ADMINISTRATIVE PROCEEDING
FILE NO. 3-6612

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
EUGENE MULVIHILL

INITIAL DECISION

September 30, 1986
Washington, D.C.

David J. Markun
Administrative Law Judge

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APPEARANCES: Scott H. Rockoff and James G. Carroll, Esqs. New York Regional Office, for the Division of Enforcement. Also on the briefs: Edwin H. Nordlinger, Esq., Associate Regional Administrator.

John J. Barry, Esq. of Kimmelman, Wolff & Samson, Roseland, New Jersey; Lewis Lowenfels, Esq. of Tolins and Lowenfels, New York, New York (at the hearing only).

BEFORE: David J. Markun
Administrative Law Judge

THE PROCEEDING

This public proceeding was instituted by an order of the Commission on October 16, 1981 to determine whether (a) Respondent Eugene Mulvihill ("Mulvihill") was, as the Division of Enforcement alleged in the order, convicted upon a plea of guilty in the Superior Court of New Jersey of the criminal offenses under New Jersey law of (1) using a corporation to promote a criminal object, (2) falsifying and tampering with records, and (3) illegally doing business as an unauthorized insurance company, and, (b) if so, the remedial action, if any, that is appropriate in the public interest pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§78 o(b), 78s.

The evidentiary hearing was held on May 27th and 28th, 1986, in New York, New York, during which documentary evidence was received. No witness was called. Proposed findings of fact, conclusions of law, and supporting briefs were filed by the parties.

Preponderance of the evidence is the standard of proof applied. Steadman v. S.E.C., 450 U.S. 91, 101 S.Ct. 999 (1981).

FINDINGS OF FACT AND LAW

A. The Respondent and Related Entities.

Respondent Mulvihill has been the secretary, treasurer, and 75-100% owner of the outstanding common stock of Mayhill Agency, Inc. ("Mayhill"), a broker-dealer, since October 1977. Mayhill, in turn, has been the owner of 75-100% of the outstanding shares of Seabord Planning Corporation ("Seabord"), another broker-dealer, since January 1977. Respondent Mulvihill has been president and a director of Seabord since January 1985 and has been the beneficial owner of 75-100% of the outstanding common shares of Seabord since February 1977. Both Mayhill and Seabord are broker-dealers registered with the Commission pursuant to Section 15(b) of the Exchange Act, and both are also registered with the NASD.

During the period from April 1977 to April 1981 Respondent Mulvihill was a member of the board and chief executive officer of Vernon Valley Recreation Association, Inc. ("Vernon Valley"), which owned and operated a recreational ski area and summer action park in northern New Jersey, and was also associated with other entities and operations. One of these, Stonehill of Vernon, Inc.

("Stonehill"), was engaged in the construction of town-houses and condominiums and in other construction activities at Vernon township in Sussex County, New Jersey.

In order to avoid the cost of insurance premiums in connection with insurance required by the various recreational and construction operations in which he was involved, Respondent Mulvihill formed a phony offshore corporation, London & World Assurance, Ltd. ("L&W"), as an exempt corporation under the laws of the Cayman Islands, British West Indies, and utilized it to issue and distribute fictitious insurance policies and performance bonds. This conduct resulted in the convictions of Respondent Mulvihill that are involved in this administrative proceeding.

B. Respondent's Convictions

In 1983 or 1984, State Grand Jury Indictment Number SGJ-110-83-14(2), containing 108 counts, and Accusation Number SGJ 110-83-14 ACC (a one-count accusation) were filed with the Superior Court of New Jersey.

On November 8, 1984, the State of New Jersey and Respondent Mulvihill entered into a plea agreement pursuant to which (a) Respondent pled guilty to counts 17, 23, 57, 61 and 65 of the indictment and to the one-count accusation

and (b) the remaining counts in the indictment were subsequently dismissed.

On December 14, 1984, Respondent Mulvihill was sentenced. On the accusation (using a corporation to promote a criminal object) he received a suspended three year sentence, was placed on probation for three years, and was fined $7,500. On count 17, (doing business as an unauthorized insurance company) and on counts 23, 57, 61 and 65 of the indictment (falsifying and tampering with records) he received, for each count, a suspended one year sentence, a term of one year's probation, and a fine of $7,500. All of the sentences ran concurrently.

A judgment of conviction and order for probation was issued against Respondent Mulvihill on Feburary 27, 1985, in accordance with the plea of guilty, and all remaining counts of the indictment were dismissed.

C. Statutory Bases For Imposition of Sanctions.

Subsection 15(b)(6) of the Exchange Act provides in pertinent part as follows:

> (6) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, or seeking to become associated, with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer,

> if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person . . . has been convicted of any offense specified in subparagraph (B) of . . . paragraph (4) [of this subsection] within ten years of the commencement of the proceedings under this paragraph . . . .

The pertinent criminal offenses specified in subsection 15(b)(4)(B) are the following:

> (B) . . . any felony or misdemeanor which the Commision finds --
> (i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense; [emphasis added]
> (ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary; [emphasis added].
>
> * * *

The record establishes a jurisdictional basis for applying sanctions under subsection 15(b)(6) of the Exchange Act in that the counts in the indictment and in the accusation to which Respondent pleaded guilty and on the basis of which he was sentenced set forth numerous "false reports" made in connection with the issuance of fictitious insurance policies and performance bonds by L&W, the phony offshore insurance company. These and related aspects of the violations will be discussed in greater detail under the "public interest" portion of this decision. Respondent concedes

(Resp. Br. p. 8) that the falsity of the various documents filed establishes a jurisdictional basis under the statute for the Commission to apply sanctions if it finds them to be in the public interest.

Respondent disputes, however, the Division's contention that an additional jurisdictional basis for sanctions exists because the violations arose out of "the conduct of the business of a[n] . . . insurance company" within the meaning of the relevant statute.

The essence of Respondent's arguments on this point is that L&W was not a bona fide insurance company and did not sell or purport to sell insurance to the public at large but only to various entities in which Mulvihill had an interest.

Count 17 of the indictment charges Respondent Mulvihill, L&W, and others, with "Doing Business as an Unauthorized Insurance Company" [emphasis added] during the period April 1977 of the filing of the indictment. It charges defendants with specific acts involving the transacting of the business of insurance without being specifically authorized under the laws of New Jersey to do so. As already noted, Respondent Mulvihill pleaded guilty to Count 17 of the indictment.

Similarly, the 6-page, one-count accusation charging Mulvihill with "Use of a Corporation to Promote a Criminal Object, Third Degree", charged that from April 1, 1977 through April, 1984, Mulvihill and others created and used L&W to promote a criminal object by, among other things, fabricating and distributing documents purporting to be valid insurance policies and performance bonds issued by L&W and other documents, records and correspondence relating to the financial condition of L&W for the purpose of creating the false impression that L&W was a bona fide insurance company when in truth it was not. The accusation further spells out specific acts of purported insurance and the like carried out in furtherance of the scheme. Again, as already noted, Respondent Mulvihill pleaded guilty to the one-count accusation.

Additionally, counts 23, 57, 61 and 69, to which Mulvihill also pleaded guilty, each details specific acts involving the issuance of purported insurance policies or performance bonds by Mulvihill through L&W.

From the foregoing it is clear that Respondent Mulvihill pleaded guilty to engaging in the unauthorized business of insurance within the relevant period, even though the

record supports his contention that the purported insurance policies, performance bonds, and the like were on a limited scale, i.e., there was no attempt to sell insurance, genuine or bogus, to the public at large.

There remains for determination whether the doing of unauthorized, bogus insurance business constitutes the commission of a crime that arose "out of the conduct of the business of" an insurance company within the meaning of subsections 15(b)(6) and 15(b)(4)(B) of the Exchange Act.

In some respects Respondent's argument on this point is somewhat akin to the argument that income illegally obtained need not be reported as income for Federal income tax purposes because it was not legally obtained. That argument, of course, has been singularly unpersuasive in the courts.

But, basically, I conclude that the Division's argument that the pertinent sections of the Exchange Act must be broadly construed in order to effectuate their remedial purposes in sound and persuasive. In Tcherepnin v. Knight, 389 U.S. 333 (1967) the Supreme Court stated, in pertinent part, at p. 336:

> ". . . In addition, we are guided by the familiar canon of statutory construction that remedial legislation should be construed broadly to

> effectuate its purposes. The Securities Exchange Act quite clearly falls into the category of remedial legislation . . . ."

In light of the purposes to be achieved under Subsection 15(b)(6) of the Exchange Act I conclude that subsection 15(b)(4)(B) must be broadly construed and that, so construed, it embraces the conduct here involved as arising out of the conduct of the business of an insurance company.

In any event, since Respondent Mulvihill concedes that the "false reports" basis for jurisdiction does exist, and the record amply so demonstrates, as a practical matter it makes little difference whether there exists a second jurisdictional basis or not, since the violations involving L&W bogus insurance and performance bonds and the like would clearly be relevant and admissible for purposes of determining sanctions in the public interest even if they were not jurisdictional. In the context of this proceeding, there would be no difference in sanctions under the public interest whether one jurisdictional basis or two were found to exist.

PUBLIC INTEREST

There remains for determination the issue of what, if any, sanctions need to be imposed in the public interest.

In this connection, there is a threshold question that requires determination.

Respondent contends that of the 108 counts in the indictment returned against him only the five counts (nos. 17, 23, 57, 61, and 65, Respondent's Exhibit A) to which Respondent pleaded guilty may be considered on the question of sanctions in the public interest and that the remaining, dismissed, counts must be disregarded since they do not establish anything and were not considered by the trial count in determining sentences. The Division argues that the dismissed counts, while not admissible to prove or establish the counts to which Respondent pleaded guilty, are admissible on the question of what sanctions are appropriate in the public interest, by analogy to the wide latitude criminal courts have to consider broadly matters bearing upon the personal history and behavior of the accused, included counts of dismissed indictments - - U.S. v. Needles, 472 F.2d 652 (2nd Cir. 1973); Billiteri v. U.S. Bd. of Parole, 541 F.2d 938, 944 (1976) -- in rendering sentence after a finding of guilt.

In light of the facts and circumstances presented by this administrative proceeding, including the circumstance that the findings of violations are based on determinations

in another forum under a plea arrangement, I conclude that due process considerations militate against considering the dismissed counts of the indictment in determining what sanctions may be appropriate in the public interest. Therefore, I do not consider, and have not read, the dismissed counts of the indictment. However, I do not strike such dismissed counts from the record in view of their possible utility in any appeal that may be involved in subsequent stages of this proceeding.

The egregious nature, character, and duration of the felonies committed and admitted by Respondent Mulvihill are best summarized in the one-count accusation, which reads as follows:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY
ACCUSATION NO. SGJ110-83-14ACC

STATE OF NEW JERSEY)
v.) ACCUSATION
EUGENE MULVIHILL)

COUNT ONE
USE OF A CORPORATION TO PROMOTE A CRIMINAL OBJECT
THIRD DEGREE

In or about April 1, 1977 and continuing through April, 1984, at the Town of Chatham, in the County of Morris, at the Township of Vernon, in the County of Sussex, at the City of Trenton, in the County of Mercer, elsewhere, and within the jurisidiction of this Court, EUGENE MULVIHILL, did purposely and knowingly use, control and operate a corporation for

the furtherance and promotion of a criminal object. That is, EUGENE MULVIHILL and others did conceive, form, incorporate, control and utilize an "off shore" and "captive" corporation known as London and World Assurance, Ltd. Said corporation was formally incorporated on or about October 12, 1977, as an exempt corporation under the laws of the Cayman Island, British West Indies, a sovereign which did not then regulate the formation or use of insurance companies and whose confidentiality laws ensured that the identity of the promoters, nominal shareholders, beneficial shareholders, directors and officers, as well as the true nature and financial condition of London & World Assurance, Ltd., would remain secret. Throughout the time period set forth in this Accusation, EUGENE MULVIHILL, and others did create, fabricate, publish and distribute documents purporting to be insurance policies and performance bonds issued by London & World Assurance, Ltd., certificates of insurance which purported to evidence insurance coverage by London and World, Ltd. and various documents, records and correspondence relating to the financial condition of said corporation for the purpose of falsely creating the impression that London and World Assurance, Ltd. was a bona fide insurance company when in truth and in fact London and World Assurance, Ltd. was not a bona fide insurance company.

In furtherance of the crime charged in this Accusation, EUGENE MULVIHILL, did engage in conduct and did derive a benefit as follows:

A. During the time period set forth in this Accusation, EUGENE MULVIHILL, as a member of the the board of directors and as chief executive officer of Vernon Valley Recreation Association, Inc. was aware of the express conditions contained in various lease agreements between the State of New Jersey and Vernon Valley Recreation Association, Inc. requiring that Vernon Valley Recreation Association, Inc. purchase, maintain and keep in force at all times a policy of general liability insurance in an amount not less than $2,100,000.00 with the State of New Jersey designated as a named insured. By means of the aforesaid false impressions and representations made by EUGENE MULVIHILL, it was concealed from the State of New

Jersey that Vernon Valley Recreation Association, Inc. did not have bona fide insurance coverage from July, 1977 until March 1981 as required by said leases, so as to prevent the State of New Jersey from enforcing its rights arising under said leases.

B. During the time period set forth in this Accusation, Vernon Valley Recreation Association, Inc., T.R.C. International, Inc., Western Formula, Inc., Water Hill, Inc. and Dunehill, Inc. operated carnival-amusement rides which were subject to the provisions of the Carnival-Amusement Rides Safety Act (N.J.S.A. 5:3-31 et seq.) and regulations promulgated pursuant thereto and enforced by the New Jersey Department of Labor and Industry, Carnival and Amusement Rides Section. Said statute and regulations provided that no carnival-amusement ride could operate without first having obtained a permit, and that no permit could issue unless the applicant first filed with the New Jersey Department of Labor and Industry a certificate of insurance evidencing the existence of general liability insurance coverage with limits of liability in an amount not less than one hundred thousand dollars ($100,000) and underwritten by an insurance carrier licensed or approved by the New Jersey Department of Insurance.

With knowledge of the aforesaid requirements, EUGENE MULVIHILL, and others, caused to be filed with the New Jersey Department of Labor & Industry, carnival-amusement ride permit applications to which were appended documents which purported to be genuine certificates of insurance issued by London & World Assurance, Ltd., and did thereby falsely represent to the New Jersey Department of Labor & Industry, its agents and employees, that the Vernon Valley Recreation Association, Inc., T.R.C., International, Inc., Western Formula, Inc., Water Hill, Inc. and Dunehill, Inc. had purchased and procured general liability insurance coverage from London & World Assurance, Ltd., and that London & World Assurance, Ltd. was a bona fide insurance carrier. To further re-inforce the false impression that London & World Assurance, Ltd. was a bona fide insurance company, EUGENE MULVIHILL, and others, in and about April, 1978, and thereafter between on or about May 9, 1980 and on or

about February 9, 1981, filed with the New Jersey Department of Insurance, Surplus Lines Examining Office, direct placement or self-insurers reports which contained false and misleading statements, along with other oral and written misrepresentations to officials and employees of the New Jersey Department of Insurance. Wherefore, and in reliance upon said false and deceptive documents, filings, representations and pretenses, aforesaid entities did obtain from the New Jersey Department of Labor & Industry, permits to operate said carnival-amusement rides and did operate and derive income from said carnival-amusement rides.

C. During the time period set forth in this Accusation, Stonehill of Vernon, Inc. was engaged in the construction of townhouses, condominiums and other construction activities at Vernon Township, Sussex County. On various occasions, Stonehill of Vernon, Inc. was required to procure and file with Vernon Township, its employees, representatives and agents, performance bonds naming Vernon Township as obligee. The submission and filing of such performance bonds was a condition precedent to obtaining approval and permission from Vernon Township to undertake and engage in various construction projects. The requirement for procuring and filing said performance bonds was to ensure that funds constituting the penal sums of said performance bonds would be available for Vernon Township to draw upon, should it have become necessary for Vernon Township to undertake to complete or correct deficiencies in the design or construction of said projects.

In or about October, 1979 and in or about April, 1980, EUGENE MULVIHILL, and others, endeavored to submit and file with Vernon Township, its employees, representatives and agents, documents which were purported to be genuine performance bonds issued by London & World Assurance, Ltd.

EUGENE MULVIHILL, and others, by means of the submission and filing of said false and deceptive performance bonds, and by other means, did represent and state to Vernon Township, its employees and representatives, that Stonehill of Vernon, Inc. had purchased and procured genuine performance bonds from London & World Assurance, Ltd., wherefore, as a result of said

false and deceptive documents, filings, writings, representations and pretenses, permission and authorization to engage in said construction activities was obtained from Vernon Township.

All contrary to the provisions of N.J.S.A., 2C:21-9c and against the peace of this State, the government and dignity of the same.

s/
WILLIAM R. LUNDSTEN
DEPUTY ATTORNEY GENERAL

DATED: 11-8-84

Using a corporation to promote a criminal object (the one-count accusation) exposed Respondent Mulvihill to a maximum penalty of five years' imprisonment and a fine of up to $7,500.

Each of the five counts in the indictment exposed Respondent Mulvihill to imprisonment for up to 18 months and/or a fine of $7,500. These counts, as already noted, involved falsifying and tampering with records or doing business as an unauthorized insurance company.

On the accusation, the Court imposed a suspended three year sentence, probation for three years, and a fine of $7,500. On each of the five counts in the indictment the Court imposed a suspended one year sentence, all sentences to run concurrently, and a $7,500 fine. The fines imposed totaled $45,000.

The sentencing Court, evidencing the seriousness with which it regarded the defendant's violations, stated in part as follows (Div. Exh. 302, pp. 35-36):

> What I find very troubling is the fact that the defendant, Mr. Mulvihill, with such ability and such talent has deliberately, calculatedly and premeditatedly chose[n] the course of action which he did, and I have no doubt in my mind that he knew at the time that it was illegal, criminal, and an attempt deliberately to deceive for the purpose of a commercial venture.
>
> I am not here to judge Mr. Mulvihill, as such. I am here to judge his acts, and his acts were illegal, criminally illegal.
>
> The difficulty of sentencing in a case such as this is that unless the sentence is one which clearly indicates that the State cannot permit this type of activity to go unpunished, others, including the defendent, may very well be tempted to take the same commerical course regardless of its criminality.

Indeed, the sentencing Judge remarked (Exh. 302, p.36) that he regarded the violations as being just as serious as that of a judge who takes a bribe.

The sentencing Court had before it numerous letters from friends, acquaintances, and persons who had had business or other contacts with Respondent Mulvihill and who spoke of his generosity, standing as a fine family man, uprightness in his business dealings, and the like. These same letters were received in this proceeding as part of Respondent's Exhibit B and are relied upon by him on the question of sanctions.

An additional argument on the issue of appropriate sanctions that Respondent relies upon heavily is that he did not receive a custodial sentence but instead was placed upon probation.

The sentencing Court's remarks are pertinent to both of the foregoing two arguments of Respondent. The Court stated in pertinent part (Exh. 302, pp. 36, 37-38):

> It's often said that to whom much is given, much is expected, and I think more was expected of you, Mr. Mulvihill, than you showed.
>
> You have great talent. You abused it, and sadly when I see the nature of the people who had written letters in your regard, some of whom I know personally and have high admiration and respect for who, to your credit, still consider you to be one who[m] they hold in high esteem.
>
> I cannot believe that when you did these things you didn't see the consequences of bringing you here today if you were caught. You stand here disgraced, really, in the eyes of your family, in the eyes of the community, and it's hard for me to understand how you could have jeopardized all that for the sake of this commerical venture.
>
> But I do take into consideration the effect that this predicament that the defendant is in today has upon his reputation.
>
> * * *
>
> . . . I don't see this as a crime committed out of weakness; I see it as a crime committed out of strength and an arrogant belief that it could be accomplished without detection, and I think that the defendant's greatest regret, probably, in the whole matter is that it was detected and then [sic] he stands here today in this position.

> I don't see running through the statements a regret for the act taken but, rather, an attempt to excuse it as understandable. That I find troubling, so much so that I did seriously consider a custodial sentence, in spite of all that I have read in favor of the defendant. I am satisfied, after giving credit to all the aggravating and mitigating circumstances under our law that is not called for as an ultimate disposition in this case, but I find that to be so not as a result of my personal conviction as to what should be done here, but rather, taking the statutory aggravating and mitigating factors into consideration and weighing them judicially, as I am required to do by more recent cases. [emphasis added].
>
> I find that the presumption against incarceration must prevail. Nevertheless, the need for deterring this defendant and others from violating the law in any similar fashion calls upon the court to demonstrate that this offense is a most serious one and is not merely the violation of some regulatory provision.

The letters favoring "leniency", the fact that the violations were first offenses, and the fact that the violations did not result in a custodial sentence, are all matters that are appropriately considered on the question of sanctions, but they are in no sense controlling or dispositive. It is clear that the sentencing Court considered the pro-leniency letters and the absence of prior violations outweighed by the gravity of the violations, the knowledge and premeditation with which they were committed, and the evidence lack of true repentence or genuine appreciation and recognition of the seriousness of the offenses on the part of the Respondent. And the Court indicated it had given serious

consideration to a custodial sentence but concluded that under the various state-law balancing criteria as contained in the case law the presumption against custody had to be sustained.

I find nothing in the record or in the Respondent's arguments that would prompt me to come to a different conclusion in evaluating these several elements in determining sanctions in the public interest in this proceeding. Respondent's past acts of charity and assistance to worthy groups and individuals cannot serve to immunize him from the consequences of his serious and calculated violations.

Respondent attempts to make much of the arguments that no one got hurt and that no one was put at risk by his phony insurance machinations. This argument only serves further to demonstrate Respondent's failure to appreciate the nature and gravity of his offenses, as the sentencing Court noted.

While the record establishes no actual losses sustained as a result of Respondent's violations, it is quite clear that over the almost 4-year period during which the violations continued, numerous individuals and entities were in fact placed at risk by Mulvihill's failure to have genuine insurance in effect.

All persons and entities intended to be protected by the insurance of a bona fide independent insurer were in fact put at risk of loss by Mulvihill's bogus insurance scheme. Likewise, all persons and entities designed to be protected by the performance bonds were at risk of loss because the performance bonds were not in fact backed by a bona fide insurer. Moreover, public shareholders of any of the entities purpurtedly "insured" under the bogus insurance scheme were at risk of loss respecting the value of their shares upon discovery of the bogus scheme or inability to pay any purportedly-covered losses. In addition, to the extent that reinsurers were involved, to whom Respondent refers, it seems unlikely that they would have participated had they been aware of Mulvihill's bogus insurance scheme.

Respondent's claim that the scheme for a bogus insurance company issuing phony insurance policies and fictitious performance bonds and the like was merely a mechanism to act as a self insurer just won't wash. At his investigative testimony before the Commission staff he stated, Div. Exh. 300, p. 35:

> Everybody has self-insurance to some degree. If you have $50 deductible on a car, that $50 is basically self-insurance and its okay if you can afford it. Now we could afford it and as it turned out, even in hindsight, like I said, we paid all the claims.

What this argument overlooks, as the Division points out, is that the self-insurance must be legal in order to be a legitimate option, whether one can "afford" it or not. his insurance scheme was more like pretending to carry third party liability insurance on an automobile when insurance with a legitimate insurer is the only legally approved method for insuring the public's protection. Respondent argues that the insurance rates were "prohibitive". Carrying his solution to the problem to its logical extreme, would this mean that a surgeon or physician who found malpractice policies unavailable or available only at rates he/she considered "prohibitive", should continue to practice without insurance, or with bogus insurances, if he/she considered his/her resources adequate to meet all contingencies, or with bogus self insurance to given limits overlaid with reinsurance for additional coverage?

Mulvihill's disposition to cut corners rather than to turn square corners in legal matters as indicated by his convictions is precisely the kind of tendency that must be guarded against, and cannot be countenanced, in the securities business, an industry that presents so many opportunities for abuse and overreaching and depends so heavily on the integrity of its participants. In the Matter of C.E. Carlson,

Inc., Exchange Act Release No. 34-23610, September 1, 1986, A.P. 3-6346, at p. 7.

As the Division points out, Respondent Mulvihill, a man in his fifties, has been in the brokerage business since 1959. He is not a novice who blundered into illegal conduct. He should have been well aware that conviction of felonies of the type here involved would impugn his honesty and integrity and jeopardize his ability to continue in the securities business.

Imposition of a sanction here against Respondent Mulvihill is not for punitive purposes. He has been punished for his crimes. The purpose, instead, is remedial. The function of a sanction here is to discharge the Commission's responsibility to protect the public interest by not permitting persons who have committed certain criminal offenses to continue in the securities business if they are deemed to pose an unacceptable risk to the investing public. In addition, it is necessary and appropriate for the Commission to consider the deterrent effect upon others of the imposition of a sanction. Arthur Lipper Corp. v. S.E.C., 547 F.2d 171, 184-5 (2d Cir. 1976); Thomas A. Sartain, Sr. 19 SEC DOCKET 562, 567-8 (1980).

Under all the facts and circumstances present here and on the basis of the foregoing considerations, I conclude that a bar is necessary in the public interest. It should be noted that a permanent bar order is not necessarily an irrevocable sanction; upon application the Commission, if it finds that the public interest no longer requires applicant's exclusion from the securities business, may permit his return. Hanly v. S.E.C., 415 F.2d 589,598 (2d Cir. 1969).

ORDER

Accordingly, IT IS ORDERED that Respondent Eugene Mulvihill is hereby 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, 17 CFR §201.17 (f).

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 (15) 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. */

David J. Markun
Administrative Law Judge

September 30, 1986
Washington, D.C.

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*/ All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the findings, conclusions and views stated herein they have been accepted, and to the extent they are inconsistent therewith they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented.