge of it. This position is untenable in view of the evidence. Mawod testified that he checked with Epoch's attorney who informed him that there had been a Regulation A offering, but no further investigation was made. Despite the existence of "red flags" in the form of Strand directing orders in the trading room, the Epoch check to Registrant for $20,000, the delivery of original issue certificates for sale by Strand and O'Quinn, and the matching of Epoch orders, Registrant was not alerted to make further inquiry.

In Stead v. S.E.C., 444 F.2d 713 (C.A. 10, 1971), where the respondent relied on his having been told by the transfer agent that the stock was exempt from registration the court said, at 716:

> As to the violation of registration provisions Stead urges that he did make reasonable inquiry into the nature of the . . . account and the status of the . . . stock and that he reasonably believed the transactions involving . . . stock were exempt from the registration requirements of the Securities Act of 1933.* * * The act of Stead in calling the transfer agent is obviously not a sufficient inquiry.

Here, too, Mawod's simply asking Epoch's attorney as to the Regulation A exemption cannot be considered as a sufficient inquiry. In addition, a broker-dealer and a registered representative cannot escape responsibility by remaining uninformed or failing to investigate. As the Court said in

Quinn & Co., Inc., supra:

> Petitioners, as professionals in the securities business and as persons dealing closely with the investing public, are expected to secure compliance with the requirements of the Act to protect the public from illegal offerings. . . Brokers and securities salesmen are under a duty to investigate, and a violation of that duty brings them within the term "willful" of the Securities Act.

It is found that Registrant, Mawod and Airsman willfully[8/] violated Sections 5(a) and 5(c) of the Securities Act, as alleged in the Order.

Anti-Fraud Provisions

The Order charges that during the period from about July 28, 1972 to about September 1973, Registrant, Mawod and Airsman wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder[9/] in that they sold and effected transactions in the common stock of Epoch by employing directly and indirectly devices, schemes and artifices to defraud and by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which

---

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

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

they were made, not misleading. As part of the aforesaid conduct and activities Registrant, Mawod, Airsman and other respondents, among other things, would and did:

1. Participated in the distribution of unregistered shares of Epoch on behalf of themselves and others and in connection therewith took steps to conceal said activities and to avoid detection by:

   (a) Effecting sales by Epoch in accounts allegedly of Registrant, Transamerican, Continental, and other broker-dealers, when in fact such transactions were being made or directed by Strand, O'Quinn and others.

2. Publish bids for and purchase such Epoch stock for their own accounts and others at successively higher prices for the purpose of creating an apparent market in and raising the price of Epoch stock while inducing other broker-dealers to enter both bid and ask quotations for the stock in the National Daily Quotation Service.

3. Maintain, dominate, control and manipulate the market for securities of Epoch.

4. Make false and misleading statements of material facts and omit to state material facts concerning, among other things:

   (a) The existence of a bona fide independent market for Epoch stock,

   (b) The participation of respondents and others in a scheme to manipulate the market price of Epoch common stock.

Early in April 1973, Strand and O'Quinn appeared at Registrant's offices to open an account for Strand and to reactiviate O'Quinn's account. Because of previous difficulties with Strand due to Regulation T problems, Mawod was at first reluctant to open accounts. Airsman testified that Mawod told him "to watch these accounts (Strand and O'Quinn) and make sure that they're paid for." O'Quinn's account was reactivated on April 3, 1973

by his delivering in 2,500 shares of Epoch. Strand effected a wash sale in Epoch shortly thereafter on May 2, 1973, wherein Strand bought 1,500 shares in a nominee account[10/] (Lois Linford) at Registrant which came from Strand's account at Continental. Beginning with this trade and continuing through September 1973, he effected a number of wash sales, in fact a total of 34 wash sales and matched trades were arranged by Strand, and others, for his benefit.

A "wash sale" is the practice described in Section 9(a)(1)(A) of the Exchange Act which prohibits any transaction in a "security which involves no change in the beneficial ownership thereof."[11/] A "matched order" is the practice described in Section 9(a)(1)(B) and (C) which prohibits an order or orders for the sale or purchase of a security made with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase or sale of such security has been or will be entered by or for the same or different parties.[12/]

10/ Strand had nominee or accounts he controlled at Registrant in the names of his father Vern Strand, his brother Rex Strand, Richard Y. Merrill, Lois Linford and William Bruhn. He, also, exercised control over the O'Quinn account. In addition, Strand had nominee accounts at other brokers Airsman controlled the Norma L. Ramsey account at Registrant.

11/ J.A. Latimer & Co., Inc., 38 S.E.C. 790 (1958); Thornton & Co., 28 S.E.C. 208, aff'd., Thornton v. Securities and Exchange Commission, 171 F.2d 702 (1948).

12/ Thornton & Co., supra.

If either a wash sale or a matched order is transacted using the means of interstate commerce "for the purpose of creating a false or misleading appearance of active trading" or "a false or misleading appearance with respect to the market for any such security" then there is a manipulation of the stock. Section 9(a)(10) of the Exchange Act; Thornton & Co., supra.

While Section 9 of the Exchange Act prohibits specific manipulative practices for listed securities such activities have been held to constitute fraudulent and manipulative activities in cases of securities traded in the over-the-counter market, and where established, to constitute violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[13/] Also, the failure to disclose manipulative activities constitutes violation of these provisions. Halsey, Stuart, supra.

Strand has admitted conducting wash sales, matched orders and float trades,[14/] but denies manipulative purpose. Strand contends, in substance, that he was conducting "kiting" operations to meet his personal obligations and that, absent a manipulative intent or purpose, this is not illegal under the Securities Acts. However, the record does not support his contention.

Between May 2, 1973 and September 14, 1973, Strand engaged in 34 transactions in Epoch stock of which 21 were wash sales and 13 were matched

---

13/ Barrett & Co., 9 S.E.C. 319, 328 (1941); Halsey, Stuart & Co., et al., 30 S.E.C. 106, 111 (1941); Gob Shops of America, Inc., 39 S.E.C. 92,101 (1949).

14/ During the course of this proceeding, the term "float trade" was defined to mean a wash sale wherein the person conducting the sale would have a same day cash payout, i.e., a cash sale from the sale of the security and the use of those proceeds for a seven day period until payment was required on the purchase.

trades. Two of these were very large matched orders which had a significant effect on the market and created a "false or misleading appearance of active trading" in Epoch stock. Bruce Jensen, president of Associated, testified that around July 18, 1973, Strand asked him to purchase 20,000 shares of Epoch which Universal was planning to dump on the market.[15/] Jensen said that Strand told him that unless these 20,000 shares were picked up their sale on the open market would "have a devastating effect on the market." At this same time Strand directed Jensen to go into the pink sheets in Epoch. On July 18, 1973, Strand, in an arranged trade, sold 14,000 shares through Continental at 1 5/8 to William O'Neill, a Los Angeles brokerage house. Strand then asked Jensen to purchase these shares for him. However, when Strand did not pick up the shares at Associated, O'Neill was unable to find a market and was forced to sell them at a substantial loss to Olsen & Co., a broker in Salt Lake City, on September 14, 1973, at 25 cents a share. Strand was the buyer of these shares at Olsen in his name and the name of the wife of a representative.

These illustrative transactions belie Strand's contention as to his intent and purpose. At the time of the 20,000 share purchase by Associated to prevent a "devastating effect on the market," Strand told Jensen that it was "necessary to start mopping up or absorbing some of the stock." Also, the sale to O'Neill on July 18, at a price above the prevailing market, and Associated's entry into the pink sheets at Strand's direction, gave the market in Epoch an appearance of additional depth. However, the lack of any depth or of a bona fide market for Epoch is exemplified by the fact that O'Neill was forced to dump back the 14,000 shares at a substantial loss some

---

15/ These shares had been placed in various nominee accounts at Universal by Martin and O'Quinn and not been paid for.

two months after their purchase.

Strand was assisted in his violative activities by Registrant, Mawod and Airsman. Airsman introduced Strand to Gary Ramsey at Continental so that Strand could effect the cash sales which he needed to facilitate his "float trades." Airsman, also, allowed Strand to use his account of Capital Transfer at Registrant and the account of his son Jack at Parker, Jackson, in both of which Strand executed wash sales and/or matched trades. In addition, Airsman engaged in at least two wash transactions for his own benefit through a nominee account and the Capital Transfer account. 16/

Mawod allowed Strand to spend several hours each day in the trading room at Registrant over a period of 5 or 6 weeks. Strand and Mawod have both stated that the only reason for this was that Strand furnished a portable television set for them to watch the Watergate hearings. This defies credibility. Strand was allowed to take orders for Epoch as they were phoned into the trading room and 20 of the 42 trades introduced into evidence in this proceeding for which Airsman received credit and the commission's actually originated in the trading room. There is no doubt that Strand's presence in the trading room allowed him to perfect the wash sales and matched orders in Epoch and greatly facilitated his activities in manipulating the market in Epoch stock.

The record shows that Registrant had the largest volume of purchases in Epoch during June 1 to September 14, 1973, and was in the pink sheets quoting the stock from May 14, until July 16, 1973. During the period May 21, 1973 until June 25, 1973, a number of inhouse cross trades, wash sales, and matched orders occurred at Registrant. Of the 21 wash sales previously

---

16/ In the name of Norma Ramsey.

mentioned at least 11 went through Registrant, and of the 13 matched orders 7 were executed at Registrant.

It is argued, on behalf of Registrant and Mawod that they had no knowledge of nor did they participate in any manipulation, and that they entered the pink sheets late in the game when the market was declining.

It is a long established precept that a broker-dealer has a duty of inquiry concerning securities which he recommends and in which he chooses to make a market. The totality of the circumstances here should have placed Registrant, Mawod and Airsman on notice that diligent inquiry was called for concerning the issuer: the claimed exemption from registration of the securities, the use of nominee accounts by Strand at Registrant, the execution of wash sales and matched orders, the placing of orders by Strand in the trading room, and the unexplained price rise from .20 cents to over $2.00 in a few months. These and other unusual factors should have alerted respondents to more diligent inquiry.

One of the respondents in this proceeding, Bruce Jensen, president of Associated testified that when Carl Martin came to his office in March or April 1973, and asked him to make a market in Epoch:

> "I was concerned in looking at the securities, that in a relatively short period of time the stock had gone from, I believe 20 cents, which was the offering price to somewhere in the $2.00 range at the present time. I could not determine any particular reason and I was simply leery because of that, among other reasons. The thing just didn't seem right to me, so I refused on those grounds."

The importance of a broker-dealer's responsibility to use diligence where there are unusual factors is highlighted by the fact that violations of the antifraud provisions of the securities laws frequently depend for

their consummation, as here, on the activities of broker-dealers who fail to make diligent inquiry to obtain sufficient information to justify their activity in the security.[17/] This activity contributed to creating a false and misleading impression of a free and active market for Epoch stock when, in reality, it was not. The more frequently a security is quoted, or the greater the number of dealers quoting it, the broader the appearance of the market for that security.[18/]

As the Commission has said:

> The anti-manipulative provisions of the Securities Exchange Act are directed not only against the defrauding of unwary investors but with equal force against the impediments to a free and open market created by artificial stimulants or restraints. Where the purpose is to induce the purchase or sale of securities by others, the Act denounces manipulations whether designed to raise or lower the market price of a security or only to create a false appearance of activity or inactivity in the market for the security. Masland, Fernon & Anderson, 9 S.E.C. 338, 344 (1941).

A sophisticated registered representative or broker-dealer should have recognized that the instant situation required, at the very least, reasonable inquiry so as to assure that the activity in which he participated would not violate federal securities laws.[19/]

Accordingly, it is found that Registrant Mawod and Airsman wilfully violated Sections 17(a) of the Securities Act and 10(b) of the Exchange Act and Rule 10b-5 thereunder.

17/ Alessandrini & Co., Exchange Act Release No. 10466 (October 31, 1973).

18/ S.E.C. v. Resch-Cassin & Co., Inc., 362 F. Supp. 964, 976 (S.D.N.Y. 1973); F.S. Johns & Co., Inc., 43 S.E.C. 124, 135 (1936), aff'd., Dlugash v. S.E.C., 373 F.2d 107, 109 (2d Cir., 1967).

19/ Hanley v. S.E.C., 415 F.2d 589, 597 (C.A. 2, 1969).

Violations of Section 10(b) of the Exchange Act and Rule 10b-6 Thereunder.

The Order alleges that during the period from November 27, 1972 to July 18, 1973, Registrant Mawod and Airsman, among others, wilfully violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder while participating in the distribution of Epoch stock.

Rule 10b-6 prohibits bids or purchases by any person who is an underwriter, prospective underwriter, a broker, dealer, or other person who is participating in a distribution, or who is a person on whose behalf a distribution is being made. Each of the selling stockholders and any broker or person acting for any of them will be subject to the provisions of this rule. 20/

The evidence shows that the distribution of Epoch was not completed until at least September 1973. Therefore, the bid and purchase activities engaged in by Registrant, Mawod and Airsman, which have been previously described, clearly violated the provisions of the rule.

Accordingly, it is found that Registrant, Mawod and Airsman violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder, as charged in the Order.

Regulation T Violations

The Order charges that during the period from on or about July 1972 to September 1973, Registrant wilfully violated and Mawod wilfully aided

---

20/ Hazel Bishop, Inc., 40 S.E.C. 718, 736 (1961).

and abetted violations of Section 7(c)(1) of the Exchange Act and Regulation T.[21/]

A securities compliance examiner on the Commission's staff testified that he examined the O'Quinn account at Registrant and prepared a schedule showing all transactions in chronological order from January 1, 1973 to June 31, 1973. From this the examiner prepared another schedule showing transactions where payments for securities were received in excess of seven days from the date of purchase. As a result of this examination it was found that there were 30 transactions during this period which were in violation of the 7 day payment requirement of Section 4(c)(2) of Regulation T Of these 30 transactions 28 ranged from 9 to 79 days delinquent in payment and 2 were transactions where extensions had been granted by the NASD but even in these the payments were 8 to 14 days late, respectively, beyond the extension date.[22/]

Respondents contentions are (1) that there were no Regulation T violations because the O'Quinn account was a "C.O.D. account" pursuant to Section 4(c)(5)[23/] of Regulation T and thus was subject to a 35-day payment

---

21/ Section 7(c) prohibits any broker or dealer, directly or indirectly, from extending credit to customers in violation of regulations prescribed by the Federal Reserve Board pursuant to Section 7(c)(1). Section 4(c)(2) of Regulation T, promulgated by the Board of Governors of the Federal Reserve System, requires that a broker or dealer promptly cancel or otherwise liquidate a transaction where a customer purchases a security in a special cash account and does not make full cash payment within seven full business days.

22/ An extension of the 7-day period may be granted by the NASD, where a good faith application is made with respect to a bona fide cash transaction and "exceptional circumstances warrant such action." Section 4(c)(6).

23/ Section 4(c)(5) of Regulation T provides:

"(5) If the creditor, acting in good faith in accordance

period rather than a 7-day period and that payment was always made on the delivery of the securities; and (2) that there was a continuing credit balance in the account so that each purchase was covered.

That the O'Quinn account was not a so-called "C.O.D. account" is indicated by respondents' contradiction of their own contention. On June 13, 1972, Mawod issued a memorandum to all registered representatives which said:

> "No C.O.D. accounts are to be set up for individuals. C.O.D. accounts are intended to be used for banks and institutions only. All customer C.O.D. accounts presently open will be closed upon the completion of open transactions now in the account."

Mawod's understanding is reflective of the interpretation of this Section by the Federal Reserve Board which has been careful to point out that the 35-day period is not applicable as a matter of customer convenience, but may be necessary in the case of an institutional investor to avoid unreasonable duplication of clerical operations in connection with the delivery of a large block of securities. (26 Fed. Res. Bull. 1172, 1940).

23/ (continued)

> with subparagraph (1) of this paragraph, purchases a security for a customer, or sells a security to a customer, with the understanding that he is to deliver the security promptly to the customer, and the full cash payment to be made promptly by the customer is to be made against such delivery, the creditor may at his option treat the transaction as one to which the period applicable under subparagraph (2) of this paragraph is not the 7 days therein specified but 35 days after the date of such purchase or sale." (Underscoring supplied).
>
> Subparagraph (1) permits a broker to effect bona fide cash transactions involving the purchase of any security by a customer in a special cash account which does not have sufficient funds for the purposes only if he does so in reliance upon an agreement accepted by him in good faith that the customer will promptly make full cash payment for the security and that he does not contemplate selling the security prior to making payment.

Also, the account clearly shows that payments by and deliveries of securities to the customer (O'Quinn) not only did not coincide, as required by Section 4(c)(5), but in many cases deliveries simply were not made. For example, the account shows a purchase on January 2nd of 2,000 Hoffman Resources in two 1,000 share lots, and again on January 9th, the purchase of 2,900 Hoffman Resources. The 2,900 were delivered the same date purchased, but payment was not received on that date. Moreover, the 2,000 shares of Hoffman were not delivered at any time within the 6-month period under review.

Furthermore, the 2 requests for extension of time were predicated on the standard 7-day payment period as shown by the trade date, the settlement date and the expiration date of the extension. These requests were made by Airsman and approved by the NASD.

Respondents' second contention that there was a continuing credit balance in the account is refuted by the Division's examination which showed, rather, a continuing debit balance. At some time the account was marked "COD Account Frozen" but just when this took place is uncertain. Owen Sumsion (Sumsion), Mawod's accountant testified that it was brought about by events occuring in late June 1973.

Respondents contentions are not credible in view of Mawod's concern about opening an account for Strand because of previous Regulation T problems; Strand's use of the O'Quinn account; Mawod's instructions to Airsman to watch Strand and O'Quinn and make sure their accounts were promptly paid; and by Airsman's applications to the NASD for extensions of time based on the standard 7-day payment period.

It is found that Registrant wilfully violated and that Mawod wilfully aided and abetted violations of Section 7(c)(1) of the Exchange Act and Regulation T promulgated thereunder.

Bookkeeping Violations

The record establishes that during the period from March 1, 1973 to September 1973, Registrant, wilfully aided and abetted by Mawod, wilfully violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, by failing to accurately make and keep current certain of its books and records. 24/

The record keeping violations herein flow from the nominee accounts previously mentioned in the names of J.C. O'Quinn, Norma Ramsey, Vern Strand, Richard Y. Merrill and William G. Bruhn, which were used by Strand and Airsman in their manipulation of Epoch stock.

The New Client Application Forms required to be prepared and kept for these accounts pursuant to Rule 17a-3(a)(9), were incomplete and inaccurate in that they did not disclose the name and address of the beneficial owner of the account and in the case of a joint account the persons authorized to transact business for such account.

The evidence establishes that in many instances someone in the trading room where Mawod was the trader took the order directly from Strand for a transaction in one or more of these accounts. The order tickets were inaccurate in that 20 of the 42 tickets on which Airsman's name appears as the registered representative and for which he received the commission, were

---

24/ Section 17(a) of the Exchange Act, as applicable here, requires registered brokers and dealers to keep such books and records as the Commission by rule or regulation may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 17a-3 specifies the books and records that must be maintained and kept current.

prepared by someone in the trading room, in some instances, Mawod. The false and inaccurate nominee account records also, of necessity, caused the orders, confirmations, blotters and ledger accounts to be inaccurate or incomplete.

The Commission has repeatedly stressed the importance in the regulatory scheme for strict compliance with the requirement that books and records be kept current and in proper form.[25/] The requirement that records be kept embodies the requirement that such records be true and correct.[26/] Compliance with the rule relating to maintenance of books and records is regarded as a "unqualified statutory mandate" dictated by a broker-dealers obligation to investors to conduct its securities business on a sound basis.[27/]

It is found that Registrant wilfully violated and that Mawod wilfully aided and abetted the violation of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

Public Interest

The remaining issue concerns the remedial action which is appropriate in the public interest with respect to the respondents who have been found to have committed certain violations as alleged in the Order.

The appropriate remedial action as to a particular respondent depends on the facts and circumstances applicable to him and cannot be measured precisely on the basis of action taken against other respondents,[28/] particularly

---

25/ "It is obvious that full compliance with those requirements must be enforced and registrants cannot be permitted to decide for themselves that in their own particular circumstances compliance with some or all is not necessary": Olds & Company, 37 S.E.C. 23, 26 (1956); Pennaluna & Company, Inc., 43 S.E.C. 298, 312 (1967).

26/ Lowell Niebhur & Co., Inc., 18 S.E.C. 471, 475 (1945).

27/ Billings Associates, Inc., 43 S.E.C. 641, 649 (1967).

28/ See Dlugash v. S.E.C., 373 F.2d 107, 110 (C.A. 2, 1967).

where, as here, the action respecting others is based on offers of settlement which the Commission deemed appropriate to accept.[29/]

The violations found herein were serious and cannot be excused by a claim of lack of knowledge of pertinent requirements. Mawod not only allowed his firm to be used for manipulative purposes, thus placing customers funds and securities in jeopardy, but he disregarded important controls applicable to the proper conduct of a securities business. As the general partner and principal officer of Registrant, Mawod was under a duty to use reasonable care to see to it that the everyday operations of the firm's business were properly performed.[30/] His protest that he was not aware of Strand's and O'Quinn's activities is belied by the fact that the record keeping and Regulation T violations occurred in the very accounts which were being used to perpetrate the manipulation.

Mawod and Registrant have been previously disciplined by the Commission for violations of some of the same statutes as involved here. On August 30, 1974, Mawod and Registrant were both suspended for 60 days following a hearing in which it was found that they had violated Sections 5(a) and (c) in the sale of a security for which an exemption was claimed under Section 3(a)(11) of the Securities Act, and Regulation T. (Exchange Act Release No. 10966). In view of the nature and extent of the violations, the wilful disregard of the obligations and duties of a registered broker-dealer, and the lack of any genuinely mitigating factors, it is concluded that the public interest requires

---

29/ See Benjamin Werner, 44 S.E.C. 745, 748 (1971).

30/ Madison Management Corp., et al. 42 S.E.C. 390, 396 (1964); General Investing Corp., 41 S.E.C. 952, 958 (1964).

that the registration of Registrant be revoked and that Mawod be barred from association with a broker-dealer.

Airsman has a long experience in the securities business and in the enforcement of the securities laws, having at one time been Securities Commissioner for the State of Utah. Therefore, his aiding and abetting of Strand's activities and his active participation in transactions designed to further the manipulation is doubly reprehensible. It is concluded that the public interest requires that he be barred from association with a broker-dealer.

ORDER

IT IS ORDERED that the registration as a broker-dealer of Edward J. Mawod & Company is revoked, and that Edward J. Mawod and John W. Airsman, and each of them, is barred from association with a broker-dealer.

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

Pursuant to Rule 17(f) this initial decision shall become the final decision of the Commission as to each party who has not within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c) determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party. 31/

Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.
April 12, 1976

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