202 Va. 478

Record No. 5155

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Clerk, Supreme Court of Appeals
Richmond, Va.

In the Supreme Court of Appeals of Virginia at Richmond

DR. WILLIAM T. SPENCE

v.

NORTHERN VIRGINIA DOCTORS HOSPITAL CORPORATION, ET AL.

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5155

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 2nd day of March, 1960.

DR. WILLIAM T. SPENCE, Appellant,

against

NORTHERN VIRGINIA DOCTORS HOSPITAL CORPORATION, ET AL., Appellees.

From the Circuit Court of Arlington County

Upon the petition of Dr. William T. Spence an appeal is awarded him from a decree entered by the Circuit Court of Arlington County on the 8th day of December, 1959, in a certain proceeding then therein depending wherein Dr. John T. Hazel, the petitioner, and others were plaintiffs and Northern Virginia Doctors Hospital Corporation and others were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed in the Clerk's Office the 18th day of Sept., 1959.

Teste:

H. BRUCE GREEN, Clerk
VIRGINIA C. LONG, D. C.

COMPLAINT FOR INJUNCTION.

The plaintiffs, Dr. John T. Hazel, Dr. Raymond Schwartz, Dr. William T. Spence, and Dr. William D. Dolan, sue the defendants, Northern Virginia Doctors Hospital Corporation, a Corporation, Dr. Thomas Eugene Haggerty and Dr. John E. Alexander, and complain as follows:

page 2 } 1. That plaintiffs are stockholders in the Northern Virginia Doctors Hospital Corporation, a Virginia Corporation, which was incorporated on the 24th day of May, 1957, for the purpose of the erection of a medical center which is to include a convalescent hospital and a general hospital on a tract of land known as 601 South Carlyn Springs Road, Arlington, Virginia.

2. That the defendant, Dr. Thomas Eugene Haggerty, is presently the President of the defendant, Northern Virginia Doctors Hospital Corporation, and the defendant, Dr. John E. Alexander, is the Secretary of the Corporation.

3. That in an attempt to raise funds for the erection of the hospital the defendant corporation made an offering of thirty thousand (30,000) shares of its common stock at Ten ($10.00) Dollars a share, and the notice of the offering was filed with the Securities and Exchange Commission. The original underwriter was Whitney & Company, Inc., which was followed by the Matthew Corporation, and Balogh & Company, Inc., who is the successor to the Matthew Corporation.

4. That on August 3, 1959, the plaintiffs, and Dr. Henry L. Bastien, purchased sixty-two hundred twenty (6220) shares of the stock of the defendant, Northern Virginia Doctors Hospital Corporation through Balogh & Company, Inc., a Corporation, and, in accordance with the requirements of the underwriter, submitted a cashier's check to Balogh & Company Inc., in the sum of Sixty-Two Thousand Two Hundred Dollars ($62,200.00) which was in full payment for the stock purchased. Plaintiffs were advised that the Riggs National

Bank was the transfer agent and that the certificates representing the ownership of this stock would be forwarded to plaintiffs. There is attached to this complaint and made a part thereof the affidavit of Stephen E. Balogh, President of Balogh & Company, Inc., covering the sale to plaintiffs.

5. That plaintiffs are advised and aver that the defendant Dr. Thomas Eugene Haggerty, President, and the
page 3 } defendant, Dr. John E. Alexander, Secretary, on August 5, 1959, upon learning of the sale of the stock to plaintiffs, went to Riggs National Bank and physically removed all of the blank certificates, and on August 6, 1959, Riggs National Bank was ordered to close the transfer books of the corporation.

6. That plaintiffs are the owners of stock in the defendant corporation other than the stock purchased on August 3, 1959.

7. Plaintiffs are advised that the defendants, Dr. Thomas Eugene Haggerty, and Dr. John E. Alexander, as officers of the corporation, are presently endeavoring to lease a part of the property, purchased by the corporation for a convalescent home and general hospital, for a period of ninety-nine (99) years for the erection of a nursing home on the property purchased by the corporation, to persons who are non-residents of the State of Virginia. On August 6, 1959, a letter was addressed to the defendant, Dr. Thomas Eugene Haggerty, as President of the defendant corporation, advising him that a group of Northern Virginia physicians, all stockholders, desider to submit a proposal for the erection of a nursing home and requesting that until such time as the proposal is received that no action be taken toward the leasing of this property, and plaintiffs aver that no acknowledgment of this letter to the President has been received.

8. The charter of the defendant corporation does not indicate any intention concerning the building of a nursing home nor the leasing of any of its property for that purpose, nor is there any statement contained in the offering circular for the sale of the stock of the Northern Virginia Doctors Hospital Corporation that any part of the property was to be leased for such a period of time for the purpose of the erection of a nursing home, and a copy of the offering circular is attached to this complaint and made a part thereof.

9. Plaintiffs aver that it is not to the best interests of the corporation to lease any part of its property at this time and it is unfair to persons who have purchased stock in the defendant corporation on the basis of the statements contained in its circular, and that before any lease should be signed

that the matter be presented to the stockholders of
page 4 } the corporation.

10. Plaintiffs are not in a position at this time to call a meeting of the stockholders and will not be until such time as the Court passes upon their application to require the defendants to issue the certificates for the stock purchased by them and their names placed in the stock records of the corporation.

11. Plaintiffs further aver that the acts of the defendants, Dr. Thomas Eugene Haggerty and Dr. John E. Alexander, in reference to the refusal to issue the stock certificates and the attempt to lease the property, are entirely outside their duty and authority as officers of the corporation, and that the acts of these defendants were done with malice and with the definite intention of harassing, annoying and injuring plaintiffs. It is further avered that the failure of the corporation to issue the stock and the failure of the defendants, Dr. Thomas Eugene Haggerty and Dr. John E. Alexander, to sign the certificates was a violation of their clear duty as officers of the corporation and of the contract with the underwriter, Balogh & Company, Inc., a Corporation and Riggs National Bank, its transfer agent.

12. Plaintiffs say that they will sustain irreparable injury and damage if the defendants are not restrained at this time from leasing the property for any period of time and also will suffer irreparable injury and damage if the stock which they have purchased is not issued to them and the amount of the purchase placed on the books of the corporation.

The premises considered, plaintiffs pray:

1. That the defendant corporation, Northern Virginia Doctors Hospital Corporation, and the defendants, Dr. Thomas Eugene Haggerty and Dr. John E. Alexander, be restrained from selling or disposing of any part of the sixty-two hundred twenty (6220) shares purchased by plaintiffs.

2. That the defendant corporation, Northern Virginia Doctors Hospital Corporation, and the defendants, Dr. Thomas Eugene Haggerty and Dr. John E. Alexander, be required to issue certificates of stock to plaintiffs in
page 5 } accordance with their purchase order at Balogh & Company, Inc., a Corporation, its underwriting agent.

3. That the defendant corporation, Northern Virginia Doctors Hospital Corporation, and the defendants, Dr. Thomas Eugene Haggerty and Dr. John E. Alexander, be restrained

from entering into any contracts or lease agreements covering the lease of any property belonging to the defendant corporation.

4. That the defendant Corporation, Northern Virginia Doctors Hospital Corporation, and the defendants, Dr. Thomas Eugene Haggerty and Dr. John E. Alexander, be restrained from proceeding with any contracts of any kind, other than the erection of the hospital, until such time as certificates have been issued to plaintiffs representing the shares of stock purchased by them from Balogh & Company, Inc., a Corporation.

5. That the damages caused by reason of the unlawful action of the defendants be assessed and that plaintiffs have a judgment against the defendants, Northern Virginia Doctors Hospital Corporation, Dr. Thomas Eugene Haggerty and Dr. John E. Alexander, and each of them, for a sum which will reasonably compensate them for their damages.

6. That the plaintiffs, Dr. John T. Hazel, Dr. Raymond Schwartz, Dr. William T. Spence and Dr. William D. Dolan, have judgment against the defendants, Dr. Thomas Eugene Haggerty and Dr. John E. Alexander, for punitive damages by reason of their unlawful acts.

7. And for such other relief as to the Court may seem just and proper.

DR. JOHN T. HAZEL
DR. RAYMOND SCHWARTZ
DR. WILLIAM D. DOLAN
DR. WILLIAM T. SPENCE

CORNELIUS H. DOHERTY
4719 N. Rock Spring Road
Arlington, Virginia
Attorney for Plaintiffs.

* * * * *

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Filed Sep. 11, 1959.

H. BRUCE GREEN, Clerk
By V. LONG, Deputy Clerk.

PETITION TO INTERVENE ON THE PART OF THOMAS E. O'BRIEN, HOWARD O. MOTT, SIDNEY LYONS, W. LEONARD WEYL, CHARLES R. DERRICKSON, ROBERT A. BELL, J. FREDERICK CHAIRSELL, JOSEPH BEINSTEIN, HERMANN F. DIAMANT, HENRY T. KULESHER, JOHN E. ALEXANDER, JOHN E. PROMINSKI, THOMAS E. HAGGERTY, PARIS M. BRICKEY, W. T. PRYSE, LEO SOLET AND ROBERT MITCHELL.

To the Honorable Judges of the said Court:

COME now your Petitioners, Thomas E. O'Brien, Howard O. Mott, Sidney Lyons, W. Leonard Weyl, Charles R. Derrickson, Robert A. Bell, J. Frederick Chairsell, Joseph Beinstein, Hermann F. Diamant, Henry T. Kulesher, John E. Alexander, John E. Prominski, Thomas E. Haggerty, Paris M. Brickey, W. T. Pryse, Leo Solet and Robert Mitchell, and each of them, and respectfully petition this Honorable Court for leave to intervene and to file this their intervening petition in the pending cause entitled John T. Hazel, et als., Plaintiffs, *v.* Northern Virginia Doctors Hospital Corporation, a corporation, et als., Defendants, in chancery in this Court, and respectfully represent to the Court as follows:

1. Each of these Intervenors has a claim against the 6,220 shares of stock in the Defendant Corporation, which said claim is asserted in the Bill of Complaint by the Plaintiffs in the original Bill for Injunction. These Inter-
page 48 } venors claim the right and title to the said stock by virtue of a lawful subscription by the terms of which they were to and did pay one-half of the subscription amount and were to and stand ready to pay the other one-half of the subscription amount upon call to the Board of Directors of the Defendant Corporation. These Intervenors therefore respectfully assert that they are lawfully and equitably entitled to the delivery of the stock to them and to others similarly situated and that their claim is ahead and superior to any claim on the part of the Complainants in this cause.

2. That these Intervenors believe and therefore aver that prior to the time they executed subscription agreements with the Defendant Corporation that efforts had been made on a best effort basis by some stock salesman to sell the full issue of $300,000.00 to accomplish the objectives of the Corporation, the construction of a doctors hospital on property owned by the Corporation, and that the issue had failed of complete sale and that the said Defendant Corporation was in need, in

order to begin its project, of the subscription of the remaining 8,000 shares of stock.

3. Your Intervenors believe and therefore aver that in order to obtain a committal from the Arlington Trust Company in Arlington, Virginia, which committal was to be jointly participated in by Riggs National Bank of Washington, D. C., in the amount of $300,000, that the President of the Arlington Trust Company did require of the Defendant Corporation by letter of May 13, 1959, that the Corporation obtain from responsible persons legally binding agreements to purchase the sale of the remaining 8,000 shares of the common stock of the Defendant Corporation of which one-half should be paid in cash by July 15, 1959, and

page 49 } the remaining amount should be payable in cash on or before the date of the completion of the building or before the draw of the last $40,000.00 of the committed loan.

4. The Intervenors are advised and therefore aver that in compliance with the requirement of the said Arlington Trust Company as set forth by its President in a letter dated as aforesaid, there was prepared a subscription contract by the said Defendant Corporation in which the Intervenors and other subscribers similarly situated did subscribe and agree to take at a price of $10.00 per share the number of shares of the Defendant Corporation written opposite the signature of each subscriber and did promise and agree with the Defendant Corporation to pay therefor 50% of said subscription on or before the 15th of July, 1959, and to pay the remainder at such times and in such amounts as required by the Board of Directors of said Corporation, provided however that in any event the remainder was to be paid on or before the date that construction of stage one of the Northern Virginia Doctors Hospital to be built at 601 Carlyn Springs Road in Arlington County, Virginia, was completed. The said subscription contract between these Intervenors and others similarly situated and the Defendant Corporation provided that in the event 8,000 of the remaining shares (then 8,600) of the capital stock in said Defendant Corporation were not subscribed on or before the 30th day of July, 1959, that the said subscription contract would be null and of no effect. The said subscription contract was dated May 22, 1959.

5. Each of the Intervenors did so contract with the said Defendant Corporation by signing the said contract

page 50 } agreement and did pay at the time prescribed the amount required by the said contract and therefore became entitled to the issuance to them of the amount then paid for and became legally bound and required to pay the

additional amount when called for by the Board of Directors and to then receive the additional stock subscribed.

6. Intervenors, upon compliance in every respect with the agreement aforesaid, received a confirmation from one Balogh & Company of the subscription of the stock.

7. Thereafter, the said Balogh & Company, which your Intervenors allege to have been the stock sales representative for the Defendant Corporation, on August 3, 1959, in a letter signed by "Balogh & Company, by Lafayette Franklin, Executive Vice President" and in complete violation of the agreement between your Intervenors and the Defendant Corporation returned to the individual Intervenors the checks theretofore delivered by them and stated that the said Balogh & Company had not received the additional one-half payment prior to July 31, 1959.

8. Your Intervenors are advised and therefore allege that on said August 3, 1959, the said Balogh & Company learned that there were others anxious to obtain the stock and acting with others who were not bound by the aforesaid contract between themselves and the Defendant Corporation and without authority of the Defendant Corporation and in violation of the agreement under which the Defendant Corporation was bound to deliver the stock subscribed by each to the Intervenors did return the checks of all subscribers, violate the confirmation theretofore given to all subscribers and did then and there illegally and unlawfully agree to make the said stock available at some later date to others than the page 51 } subscribers.

9. Your Intervenors believe and allege that no stock sale had been made to others on the 3rd of August, 1959, and that on the said August 3, 1959, the Intervenors were the owners of the stock subject to its delivery by the Defendant Corporation and that no other person had any interest or title thereto.

10. These Intervenors allege that they are the rightful owners having complied in every respect with the said agreement with the Defendant Corporation and having paid the amounts required on the dates required in accordance with the contract and are the lawful owners of the said stock and that the Plaintiffs in this cause have no right, title or interest in and to the said stock.

WHEREFORE, your Intervenors pray that the Defendant Corporation may be required to issue the stock to each of the Intervenors heretofore subscribed by each of them and in accordance with the terms of the agreement for subscription; that the Bill of Complaint of the Complainants for an

injunction might be dismissed and that your Intervenors may have such other, further and more complete relief, including suit money and attorneys fees, as the nature of the case may require and to equity and good conscience may seem meet.

THOMAS E. O'BRIEN
HOWARD O. MOTT
SIDNEY LYONS
W. LEONARD WEYL
CHARLES R. DERRICKSON
page 52 } ROBERT A. BELL
J. FREDERICK CHAIRSELL
JOSEPH BEINSTEIN
HERMANN F. DIAMANT
HENRY T. KULESHER
JOHN E. ALEXANDER
JOHN E. PROMINSKI
THOMAS E. HAGGERTY
PARIS M. BRICKEY
W. T. PRYSE
LEO SOLET
ROBERT MITCHELL
Each by Counsel.

BALL, McCARTHY, BALL & EMBREY
By FRANK L. BALL, JR.
Counsel for Intervenors.

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Filed Sep. 18, 1959.

H. BRUCE GREEN, Clerk
Circuit Court, Arlington
County, Va.
By V. LONG, Deputy Clerk.

ANSWER OF DEFENDANT NORTHERN VIRGINIA DOCTORS HOSPITAL CORPORATION.

Comes now the defendant, Northern Virginia Doctors Hospital Corporation, a corporation organized and existing under the laws of Virginia, and for answer and grounds of defense

to the bill of complaint filed against it in this cause which is entitled Complaint for Injunction, respectfully answers and says as follows:

1. This defendant admits the allegations of paragraph one of the bill of complaint.

2. This defendant admits the allegations of paragraph two of the bill of complaint.

3. This defendant neither admits nor denies the allegations of paragraph three of the bill of complaint, but calls for strict proof thereof.

4. This defendant denies the allegations of paragraph four of the bill of complaint and calls for strict proof of the same.

5. This defendant says that at the unanimous direction of its Executive Committee, which act was subsequently ratified by its Board of Directors, a representative of the corporation did go to Riggs National Bank and pick up the stock certificates and directed said bank to close its transfer books. As to the other allegations set forth in paragraph five, this defendant denies and calls for strict proof.

page 68 } 6. This defendant admits that plaintiffs are owners of certain stock in said corporation, but denies that plaintiffs purchased any stock of defendant corporation on August 3, 1959.

7. This defendant says that at the direction of its Board of Directors, its officers and Executive Committee have been, for some time, negotiating for the leasing of a portion of its property for a nursing home. This defendant further says that there have been numerous letters and communications by parties interested in leasing and erecting a nursing home, and that insofar as this defendant knows, its officers have acknowledged all requests, either in writing or orally, and that as of this date no lease has been consummated. As for the other allegations set forth in paragraph seven, this defendant denies and calls for strict proof.

8 This defendant says that its Charter speaks for itself and that the offering circular for the sale of its stock also speaks for itself, and therefore, the allegations set forth in paragraph eight are neither denied nor affirmed.

9. This defendant says that the unanimous vote of its Board of Directors has determined that it is to the best interest of the corporation to lease part of this property for a nursing home, providing that a suitable lease can be obtained, and this defendant further says that two of the plaintiffs herein, to-wit, Dr. John T. Hazel and Dr. Raymond Schwartz, are

members of the Board of Directors, and therefore are estopped from complaining of their own actions.

10. This defendant says that the plaintiffs are in the same position to call a stockholders meeting as any other
page 69 } stockholder, provided, however, that they comply with the statutes of the Commonwealth of Virginia, governing such action, but this defendant further says that no request has been made by the plaintiffs to call a stockholders meeting.

11. This defendant denies each and every allegations set forth in paragraph eleven of the bill of complaint.

12. This defnedant denies each and every allegation set forth in paragraph twelve of the bill of complaint.

13. This defendant, having answered the allegations set forth in the bill of complaint, paragraph by paragraph, says further as answer and grounds of defense, as follows:

(a). That this complaint is based on an effort of the plaintiffs to acquire 6220 shares of stock in defendant corporation, and secondly to prevent defendant corporation from leasing any portion of its property unless it be to a lessee of their own choosing.

(b). As to the 6220 shares of stock sought by these plaintiffs, defendant corporation says that it has no outstanding stock for sale, having already committed itself to sell the same as will more fully appear in the intervening petition filed in this proceeding.

(c). That certain of the plaintiffs herein were subscribers to a portion of the 6220 shares of stock, knew that the stock had been committed by the corporation and further knew that Balogh & Company, Inc., could not sell the 6220 shares of stock to them without placing defendant corporation in the position of selling more shares of stock than it had for sale.
page 70 } (d). That whatever the relationship that existed between Balogh & Company, Inc., as successor to Matthew Corporation, this defendant emphatically denies that the relationship was that of an underwriter and that the said Balogh & Company, Inc., knew that defendant corporation had committed itself to sell said stock to other parties and that the attempt by Balogh & Company, Inc., to sell to plaintiffs was a breach of whatever relationship then in existence.

(e). As to the leasing of a portion of defendant corporations property, two of the plaintiffs, as directors of defendant corporation, approved and ratified the leasing of the same, and from the reading of paragraph seven of the bill of complaint, and the correspondence referred to therein, it is ap-

parent that the plaintiffs are not disturbed about the leasing of the property, but rather the proposed lessee.

(f). This being a Court of Equity in which plaintiffs seek relief, they must come into equity with "clean hands" and this being a joint action on the part of the four plaintiffs, the actions of one or more of the plaintiffs which would constitute unclean hands, would rub off on the remaining plaintiffs, they being "all tarred with the same brush."

(g). This defendant says that all of the plaintiffs being stockholders in defendant corporation and some of the plaintiffs being officers and directors, this action should be dismissed as being improperly brought, no demand having been made on the Board of Directors of the corporation for the relief asked for, and the relief asked for should have been sought through a stockholders derivative suit.

page 71 } And now having fully answered, this defendant prays that the injunction may be dismissed, the temporary restraining order may be dissolved and that it be allowed its proper costs in this behalf expended.

NORTHERN VIRGINIA DOCTORS
HOSPITAL CORPORATION
By A. CARTER WHITEHEAD
Its Counsel.

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Filed Sep. 21, 1959.

H. BRUCE GREEN, Clerk
Circuit Court, Arlington
County, Va.
By V. LONG, Deputy Clerk.

ANSWER OF DEFENDANTS THOMAS EUGENE HAGGERTY AND JOHN E. ALEXANDER.

COME now Thomas Eugene Haggerty and John E. Alexander, and each of them, Defendants in the above-styled cause, and for answer to the Complaint filed against them, which is entitled "Complaint for Injunction," respectfully and individually say as follows:

1. These Defendants and each of them admit that each Plaintiff is a stockholder in the Defendant Corporation. These Defendants further say that the charter speaks for itself as to the purposes of the Corporation.

2. These Defendants admit the allegations of paragraph two of the Complaint.

3. These Defendants neither admit nor deny the allegations of paragraph three of the Complaint but call for strict proof thereof.

4. These Defendants deny the allegations of paragraph four of the Complaint.

5. These Defendants and each of them deny the allegations of paragraph five of the Complaint and say that at least two of the Complainants knew at the time of the filing of the Complaint that the allegations of paragraph five
page 75 } thereof were false. Each of these Defendants deny that either of them ever went to Riggs Bank and physically removed any certificates as alleged.

6. The allegations of paragraph six of the Complaint repeat the allegations of paragraph one thereof, and are admitted. These Defendants deny, however, that Plaintiffs made any purchase of stock in the Corporation on August 3, 1959.

7. These Defendants deny the allegations of paragraph seven of the Complaint as alleged, but say in further answer thereto that the Board of Directors of the Corporation, of which the Complainants John T. Hazel and Raymond Schwartz are members, has determined it to be in the best interests of the Corporation to lease a portion of its property, under certain conditions, for the erection and operation of a nursing home or convalescent hospital in conjunction with the operation of the hospital by Defendant Corporation. These Defendants further say that while there were several points of view expressed at its several meetings, the Board of Directors unanimously directed its officers, of which one of the Complainants is one, to-wit, Raymond Schwartz Vice President, to negotiate and consummate a lease agreement with an applicant named in the action of the Board of Directors. These Defendants say that no lease has been negotiated or consummated but that conversations have been held by the officers of the Corporation and by these two Defendants, in compliance with the unanimous direction of its Board of Directors and Executive Committee. In further answer to the allegations of paragraph seven, these Defendants say that the Complainants are estopped to complain of either the action of the Corporation or of its officers as alleged, the

Complaint being a joint complaint and two of the
page 76 } Complainants having participated in the action of
the Board of Directors and one of the Complainants as Vice President being charged with the execution of the direction of the Board of Directors.

8. These Defendants and each of them say that the provisions of the charter of the Corporation and the provisions of the offering circular speak for themselves. These Defendants further say, however, that the charter authorizes the sale, transfer and conveyance of any of the property of the Corporation, and that the Board of Directors, of which the aforesaid two Complainants are members, has always construed the charter of the Corporation to grant authority to lease a part of its property for a nursing home or convalescent hospital in accordance with the most up to date concept of proprietary hospital operation.

9. These Defendants deny the allegations of paragraph nine of the Complaint that the leasing of a part of its property for the nursing home is not to the best interests of the Corporation, but say that the Board of Directors, of which two of the Complainants are members, unanimously determined such leasing for such purposes to be in the best interests of the Corporation and the Complainants are now estopped to complain of the said determination by the Board of Directors.

10. In answer to the allegations of paragraph ten of the Complaint, these Defendants say that each Plaintiff is in the exact same position of each other stockholder of the Corporation as to the calling of a stockholder's meeting and no Plaintiff has been denied any right as a stockholder. These Defendants further say that no request for the calling of a stockholder's meeting has been received from any Complain-
' ant. These Defendants deny that Complainants
page 77 } have any right to have the said stock issued to them
as alleged in paragraph ten of the Complaint.

11. These Defendants and each of them deny any act on the part of either of them to have been outside of their authority or in excess thereof and deny any malice on the part of either of them. On the contrary, these Defendants say that the Complainant Hazel participated in a meeting of the Board of Directors which confirmed and approved every act of the Executive Committee complained of in the Bill of Complaint, to-wit, meeting of Board of Directors of August 13, 1959, at which no member voted against the resolution adopted by the said Board approving "the action of the Executive Committee in * * * closing the transfer books, removing the stock from Riggs Bank * * *." These Defendants again aver that

such action on the part of one of the Complainants of a joint complaint, estops not only such Complainant but all Complainants joined with him in a joint complaint from now complaining of the action of the Corporation Defendant or of any of its officer in the execution of the directions of the Board of Directors.

12. These Defendants and each of them deny the allegations of paragraph twelve of the Complaint. Contrary to said allegations, these Defendants say that the filing of this Complaint was done by the Complainants without warning, without consultation with, and with a desire to cause, the Corporation Defendant, and each stockholder thereof irreparable injury just 18 days after ground had been broken by the contractor for the construction of the hospital. The execution of a contract with the builder and the breaking of ground initiating construction in the first real step toward the goals and objects of the Corporation were both reached page 78 } after these Defendants became officers and due, at least in part, to untiring and devoted efforts on their part to the best interests of the Corporation.

13. Having answered the allegations of the Complaint, paragraph by paragraph, these Defendants, in further answer to the Complaint as a whole, say that the Complainants, these Defendants believe, should not be heard to complain in equity where the doctrine of clean hands applies and the doctrine of estoppel has validity. Each of the Complainants is an official on the staff of Arlington Hospital. The Complainant Dolan is in charge of Pathology at Arlington Hospital and has a lucrative agreement for the operation of the laboratory at Arlington Hospital, and it was not until after said Dolan had applied for the pathological services and the laboratory at the Northern Virginia Doctors Hospital and another applicant had been appointed, that his attitude toward the new hospital became hostile. Complainant Schwartz is the Chief of Staff of Arlington Hospital. Complainant Hazel is the Chief of Surgery at Arlington Hospital and previously was President of Defendant Corporation, and on January 22, 1959, brought his own attorney to a meeting of the Board of Directors to report that the Corporation could not be successful and resigned as President of the Corporation May 19, 1959. Complainant Spence on January 22, 1959, seconded a resolution, later tabled, that the Corporation be dissolved.

14. In spite of the aforesaid, these Defendants with other devoted members of the Board of Directors and officers have made every effort to carry through to realization the estab-

lishment of a Doctors Hospital for Northern Vir-
page 79 } ginia and to keep faith with the stockholders of the
Corporation. None of the Complainants ever complained as to the authority to lease the land complained of in the Complaint, indeed they affirmatively participated, (through two of the four Complainants), in the action of the Board in determining to lease the land for the construction of a convalescence or nursing home in close cooperation with the hospital and with a "buy back" agreement running back to the hospital. Two of the Complainants, Hazel and Schwartz, had already committed themselves by legally binding subscription contract and had purchased part of the stock they now ask the Court to say they purchased again. No complainant ever asked to call a special stockholder's meeting.

15. The concerted action of the four Complainants in this cause is either to kill all opportunity of reaching the realization of a Doctors Hospital in Northern Virginia or to cause the same, if realized, to be under the control of a few of the present officials of Arlington Hospital, all contrary to the concept of the Northern Virginia Doctors Hospital from the time the project was initiated.

16. These Defendants say there is no allegation upon which damages against either of these Defendants could be awarded the Plaintiffs and say that every act of these Defendants has been taken in accord with the direction of the Board of Directors acting the best interests of the Complainants and all other stockholders.

And now having fully answered the Bill of Complaint, these
Defendants pray to be hence dismissed with their
page 80 } reasonable costs expended and pray the Court to
award them suit money and counsel fees in defending this action.

THOMAS EUGENE HAGGERTY
JOHN E. ALEXANDER
Dfendants, by Counsel.

BALL, McCARTHY, BALL & EMBREY
1437 North Courthouse Road
Arlington, Virginia
By FRANK L. BALL, JR.
Counsel for Defendants
Thomas Eugene Haggerty and
John E. Alexander.

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MEMORANDUM.

FROM: WILLIAM D. MEDLEY, JUDGE.

TO: Cornelius H. Doherty, Esquire, Attorney for Plaintiffs, A. Carter Whitehead, Esquire, Attorney for Northern Virginia Doctors Hospital Corporation.

Frank L. Ball, Jr., Esquire, Attorney for Defendants, Thomas Eugene Haggerty and John E. Alexander and for Intervening Petitioners.

THIS CAUSE came on to be heard on the pleadings, the testimony, the exhibits, the depositions filed and admitted to be read, the argument of counsel, and memoranda filed by counsel, and was taken under advisement by the Court.

UPON CONSIDERATION of the foregoing, the Court is of the opinion that the plaintiffs are not entitled to the relief prayed for in their Bill of Complaint; that said Bill of Complaint should be dismissed, and that the injunction heretofore awarded should be dissolved.

At the time of the argument of this case, counsel for the intervening petitioners requested that the Court dismiss the intervening petition if the Court denied the relief prayed for by the plaintiffs. The Court, therefore, deems it unnecessary to make any finding with respect to the intervening petition since said petition will be dismissed by the decree to be entered in this case.

A decree should be prepared pursuant to this memorandum and, after endorsement by all counsel of record, be presented for entry.

December 2, 1959.

WILLIAM D. MEDLEY, Judge.

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FINAL DECREE.

THIS CAUSE came on again to be heard upon the pleadings, the testimony, the exhibits, the depositions filed and admitted to be read, and upon argument of counsel, and upon memoranda filed by counsel subsequent to the argument, and the Court having taken the same under advisement and maturely considered the matter, and

The Court being of the opinion that the Plaintiffs are not entitled to the relief prayed for in their Bill of Complaint and that said Bill of Complaint should be dismissed, and

IT FURTHER APPEARING TO THE COURT that the intervening petitioners, by their attorney, at the time of the argument of this cause stated to the Court that if the Court found that the Plaintiffs had not carried their burden of proof in establishing their right to relief under their Bill of Complaint that the intervening petitioners desired to withdraw or have the Court dismiss the intervening petition without the necessity of making findings thereupon, and

IT FURTHER APPEARING TO THE COURT that it is therefore unnecessary for the Court to make any finding with respect to the intervening petition since the said petition will be dismissed by this decree, it is

page 111 } ADJUDGED, ORDERED AND DECREED that the preliminary injunction heretofore granted Plaintiffs in this action be and the same hereby is dissolved; that the Bill of Complaint for injunction and for damages be and the same hereby is dismissed; that the intervening petition, at the request of the attorney for the intervenors, be and the same hereby is dismissed without consideration of the merits of the intervening petition.

This Decree is final.

Counsel for the Plaintiffs duly excepts to the ruling of the Court in dismissing the Bill for Injunction.

Entered: December 8, 1959.

WILLIAM D. MEDLEY, Judge.

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NOTICE OF APPEAL.

The plaintiff, Dr. William T. Spence, is aggrieved by the final decree entered in the above entitled cause on the 8th day of December, 1959, and hereby appeals from the final decree so entered and hereby gives notice that he will, within the time permitted by law, file a petition in the Supreme Court of Appeals of Virginia for an appeal to the entry of the decree and final judgment.

DR. WILLIAM T. SPENCE
By CORNELIUS H. DOHERTY
Attorney for Plaintiff.

Filed Dec. 23, 1959.

H. BRUCE GREEN, Clerk
Circuit Court, Arlington
County, Va.
By V. LONG, Deputy Clerk.

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ASSIGNMENT OF ERRORS.

The plaintiff, Dr. William T. Spense, through his attorney, Cornelius H. Doherty, assigns as errors the action of the trial Court in the following respects:

1. The Court erred in entering a decree dismissing plaintiff's complaint.
2. The Court erred in entering a decree denying the relief prayed for in the complaint and in failing to enter a decree directing the defendant, Northern Virginia Doctors Hospital Corporation, through its officers, the defendants, Dr. Thomas Eugene Haggerty and Dr. John E. Alexander, to issue a certificate of stock to plaintiff which was purchased by plaintiff on the open market.

DR. WILLIAM T. SPENCE
By CORNELIUS H. DOHERTY
Attorney for Plaintiff.

Vincent C. Burke, Jr.

Filed Dec. 23, 1959.

H. BRUCE GREEN, Clerk
Circuit Court, Arlington
County, Va.
By V. LONG, Deputy Clerk.

* * * * *

Dep.
Vol. I
page 2 }

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VINCENT C. BURKE, JR.,
a witness, was called for examination by counsel for the plaintiffs and, after having been sworn by the notary, was examined and testified as follows:

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page 20 }

* * * * *

EXAMINATION BY COUNSEL FOR DEFENDANTS.

Dep.
Vol. I
page 21 } By Mr. Ball:

Q. Mr. Burke, do you know Dr. Thomas E. Haggerty?

A. I don't know whether I ever personally met him, Mr. Ball. I talked to him on the telephone on several occasions at least.

Q. Do you know Dr. John E. Alexander?

A. I can't say as I do; no, sir. I may have talked to him, Mr. Ball.

Q. Have you ever seen either of those gentlemen in the Riggs National Bank?

Vincent C. Burke, Jr.

A. I have no recollection of ever seeing them in the bank.

Q. All right. Now, from the time of your original agreement, or your authority under the special resolution, which is identified as Plaintiffs' Exhibit No. 1, you considered the Northern Virginia Doctors Hospital Corporation as a principal, did you not?

A. Yes, sir.

Q. You would act under instructions from the Executive Committee of the Hospital Corporation?

A. Yes, sir.

Q. At no time was Balogh & Company, the Matthew Company, or the Whitney Company ever your principal?

A. Absolutely not.

Dep. Vol. I page 22 } Q. Now, I noticed in Plaintiffs' Exhibit No. 9, which is a letter from Mr. Dierkoph to the Northern Virginia Doctors Hospital Corporation of August the 10th, the letter shows that 6220 shares had been issued, that we would have exceeded the 30,000 shares authorized, does it not?

A. Yes, sir.

Q. So that, Mr. Burke, there was no authority in the bank to issue the 6220 shares as requested by Balogh within the 30,000 authorized in the offering, was there?

A. Well, certainly, we would have been over issued if we did it. Therefore, we wouldn't have authority to do it.

Q. That would be contrary to the authority?

A. Yes, sir.

Q. That authority, given in the original special resolution of the bank, was never amended or increased in any way?

A. Not to my knowledge.

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page 34 }

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EXAMINATION BY COUNSEL FOR PLAINTIFFS.

By Mr. Doherty:

Vincent C. Burke, Jr.

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page 35 }

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Q. Would Riggs issue any stock under the direction of, other than from Balogh & Company or Matthew & Company?

A. Well, our authority to issue the stock is from our principal.

Q. The Northern Virginia Doctors Hospital Corporation?

A. Yes, sir.

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Dep.
Vol. I
page 37 }

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EXAMINATION BY COUNSEL FOR DEFENDANTS.

By Mr. Ball:

* * * * *

Q. I want to ask you a question: What was the purport of the visit of Dr. Dolan and the people that evening of August the 6th?

A. 5:50 P. M.

Q. Incidentally, that was after working hours at the bank, isn't that right?

A. Mr. Ball, the Riggs National Bank works around the clock.

Q. Was there any prior appointment by which you waited until 5:50?

A. No, sir, I was there working.

Q. What was the reason for their visit? What was the purport of it?

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page 38 }

A. The purport of it was to deliver to the bank a letter containing a check in the amount of $6,220, which letter also directed that stock be issued of Northern Virginia Doctors Hospital Cor-

poration to certain listed people. And I advised the group present that, although I would accept it, I advised them that the books had been closed and we would not comply with the instructions in the letter.

Q. So, at the time that the bank first received the check, the offerer of the check was advised that the bank had no authority to issue the stock?

A. That is correct.

Q. And the bank never undertook to issue the stock to anybody?

A. No, sir.

Mr. Ball: All right, sir, thank you very much.

Mr. Doherty: That is all.

(Reading and signing of deposition waived.)

Thereupon,

MICHAEL AQUILINO,

a witness, was called for examination by counsel for the plaintiffs and, after having been sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFFS.

By Mr. Doherty:

Dep. Vol. I page 39

Q. Will you state your full name, please, Mr. Aquilino?

A. Michael Joseph Aquilino.

Q. Where do you live?

A. 4001-12th Street, Northeast.

Q. Where are you employed?

A. Riggs National Bank.

Q. In what capacity?

A. Clerk in the Stock Transfer Department.

Q. How long have you been so employed?

A. I have been with the bank for 2 years; in that particular department, about a year and a half.

Q. Are you familiar with the records of the Northern Virginia Doctors Hospital Corporation which Riggs acted as transfer agent?

A. Yes, sir, the actual stock records.

Q. Do you have anything to do with the issuance of the stock?

Michael Aquilino.

A. Yes, sir.

Q. And there has been something said here about the number of shares that have been issued, that there were 370 shares over-issued, over the public offering of 30,000.

Now, there is the notation there further, however, that Balogh & Company have made, sold a total or requested the issuance of stock in the sum of 16,552 shares?

A. Yes, sir.

Dep. Vol. I page 40 }

Q. Are you familiar with those records?

A. Yes, sir. I computed this, showing that we would be 370 shares over had we followed the entire instruction of Balogh & Company.

Q. Well, Balogh & Company had not exceeded their quota of 16,552 shares?

A. They may have not exceeded their quota, but we would have gone over 30,000 shares had we followed their instructions. We were limited to 30,000 shares.

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Dep. Vol. I page 46 }

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EXAMINATION BY COUNSEL FOR DEFENDANTS.

By Mr. Ball:

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Dep. Vol. I page 47 }

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Q. Is your answer that the bank did not have authority at the time it received it to issue the 6220 represented by the check of $62,200 brought to Mr. Burke?

A. That is correct.

Dr. Thomas Eugene Haggerty.

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Dep.
Vol. I
page 53 }

* * * * *

Q. And it was not until you got Mr. O'Donnell's check, his check of $550 that evening to Mr. Burke that the issues would have gone over the authorization?

A. Yes, sir.

Dep. Vol. I page 54 }

Q. The 6220 shares represented by the $62,200 check is the order that would have put it over the issue?

A. Yes, sir.

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Dep.
Vol. II
page 34 }

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DR. THOMAS EUGENE HAGGERTY,

a defendant, was called for examination by counsel for the plaintiffs and, after having been sworn by the notary, was examined and testified as follows:

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EXAMINATION BY COUNSEL FOR DEFENDANTS HAGGERTY AND ALEXANDER.

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Dr. Thomas Eugene Haggerty.

By Mr. Ball:

Q. This paper does bear the stamp of the Securities & Exchange Commission, Washington Regional Office, showing that it was received on May the 19th, 1959, does it not?

A. Yes, sir.

Q. Would you read please the part which is the amendment so we may have it in the record?

A. "As of May 18, 1959, 8,301 shares are offered for sale to the public at $10.00 per share on the following terms:

"A. That the purchasers sign a duly authorized subscription contract wherein they subscribe to a specified number of shares, the contents of the subscription contract being that they will purchase 50 per cent of the stock therein subscribed to on or before July 15, 1959, and that they will purchase the remainder of the stock therein subscribed to on call of the Board of Directors of this Corporation, but in any event, not later than the date that Stage 1 of the construction of the Northern Virginia Doctors Hospital, to be built at 601 Carlyn Springs Road in Arlington County, Virginia, is completed.

Dep. Vol. II page 69

"B. That in the event 4,000 of the remaining 8,301 shares are not reliably subscribed to, or in the event that an amount equivalent to $40,000 is not otherwise obtained, on or before the 30th day of July, 1959, that said subscription shall be null and of no effect."

Q. Doctor, what you have just read was filed with the Securities & Exchange Commission, as the stamp—

A. There is a stamp to that effect, Mr. Ball.

Q. Have you ever received any word from the Securities & Exchange Commission that that filing was rejected or denied in any way?

A. I have personally not seen such a letter.

Q. Have you ever heard that it was denied or rejected in any way?

A. No, sir.

Q. In your understanding of what you have just read, does that require the payment of the full amount or the payment of a half amount?

A. It is my understanding that it requires payment of a half amount.

Dep. Vol. II page 70

Q. Has the board of directors of the corporation ever called the remaining amount as set forth in what you have just read?

Raymond Schwartz.

A. Not that I know of.

Q. Did Balogh & Company ever call upon the board of directors to call the remaining amount of subscriptions as set forth in what you have just read?

A. No, sir.

Q. Is the language in what you have just read essentially the language of the subscription that you and other subscribers signed?

A. Yes, sir.

Q. Doctor, I want to go back just a moment, and maybe you will find it in the directors' minutes. Was there a time prior to July 15th when a report was made to the board of directors that all of the stock, all of the remaining stock authorized to be issued had been fully subscribed?

A. Yes, sir.

Q. Do you recall when that was?

A. I don't. I would have to consult the minutes.

Q. The minutes would show that, would they?

A. I believe so.

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Dep.
Vol. III
page 32 }

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RAYMOND SCHWARTZ,

a plaintiff, was called for examination by counsel for the Defendants Haggerty and Alexander and, after having been sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANTS HAGGERTY AND ALEXANDER.

By Mr. Ball:

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Dep.
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page 37 }

* * * * *

Raymond Schwartz.

Q. Doctor, when did you decide to go in on this arrangement with Dr. Spence and the others?

A. My first knowledge of the fact that this whole issue was in jeopardy was at about noon on that Monday, August the 3rd. This was my very first knowledge that this subscription was in jeopardy and that there had been a certain threat that the checks would be returned, and so forth, and so forth.

Q. Where did you receive that knowledge?

A. This I got from Dr. Dolan.

Q. From Dr. Dolan?

A. Yes.

Q. Did you call the president of the corporation to report it to him?

A. No, I did not.

Q. Did you call the secretary of the corporation to report it to him?

A. No, I did not.

Q. Did you attempt to call a board of directors' meeting or executive committee meeting?

Dep. A. No, I did not.

Vol. III Q. Dr. Dolan was not an officer or member of the
page 38 } board of directors?

A. That's correct.

Q. So that it became obvious to you, did it not, that Dr. Dolan had information that the corporation didn't have at that time, or the board of directors didn't have?

A. Let me merely say that whether they had this knowledge or not is not known to me. I had no knowledge whether others had knowledge of a certain jeopardy to this or not at that time.

Q. You are a member of both the board of directors and executive committee?

A. Yes.

Q. So as a member of the board of directors you had not learned?

A. No.

Q. As a member of the executive committee you had not learned?

A. Not from them, but, contrarywise, I did not have the knowledge that they didn't know these things.

Q. You didn't attempt to call your brother directors together to advise them or your brother officers?

A. I didn't do that, no.

Raymond Schwartz.

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page 41 }

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Q. Doctor, you were present at this board of directors' meeting that voted to go ahead with the contract with the Cohen interests, were you not?

A. Yes.

Q. You have heard here that the action of the board of directors was unanimous?

A. Yes.

Q. After discussion?

A. Yes.

Q. And that the minutes were approved at the next board of directors' meeting as unanimous; is that correct?

Dep.
Vol. III
page 42 }

A. Yes.

Q. You also were present, were you not, at the executive committee meeting on the night of the 3rd of August of 1959?

A. That's correct.

Q. At which time the executive committee took the action to sever relations with Balogh and to have the books and records taken back from Riggs Bank; is that correct?

A. Yes, that's correct.

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page 43 }

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Q. Later on, you say that Dr. Alexander and Dr. Haggerty had been acting outside of their authority. Is there any act that you now know of that you claim Dr. Haggerty or Dr. Alexander have done outside of their authority as officers of the corporation?

Raymond Schwartz.

Mr. Doherty: It is a legal matter. That will all come out in the proof.

Dep. Vol. III page 44 } Mr. Ball: I am asking him.

The Witness: Let me say that there is doubt in my mind, and there has been, whether we did or did not buy these stocks.

* * * * *

Q. Doctor, you are not going to tell me something that is not true. Do you know of anything that Dr. Haggerty or Dr. Alexander have done personally in connection with the corporation that wasn't first authorized by the board of directors or the executive committee?

A. I think it is fair to say that all of these things were very definitely authorized by a *comittee.*

Dep. Vol. III page 45 } Q. If they were authorized by the board of directors, you are a member of that and were present; is that correct?

A. That's right.

Q. The night that this thing was done you were present and at the time the vote was taken and the action to pull back the stock records was done you were present, were you not?

A. When you visualize the scene at that—

Q. I want to know if you were present. Then you can tell me anything you want.

A. I was present and we voiced an objection that we thought was correct. Perhaps not as vigorously as we might. The motion was made and was seconded. I neither voted aye; I didn't vote nay.

Q. Sir? You say no vote was taken?

A. I say I did not vote aye or nay.

Q. On that night, Doctor, when you were sitting with your brother members of the executive committee, did you tell any of them that you were one of those who had attempted to buy the stock on that day?

A. I merely said a group of doctors—I can't remember exactly what I did say. It was limited to a few sentences. I rather doubt that I did say that I was a member of this group. I rather doubt that I did.

Dep. Vol. III page 46 } Q. Did you in any way attempt to abrogate your obligation under the subscription agreement or tell them that you felt that the subscription agreement was abrogated in any way under which you had agreed to pay $2,000?

Raymond Schwartz.

* * * * *

Q. Did you object to the meeting that night, Doctor?

A. I wasn't very happy about being called. I came.

Q. Did you go in when the meeting was organized and say, "I object to the holding of this meeting"?

A. No. I was plenty annoyed, though, because I was a last arrival.

Q. Did the others indicate that they were annoyed, too, at the meeting at that time?

A. I am quite sure they did.

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page 48 }

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Q. Doctor, it was taken in an effort to uphold your legal agreement that you already had with the company for the purchase of $2,000 worth of stock, wasn't it?

A. I don't think I understand that.

Q. It was taken by the executive committee to uphold your legal right to have the $2,000 worth of stock that you had signed a subscription for, wasn't it?

Dep. A. That is quite correct.

Vol. III Q. Wasn't that said at the meeting, that that was
page 49 } one of the reasons for it, that the corporation had to deal square with the people that had subscribed?

A. That was stated, yes.

* * * * *

Q. Of course, you never authorized Balogh to send the checks back.

A. I should say not.

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Dep.
Vol. III
page 52 }

* * * * *

Stephen E. Balogh.

Dep.
Vol. III The allegation is that you purchased 1,500 shares.
page 53 } That would have been $15,000.

A. Yes.

Q. Did you sign a note for $15,000?

A. It was done in two parts. I signed an individual note for a certain sum of money and then three of us signed another note for a total sum of money again.

Q. None of that was done before the 6th of August?

A. There seems to be some conflict relating to dates. It has been stated, as I am sure is recorded, that it was done on Monday. I am reasonably sure that this was done later that week and just before we went to the Riggs National Bank.

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page 20 }

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STEPHEN E. BALOGH,

was called as a witness by counsel for the plaintiffs and, having first been duly sworn, took the stand, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Doherty:

Q. Mr. Balogh, would you state your full name, please?

A. Stephen E. Balogh.

Q. Where do you live?

A. 4832 46th Street, Northwest, Washington, D. C.

Q. What business are you in?

A. Registered broker dealer.

Q. Were you at one time connected with Matthew
page 21 } & Company?

A. Balogh & Company is the successor corporation. I own both corporations and we changed the name of the corporation June 1, 1959.

Q. Was the corporation advised of that fact, the Northern Virginia Doctors Hospital Corporation?

A. Northern Virginia Doctors Hospital Corporation was properly advised.

Q. Where is your broker's office?

A. In Washington, the main office, is in the Woodward

Stephen E. Balogh.

Building. The Arlington branch office is in the Arlington Trust Building, on the third floor.

Q. When were you first connected with the defendant corporation as a broker or underwriter?

A. Officially, from the 22nd of September 1948—1958.

Q. That was by the agreement which has been offered in evidence as Plaintiffs' Exhibit No. 1?

A. By written agreement properly filed with the Security Exchange Commission.

Q. I show you Plaintiffs' Exhibit No. 1 in evidence, and ask you if that is the original agreement that you had with the defendant corporation (handing the exhibit to the witness)?

A. Yes, sir.

Q. Under this agreement, Mr. Balogh, how many shares of stock were you to sell of the defendant corporation?

A. 16,552.

page 22 } Q. The offer was what?

A. Thirty thousand shares.

Q. Do you know who that went through, what underwriter?

A. Another underwriter in Washington, D. C., Whitney & Company.

Q. Did you see this offering circular of Northern Virginia Doctors Hospital Corporation known as Plaintiffs' Exhibit No. 3 in evidence?

A. Yes, sir. This is what we distribute.

Q. This organization was approved by the Securities & Exchange Commission?

A. The S. E. C. does not approve any offering. The S. E. C. authorizes the printing of the circulars.

Q That was done in this particular case?

A. It was done in this case, sir.

Q. You were to sell 16,552 shares?

A. Yes, sir.

Q. Did you sell 16,552 shares within the period that was contemplated by the original agreement?

A. We have concluded the sale on August 4, 1959, and we sold out all the 16,552 shares.

Q. Under the original agreement within the certain period of time, had you sold out to March?

A. Not all of that. In the middle of February I suggested and proposed to the Board of Directors and Exe-

page 23 } cutive Committee to close out this issue, because it was a laggard, drawn-out public issue. And for the good of the corporation, I suggested that we should close out, irrespective of the remaining unsold shares. The Board

Stephen E. Balogh.

of Directors had decided otherwise, and by the end of March I agreed in an amended extension of our sales contract that the remaining shares, namely, 8,305 shares, if I remember the numbers correctly, should be also offered to the public.

Q. I show you Plaintiffs' Exhibit No. 2 in evidence and ask you if that is the agreement that you signed some time in March (handing the exhibit to the witness)? That is dated the 10th of March. Was it signed, if you signed it, on the 10th of March, or when was it signed?

A. Well, actually, the signature was put on this paper on March 30. I advised Mr. Creedon, the attorney of the corporation, that after we contacted the transfer agent, the Riggs National Bank, and after we looked over our records, some of the proposed sales were not confirmed and in my notations the original amendment was drawn up on the basis of 5,494 shares as unsold.

Q. What are you referring to now?

A. I am referring to the copy which was given to me by Mr. Creedon on the 10th of March, and I asked him at that time to recount the shares and I wrote him a letter—I'm sure

page 24 } he has a copy of it somewhere—that the actual unsold shares are 8,503. So we never changed the date of the amendment that we signed, the corporation and myself, actually, on March 30.

Q. Referring to Plaintiffs' Exhibit No. 4 in evidence, is that the letter from Creedon that you received (handing the exhibit to the witness)?

A. Yes, sir. Mr. Creedon mailed this back with the proper signatures on March 30, and acknowledged that the copy of this proposed amendment to our original underwriting agreement is this document which I have signed.

Q. From that time up to August 3, 1959, you sold the stock whenever it was available?

A. The date of the last sale was August 4, 1959.

Q. Directing your attention to sometime in June—strike that.

Who was the representative of the defendant corporation that dealt with you on most of the occasions?

A. Most frequently I dealt with Mr. O'Neill.

Q. That is Mr. Philip O'Neill?

A. Mr. Philip O'Neill, administrator of the hospital who ran it on a month-to-month basis from our Arlington brokerage office, and it was convenient to discuss the corporation matters personally or by telephone with him.

Q. Was Mr. O'Neill aware of the fact of the change on

June 1, 1959, of the name of Matthew & Company to Balogh & Company?

page 25 } A. Precisely so. He recieved official notice from us. He received checks from us and he paid checks to us under the name of Balogh & Company.

Q. Mr. Balogh, did there come a time when Mr. O'Neill approached you about the sale of certain stock by subscription agreement to various doctors?

A. Yes, sir.

Q. Can you tell us what that was, what conversation you had with Mr. O'Neill about that?

A. Both Mr. O'Neill and Mr. Creedon showed me a draft letter which they planned to address to the stockholders of the Northern Virginia Doctors Hospital Corporation conveying the thought or suggestion of the Board of the corporation offering them a chance to buy stock on a split-payment basis, deferred-payment basis.

The original draft which was shown to me by Mr. O'Neill was outright violation of the word and the spirit of the agreement, and I asked Mr. Creedon—in fact, I wrote him a letter on or about the middle of May—

Q. Do you have a copy of the letter you wrote to him?

A. I should have a copy of it.

—in which letter I asked Mr. Creedon, the attorney of the corporation, that if any deferred payment would be brought into the picture, that future stock purchasers could buy stock on an installment basis, it should be clearly acted

page 26 } upon by S. E. C., Securities Exchange Commission, because this offering circular does not give any relief of payment to any stockholders. This stock purchased and offered to the public has to be paid by cash.

I have this copy of the letter (indicating).

Q. Before you go into that—

A. May 14, I wrote this to Mr. Creedon.

Q. You say this has to be paid by cash?

A. Paid in full by cash.

Q. Within what period of time?

A. Within four business days or seven calendar days. It is the regulation—so-called Regulation T, promulgated by the Federal Reserve Board, and it is explained by the Securities Exchange Commission that a broker is not allowed to give credit. In fact, we are warned under severe penalties.

Mr. Ball: The best evidence is the law itself or the regulations. I don't know if we can get Mr. Balogh to expound

Stephen E. Balogh.

on what the regulation is. It seems to me the best evidence is the regulation itself which he referred to.

The Witness: Would you like me to quote that one sentence? I have it written down.

Mr. Doherty: That is all right, Mr. Balogh.

I offer this in evidence as Plaintiffs' Exhibit No. 6.

The Court: This will be No. 6.

page 27 } (The document referred to was marked Plaintiffs' Exhibit No. 6 for identification and received in evidence.)

By Mr. Doherty:

Q. Now, after this correspondence with Mr. Creedon, did you have any further conversations with either Mr. Creedon or Mr. O'Neill relative to the sale of this stock to the various doctors?

A. This conversation has been going on between the middle of May to the middle of June, almost until the beginning of July. Mr. Creedon felt fairly confident that if he presents an amendment to the Securities Exchange Commission and the Commonwealth of Virginia— this being a Virginia corporation and their stock—that without too much complications he would receive permission from S. E. C. to amend the circular.

In this particular letter I only asked him in accordance with the attorney, Mrs. Appleton, the Securities Exchange Commission attorney who supervises our services, no deferred payment, installment payment stock sale could go through in connection with this stock through our books without the express knowledge and the approved amendment of S. E. C.

On or about the middle of June Mr. O'Neill brought a second draft of a letter and he showed me an alleged contract and made this statement, "That we had made an page 28 } arrangement with a bank in Arlington. We will be able to sell on the basis of this contract 6,400 shares,"—the actual remaining amount of shares at that time—"so you reserve those shares, do not offer them to the public anymore. Half of the shares will be paid by the individual purchasers,"—we could call them his prospects, sixty-three prospects, whom he actually had lined up on that statement—"and the other half of the stock will be paid by the corporation."

I didn't have to consent verbally or in writing to such an

arrangement, but in order to help the completion of the sale of this corporation stock I agreed that I will be willing to reserve the 6,400 shares from the middle of June up till July 15; that was the termination date of the contract. And we so advised every one of our salesmen who were engaged in the selling of this stock, we actually have reserved on our books 6,400 shares for this contractual type of sale with the understanding that half of the sales on the actual date of payment will be paid by the corporation and half of the amount will be paid by the individual purchasers.

On July 16, I was in the hospital under a surgical operation for about two or three weeks. On July 16, Mr. O'Neill brought a series of names, precisely sixty-three purchasers—alleged purchasers' names, into our office and our security vice president, who is actually the cashier and authorized executive officer, accepted these names as purchase

page 29 } orders, and he has entered into our ledger books sixty-three names. He immediately sent them out, everyone of these names appearing on this ledger book, on July 16 and received a copy of our regular routine confirmation.

Q. Do you have a copy of one of these here?

A. Everyone of those confirmations is here.

Q. Was one sent out to each one of them?

A. It went out on July 16, '59, to everyone of these names that appears on our ledger, with the understanding that the settlement date of payment is July 22nd. There must have been a week end in between.

Mr. Doherty: Wait just a minute, Mr. Balogh.

I offer this in evidence as Plaintiffs' Exhibit No. 7 on the statement of the witness that he has one of those for each one of the sales or offer of purchase made on the 16th day of July 1959.

(The document referred to was marked Plaintiffs' Exhibit No. 7 for identification and received in evidence.)

Mr. Doherty: And I ask this be marked Plaintiffs' Exhibit No. 8 in evidence showing the names and amounts of stock allegedly purchased on that day.

(The document referred to was marked Plaintiffs' Exhibit No. 8 for identification and received in evidence.)

Stephen E. Balogh.

page 30 } By Mr. Doherty:

Q. This statement that went out to every one of those doctors, final settlement of full payment was to be made on the 22nd?

A. The 22nd of July.

Q. Did you talk to Mr. O'Neill about that?

A. I wasn't in the office. Mr. Franklin didn't know the verbal discussions in every detail between Mr. O'Neill and myself, and he couldn't communicate with me because I was in the hospital, in the Doctors Hospital in Washington, at that time.

So what he has done, he issued these confirmations on that day and as the checks came in half of the amount of the stock purchased checks—he put all the original checks in one file with all these confirmations and he has waited because he couldn't enter into our books half payments, he wasn't authorized to do that.

Q. Was any of that money ever put in the account at the bank?

A. No. We kept the checks in our file. We have not cashed any of those checks. On July 26th, we went back to the office and looked over this file, and the next day, on July 27, I called up Mr. O'Neill and I told him that the settlement date on these purchases, sixty-three customers' purchases, was past due and we cannot enter this as a *bona fide* page 31 } sale into our books because under the law, Regulation T, which every broker must know, we have to cancel out or liquidate the sale immediately if it isn't paid on the settlement date.

So consequently, I advised him I am not entering this into the books but since this is July 26 I asked him that the latest on July 31, which happened to be Friday, the other half of the check from the source of Doctors Hospital or from the loan, as it was explained to me, is the latest it must be paid, otherwise I will cancel out every one of these payments.

I made a count of sixty-three orders and I found that nineteen of the proposed customers didn't even answer, they didn't send in any checks. Here are the confirmations which were automatically disregarded. Three of them, fifty shares each, and it is marked there on the ledger have paid in full, and the remaining balance, thirty-nine or forty, sent in half of their checks.

Q. What was the total amount that you received?

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A. Approximately $17,000.

Q. What would half of the amount have been of the sale of the 6,400 shares?

A. Three thousand two hundred—

Q. $37,000?

A. $37,000. A little less than $17,000. I actually didn't run a total on that, but it is close to $17,000. Those were all the original checks as they came in from the pur-
page 32 } chasers.

Q. Wait a minute, Mr. Balogh.

In order to get half payment for those 6,400 shares, you would have to have $37,000, is that right?

A. Yes, sir.

Q. The $37,000 was to be brought in by the corporation or by loan from the bank, or something, prior to July 31st?

A. Yes, sir. As agreed verbally on July 27, the last day of payment was July 31.

Q. Was that money brought in on July 31?

A. The money was not brought in. I called up again Mr. O'Neill on the 28th and 29th and asked him has he contacted these doctors or does he want us to call his customers. He expressed his hardships, that most of the customers who were derelict in their payments didn't respond, and he told me by Friday noon, as I agreed with him, he is unable to deliver the checks because—

Q. July 31st?

A. July 31st.—because he cannot get hold of the checks. At that time I told Mr. O'Neill I cannot antagonize and prolong this situation anymore. Since this is Friday afternoon, if the checks will be there next Monday, which was August 3rd, not later than by 12:00 o'clock, I will honor all these sales. If not, then on that date in the early hour of the afternoon I will close out all these. And he was fully aware of that.
page 33 } I also advised their attorney. In fact, I called him in—I called our attorney, Mr. Cuviello, into my office Monday afternoon, on or about 2:00 o'clock, and in his presence I called up Mr. Creedon and I asked him, "Mr. Creedon"—

Mr. Whitehead: Your Honor,—is this a telephone conversation you had with Mr. Creedon or something you talked over with your attorney?

The Witness: In the presence of my attorney I called Mr.

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Creedon and told him I am closing out all these sales because we cannot wait any longer for the payment, and I turned the telephone over to our attorney, our counsel, whose advice I acted on in this case.

The Court: Was that on August 3rd?

The Witness: On August 3rd, about 1:30 p. m. or 2:00 p. m.

By Mr. Doherty:

Q. Now, was this issue all sold out at any time up to the third day of August 1959?

A. Up until that day?

Q. Yes.

A. The issue would have been sold out if these payments would have come in, but it was not sold out at all. We had 62,020 shares left.

Q. Sixty-two hundred twenty?

A. Yes, 6,220 shares left, after I cancelled out page 34 } these sales.

Q. How did you cancel those sales to the doctors on the 3rd of August?

A. The same day I had the office mimeograph a form letter and addressed these letters to every one of the doctors, and we advised them that their number so and so original check is hereby returned. Here is the letter, please, sir, (handing the document to counsel).

With the exception of three; we have not returned three customers' checks who paid fully for their shares, because it was a public sale and it was fully completed sale.

Q. But with this letter of August 3, 1959, went the original check that was sent in by the doctor or whoever it came from?

A. Every purchasers, every prospects.

Q. Was a copy of this sent, too, (indicating), of this particular part of the confirmation?

A. No, sir. No, sir. The confirmation is separate; only the letter and the original check.

Mr. Doherty: I offer in evidence as Plaintiffs' Exhibit No. 9, the letter which has been sent to all of them. I won't put in all the letters.

(The document referred to was marked Plaintiffs' Exhibit No. 8 for identification and received in evidence.)

Stephen E. Balogh.

page 35 } By Mr. Doherty:

Q. Now, did there come a time that you sold 6,220 shares?

A. About Friday—I don't know exactly what time Friday, July 31, Dr. Spence whom—

Q. Approximately what time of day was it? Do you have any idea?

A. Later in the afternoon, around 4:00 or 5:00, I can't tell. It was later in the afternoon. Dr. Spence, whom I knew for a number of years, came into my office and inquired whether there are any shares left out of the Doctors Hospital Corporation use, because he understood some third party wants to purchase some shares, and I said that there will be—

Mr. Whitehead: Your Honor please, is that one of the plaintiffs you are speaking of?

Mr. Doherty: Dr. William T. Spence, one of the plaintiffs.

Mr. Whitehead: This is the plaintiffs' witness and I object to any conversation between one of the plaintiffs and him. He is the plaintiffs' witness.

Mr. Doherty: All right.

By Mr. Doherty:

Q. Mr. Balogh, did there come a time that day or sometime that you sold this 6,220 shares of stock?

A. No, sir. I had not sold the shares until the morning of the 4th of August. I had a verbal order on or about 5:15 p. m., at my home.

page 36 } Q. Of August 3rd?

A. August 3rd. May I mention the name?

Q. You sold the stock and there was a firm offer made to you at that time?

A. It was a firm offer made to me.

Q. Who was it made by?

A. By Dr. Spence by telephone to my home. And he asked me if there are any shares left, that he and his friends, a group of doctors—he didn't name names—would like to buy the outstanding unsold shares, and he asked me to confirm the sale to the First National Bank of Arlington naming Mr. Walter O'Donnell as agent, and no names were given to me.

I told him it was impossible to confirm this sale on August 3rd in my home, but I will be back in my office the first thing—I think it was Tuesday morning—August 4th, and the sale was

completed, the confirmation was delivered to Mr. O'Donnell and with that on August 4, we completed the public issue which sold out 16,552 shares.

Q. I show you this confirmation dated August 4, 1959, and ask you if that is the confirmation that was sent out to Mr. O'Donnell (handing the document to the witness)?

A. Yes, sir. This is a copy.

Q. Under this, the person who bought 6,220 shares had until the 10th day of August 1959 in which to pay cash. Is that right?

page 37 } A. They had four calendar days to settle.

Q. Does it show when that was paid, $62,200?

A. On August 6th, two days after the purchase.

Q. 1959?

A. Yes, sir.

Mr. Doherty: I offer this in evidence also, if your Honor please, as Plaintiffs' Exhibit No. 10 .

(The document referred to was marked Plaintiffs' Exhibit No. 10 for identification and received in evidence.)

By Mr. Doherty:

Q. After this stock was paid for, what did you do?

A. The next day I received a letter from Mr. O'Donnell giving us the transferring instructions naming five purchasers' names, and the day after, which is August 6th, I received a certified bank check for $62,200, and with the transferring instructions, as it is a broker's routine, I went over to the Trust Department of the Riggs National Bank requesting them to issue the certificates. I am responsible to deliver the certificates to the public, and unless I can effect good delivery through the laws of brokerage rules we are responsible.

So I tried to talk to the Trust Officer in person in the presence of others who accompanied me that he should issue the certificates, and he in turn accepted the check and

page 38 } asked us to wait, he will advise us within a day or two. Then I received the letter from the Riggs National Bank advising us that the delivery of the certificates cannot be effected because the certificates have been withdrawn by the corporation.

Q. Now, since that time have you been able to effect an issue of that stock to the parties named in the sale?

A. No, sir. After we completed the sale by record and by receiving the check, I notified S. E. C. and I also notified the

Stephen E. Balogh.

Richmond headquarters of the Virginia Security Commission that we have completed our obligation under the agreement as it is expressed in the offering circular, and we have sold out the issue.

Q. The 16,552 shares?

A. Yes, 16,552 shares. Under the basis of the agreement we completed our obligation.

Q. Did you notify the S. E. C.?

A. Yes, I have notified, and I also asked, in a copy of a letter to Mr. Creedon, the corporation attorney, to file the official notification of the corporation that the issue has been completed. Two days later I received a letter from Mr. Creedon with copies of the letters he made to S. E. C. and also the Richmond Security Commission,—

Q. Do you have those records there?

A. Yes, sir.

page 39 } —advising them that the *coporation* does not look upon the sale as completed. On the contrary, they will find another underwriter—words to that effect.

Let me show you the copy; I can't remember the words. Here it is, sir (handing the document to counsel). This is a copy of our letter to Mr. Crow, Regional Administrator of S. E. C.

Q. A copy of that went to Mr. Creedon or to the corporation?

A. It went to Dr. Haggerty, Stephen Creedon, Riggs National Bank, and our own attorney, Mr. Cuviello.

And this is also the letter to the Commonwealth of Virginia (handing the document to counsel).

The Court: While he is looking at that I want to clear up one thing here. I understood this witness to testify the rules of the Federal Reserve Bank is that S. E. C. requires payment in cash within four days.

The Witness: Not four calendar days; four business days or seven calendar days.

The Court: This must have been over a week end, is that right, sir? Do you know?

The Witness: No, sir. The sale was Tuesday morning and payment was Thursday morning.

The Court: The reason I ask is because it says here the sale was for 8-4, and the settlement was 8-10. That is six days.

page 40 } The Witness: On Saturday it must have come in.

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The Court: That is why I asked it.

Mr. Doherty: I offer in evidence a copy of the letter of August 7, 1959, to Balogh & Company from W. J. Crow, Regional Administrator of S. E. C., and ask it be marked Plaintiffs' Exhibit No. 11.

Mr. Ball: We object to that letter on the ground it has no probative value in determining to whom this stock belongs, and it has no probative value in determining the validity of the sale. This is a self-serving letter, written to Mr. Balogh from S. E. C.

Mr. Doherty: It shows what to do in accordance with that circular and required to do by law. It goes in as partial evidence for the Court to pass upon and give it whatever weight seems proper, under the circumstances.

Mr. Ball: I will withdraw the objection. The Court is going to separate the wheat from the chaff.

The Court: If it doesn't help me I won't use it.

(The document referred to was marked Plaintiffs' Exhibit No. 11 for identification and received in evidence.)

The Court: Do you have another one there?

Mr. Doherty: Yes. The Commonwealth of Virginia, State Corporation Commission, I offer that in evidence page 41 } as Plaintiffs' Exhibit No. 12.

The Court: All right, sir.

(The document referred to was marked Plaintiffs Exhibit No. 12 for identification and received in evidence.)

The Witness: In response to these letters a few days later I received copies from Mr. Creedon addressing himself to the Securities Exchange Commission and the Commonwealth of Virginia advising both authorities that the corporation does not consider the sale of the stock completed.

By Mr. Doherty:

Q. So that we would have this all—

Mr. Doherty: I offer this in evidence, the one of August 11, 1959, to William Young, Esquire, counsel for Securities Exchange of Virginia.

The Court: That will be Plaintiffs' No. 13.

(The document referred to was marked Plaintiffs' Exhibit No. 13 for identification and received in evidence.)

Stephen E. Balogh.

Mr. Doherty: And the one of August 11, to the Securities Exchange Commission would be No. 14.

(The document referred to was marked Plaintiffs' Exhibit No. 14 for identification and received in evi-
page 42 } dence.)

By Mr. Doherty:
Q. Mr. Balogh, did you ask your attorney to write to Dr. Haggerty and explain to him the situation that existed?
A. I asked Mr. Cuviello to write a letter first on August 7th, when I received a day before a copy of Dr. Haggerty's wire in the form of a letter sent to me.
Q. Do you have that copy here of that wire?
A. Yes, sir, (handing the document to counsel).
That is the original; that is not a copy. That is what I received.

Mr. Doherty: I ask that this be marked Plaintiffs' Exhibit No. 15 in evidence, if your Honor please.

(The document referred to was marked Plaintiffs' Exhibit No. 15 for identification and received in evidence.)

The Witness: Our attorney wrote two letters, on August 7 and again on August 24. The August 24 letter was necessary because the purchasers of the stock—Dr. Spence and four other doctors—wrote me a letter of demand, requesting the validity of their purchased stock certificates, and in order to explain and protect myself so far as responsibility is con-
cerned, I had to ask our attorney to write this
page 43-44 } letter to Dr. Haggerty, President of the corpora-
tion.

By Mr. Doherty:
Q. On the date of August 24, 1959?
A. Yes, '59.

Mr. Whitehead: If your Honor please, I want to make this observation. Some while ago we offered some minutes of what took place after this supposed stock sale of August 3rd, and now we have here a letter of August 24th, and I wonder how inconsistent we are going to be.
Mr. Doherty: This is in answer to the letter of Dr. Haggerty's.

Stephen E. Balogh.

Mr. Whitehead: I am making the observation that we offered the minutes of August 10, and here is a letter of August 24.

Mr. Doherty: You are putting it on the ground of estoppel. That is a different thing. That is part of this original transaction.

The Court: I think I was the one who mentioned about the estoppel.

Mr. Doherty: I won't put it in, if your Honor please.

By Mr. Doherty:

Q. Mr. Balogh, do you have a copy of the letter you wrote to the Riggs Bank designating to whom this 6,220 shares were to be issued?

A. Yes, sir. On the basis of a letter of transfer page 45 } order which I received from the First National Bank of Arlington, from Mr. O'Donnell who was designated as agent, this is the letter of transfer and transmittal with the checks which I wrote to the Riggs National Bank (handing the documents to counsel).

Mr. Doherty: I offer in evidence this letter from Walter J. O'Donnell, First National Bank of Arlington to Balogh & Company. And also the letter from Mr. Balogh to the Trust Firm at Riggs.

The Court: That will be No. 16.

(The documents referred to were marked Plaintiffs' Exhibits No. 16 for identification and received in evidence.)

Mr. Ball: If your Honor please, the letter of the 24th, did that go in?

Mr. Doherty: No. I withdrew it.

That is all, if your Honor please.

I assume you gentlemen want to cross examine this witness.

Mr. Whitehead: Yes.

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Stephen E. Balogh.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Mr. Balogh, did you receive this letter shown as Haggerty No. 1 in there?

A. Yes, sir.

Q. In Paragraph 2 of the letter—do you have the original?

A. I believe I got that. Yes, that is March 18.

Q. All right. In Paragraph 2 of that letter, *you* attention is invited specifically to Article 5, Paragraph 2 of the said contract, "Pursuant to provisions contained therein, this communication constitutes notification of termination of this agreement in accordance with the discussion with you pertaining to this matter. The Matthews Corporation will cease to offer the stock of Northern Virginia Doctors Hospital Corporation at the close of business March 25, 1959."

What is that referring to, sir? Now we have two; we have the underwriting agreement dated September 22nd of 1958. Is that (indicating) the agreement you are referring to, sir? (Handing the document to the witness.)

Mr. Doherty: If your Honor please, for the record that will be referred to as Plaintiffs' Exhibit No. 1 in evidence.

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The Witness: I believe so, sir, that refers to this basic agreement.

By Mr. Whitehead:

Q. So, as of March 25, 1959, this agreement had been terminated? That is what the letter says?

A. For all practical purposes, yes.

Q. I will have to defer to the Court how practical it was. The letter says it was terminated?

A. Terminated on my request.

Q. But it was terminated?

A. Yes.

Q. You so understood it?

A. I so understood it at that time.

Q. Under what authority were you operating in July of 1959?

A. On the amended agreement between the Northern Virginia Doctors Hospital and our brokerage firm, upon their request and upon their mutual written agreement.

Q. Now, that agreement is known as Plaintiffs' No. 2, and is dated the 10th of March. Yet, on the 18th you were notified not to sell any more stock. Isn't that correct?

Stephen E. Balogh.

A. May I refer you to the statement that I made.

On March 30, the attorney for the corporation had delivered to me the amended agreement to which I was a
page 49 } party and I agreed to continue on the basis of the request of their Board of Directors, of their officer and their attorney.

Q. And based on their agreement?

A. Based on their agreement. The basic agreement has not been terminated finally, but it has been continued by mutual agreement.

Q. Sir, let me get it straight. You are talking about an amended agreement, the one you are operating on?

A. Yes.

Q. That one has been terminated?

A. Between the corporation and the underwriter, yes.

Q. That is you?

A. That is right.

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Q. Mr. Balogh, when you got those checks from the various doctors under subscription agreement, you realized that was an agreement by the Northern Virginia Doctors Hospital Corporation, did you not?

A. I have known about the agreement.

Q. You have seen it?

A. I have not seen the agreement, but—

Q. Well, you—

Mr. Doherty: I would like to have Mr. Balogh finish answering the question before he interrupts him.

The Witness: I have actually not seen every signature on the agreement, but I have known that there was an agreement in being. Mr. O'Neill has shown me that a number of people, about sixty-three people, will sign that agreement, and there were about twenty or thirty signatures missing, if I recollect, when he had shown me that. He was in the process of making that agreement.

Stephen E. Balogh.

By Mr. Whitehead:

Q. Mr. Balogh, you knew that the entire stock subscription had been subscribed, didn't you?

page 53 } A. You know that he asked me to reserve 6,400 shares which he wanted to sell to those people who wanted to sign the agreement.

Q. I am just asking you, didn't you know they were all subscribed?

A. Not all of them subscribed, because about twenty or thirty names were still missing when he showed me the agreement.

Q. If every person had sent in the check when you notified them, sent in half the money, if they had sent in the rest of the money how much stock would have been left out?

A. None.

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CROSS EXAMINATION.

By Mr. Ball:

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Q. I am referring to the subscription agreement of the Doctors Hospital Corporation, and the subscription agreement, original, signed agreement, which I now show you. Do I understand you never saw those before this minute (handing the documents to the witness)?

A. I didn't say that. I have not seen all the signatures and I don't know who the signatories are. I have seen this agreement. Mr. O'Neill dictated this to our office—to the secretary we mutually use. And I am sure that he used either our typewriter or the Arlington office secretary, who made this.

Q. As a matter of fact, Mr. Balogh, wasn't that typed

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in your own office, that agreement, the subscription agreement?

A. In my own office?

Q. Yes, in Balogh or Matthew Corporation?

A. I have no idea whether it was typed in our office or which office. It was typed in our Washington office or our Arlington office. We have about thirteen people
page 69 } employed who are capable of typing any agreement. I don't know. And you are asking me to identify—

Q. I am asking you whether or not you were present when it was typed?

A. I was not present and I have not seen this in the making until certain signatures were shown to me that these are the people that are requested to sign this agreement. I was no party of this agreement.

Q. You didn't go over with Mr. Creedon and approve it?

A. I talked about this with Mr. Creedon frequently, and I was talking—

Q. Mr. Balogh, you may explain it any way you want but give me an answer first. Did you go over it and approve it with Mr. Creedon?

A. Not this one, not the final agreement, because I explicitly told Mr. Creedon and Mr. O'Neill that I am not a party in any agreement between the purchasers and the corporation.

Q. Where is the one that you did go over and approve?

A. A draft letter which was shown to me on or about May—the middle of May, which was supposed to be sent out to the stockholders. It was a draft letter which Mr. Creedon sent over or Mr. O'Neill brought over.

Q. A draft letter?

A. Draft letter.

page 70 } Q. Even though you knew there were sixty-three people that have subscribed, your present testimony is that you never saw this written agreement part—I am not talking about the signatures, but the written agreement part—until now?

A. This isn't the first time. Mr. O'Neill has brought this in sometimes in June and he intended to circulate this around the 15th or 20th of June.

Q. And that is the first time you knew about it?

A. That is the first time.

Q. There is no question at all about that, is there, the 15th of June?

A. According to my best recollection, that is the first time.

Stephen E. Balogh.

Q. Mr. Balogh, you say it is contrary to the regulation of S. E. C. for the corporation to make this kind of agreement, is that correct, sir?

A. No, sir.

Q. You don't say that?

A. I don't say that.

Q. As a matter of fact, the corporation filed with S. E. C. an amendment to their circular?

A. Yes. I knew and I asked the attorney at S. E. C. whether that amendment was acted upon.

Q. Never mind what you asked anybody. Don't you know that is a fact?

page 71 } A. That physically has been filed?

Q. Doesn't your company have a photostatic copy showing it was received by S. E. C.?

A. Sir, if you will permit me, I went to S. E. C. myself, so did our corporation counsel, and we asked—

Q. I object to any hearsay.

A. I went there personally, opened the file and the counsel of S. E. C., who is our regulatory agency counsel, showed me the amendment there, and no action was taken.

Mr. Ball: Mr. Doherty, may I have the copy you had taken at the deposition—

Mr. Doherty: I believe that is in my office, because when we took the deposition last week I asked Mr. Creedon what happened and he said no action had been taken on it. Some lawyer in town failed to file a record and nothing was done.

Mr. Ball: I specifically asked that be here this morning.

Mr. Doherty: I left it in the office. So that there wouldn't be any question about it I want to show this to your Honor. I will bring it in tomorrow morning. I asked these few questions when we took the deposition of the defendant on September 23rd.

The Court: I don't know what you gentlemen are arguing about. If you want to have the record here tomorrow, all right.

page 72 } I want to interrupt here a moment. I have arranged with Judge Hosmer—since Judge McCarthy won't be back for some time—to take my case tomorrow so I can continue with this case. So you could arrange to have your doctors who are going to testify here tomorrow.

Stephen E. Balogh.

By Mr. Ball:

Q. Mr. Balogh, up until this time you have been testifying that this whole thing was illegal, haven't you?

A. Sir, I don't believe I ever made that statement.

Mr. Doherty: Just a minute, Mr. Balogh.

That is a conclusion. They are talking about certain things that happened back in May and then they are trying to bring these things he said he couldn't do. There was something done here in June or July which is an entirely different thing. They bring them up together and are saying they are illegal. He has never said anything such as that. But he said what they wanted done by that was an entirely different thing. Now, he said on July 15 or 16 we were supposed to have these in here, pay half at that time and somebody else was to pay the other half by the 31st of July. That is what he said. There is nothing wrong about that.

Mr. Ball: If your Honor please, I haven't heard him say that.

By Mr. Ball:

Q. You say you did receive the money from the page 73 } subscribers, is that right?

A. About forty of them, yes.

Q. Which was for half of the stock subscribed?

A. With the exception of three who paid fully, and the others paid half.

Q. This was in accordance with the subscription agreement they had between the subscribers and the corporation?

A. That we allege we are not part of it.

Q. There was no authority for you to be a part of it?

A. No, sir.

Q. You are the sales representative of Northern Virginia Doctors Hospital for the sale of this stock?

A. Yes.

Q. And you had the exclusive sale contract?

A. Yes.

Q. That is what it amounts to?

A. That is right.

Q. Until there came a time when they said, "We will sell it ourselves because you haven't sold out the issue." Isn't that correct?

A. They never said because we didn't sell out the issue, but they wanted to expedite the sale for the benefit of the corporation.

Stephen E. Balogh.

Q. Because the Arlington Trust Company made that agreement on making a commitment. You knew about
page 74 } that?
A. Heard about it.

Q. You said, "All right, if you go ahead, get the stock subscribed, we won't cash any of the checks"?

A. That is right.

Q. It was an agreement between the subscribers and the Doctors Hospital—the subscriptoin we are talking about?

A. In essence that is what it amounts to.

Q. And if the Northern Virginia Doctors Hospital notified S. E. C. that is what they were doing, what business is that of yours? That is all I want to know.

A. Because there was no action taken by S. E. C., and I asked the attorney of the Securities Exchange Commission whether I could, as the underwriter, consent to a split-payment basis, and they said—

Mr. Ball: I object if he is going to interpret hearsay. Let him bring them here to testify.

The Court: Objection overruled. He is trying to tell you. Go ahead, sir. Continue with what you were saying.

The Witness: Sir, anything which changes the wording of the original offering, any material change has to be amended either by a sticker on the outside—if it doesn't materially change the body of the agreement, and I so suggested to Mr. Creedon who even objected against me going to the regulatory agency attorney, Mrs. Ruth Appleton. Mrs. Appleton said
if it materially will not change the offering cir-
page 75 } cular probably S. E. C. will consent to such a quick
amendment. I suggested that to Mr. Creedon and he and I discussed it.

It was my understanding it was this whole partial-payment agreement of the contract will be based on an amendment, and that amendment has never been carried out. So I had to treat this sale, the whole sixty-three proposed sale, as a cash-payment sale. I went along from July 16 until August 3rd before I finally put this into the books?

By Mr. Ball:

Q. You say the amendment has never been carried out?

A. Never acted upon by S. E. C.

Q. There is no action required of S. E. C.?

A. Yes, sir.

Q. What action?

A. The acknowledgement of the amendment, and S. E. C.

has to render a letter is there any objection or no objection against it and we can print the amendment on the offering circular.

Q. You have heard of any objection by S. E. C. on that, have you?

A. I have never heard any objection.

Q. And you have no evidence of any objection from S. E. C. on the amendment?

A. No, I haven't.

page 76 } Q. And you have seen the amendment filed in the office of S. E. C., haven't you, by this corporation?

A. I have seen the initiated amendment in the file.

Q. You didn't file it, did you?

A. I did not.

Q. It does show this corporation could deal with S. E. C. directly?

A. That is right, they have a perfect right.

Q. Didn't the amendment sav as of Mav the 18th, that the subscription was going into effect as of May 18, 1959?

Mr. Doherty: The paper they want me to bring out tomorrow will answer that question. Whatever it is I have a certified copy, which never had any approval and apparently was withdrawn, that I gather from the record when I saw it myself. I think this is improper.

The Court: If you filed an amendment or proposed amendment with S. E. C. to rule on it again, can you go ahead and consider that as being amended?

Mr. Ball: Yes, sir, if your Honor please, on the non-registered.

The Court: Even if they don't agree with it?

Mr. Ball: Yes.

The Witness: That is not a fact. The fact is—

The Court: It may or mav not be right, and I want to know. So, do you have something from the S. E. C.?

page 77 } The Witness: I am make the statement that S. E. C. will file a letter and copy of that will have to come to the underwriter. It may be negative, we have no objection to the amendment and then we can proceed. But until that letter reaches me there is no amendment. S. E. C. will not act silently. Thev act, for the record, either pro or con. But they have to decide.

The Court: Let me ask you this: Do you have to find out

if they are going to object before the amendment is considered to be accepted?

The Witness: A minimum of ten days,—

The Court: I am asking Mr. Ball.

Mr. Ball: May I state my—

The Court: You don't write them today and consider it amended as of tomorrow morning, do you?

Mr. Ball: The amendment stated the date it becomes effective. As soon as the information comes to S. E. C., if this is not approved they put an estoppel that stops the issue on it if there is anything unlawful about it. That is their procedure and they follow it explicitly.

The Court: This is pertinent to this case and I think you ought to get somebody qualified and expert on it. I am not so, and I don't think anybody here is.

By Mr. Ball:

Q. Mr. Balogh, from the time that was filed until the 31st of July, you never made any effort to sell the stock, did you?

page 78

A. Yes, sir. We had made every effort to sell the stock. There were over and above the 6,400 shars—number of shares sold by us. I only reserved the 6,400 shares. We have taken over—

Q. That is what I am talking about, the 6,400 shares. You made no effort to sell that at all?

A. I promised that to reserve. We had not attempted to sell any part of that.

Q. You were under the directions of the corporation not to sell the stock, were you not?

A. I am not under their directions. I consented to their requests in view of this attempt. I do not take directions from the issuer.

Q. You do not?

A. No, sir. We have an agreement, sir, and that agreement clearly sets forth our obligation, and I am free to sell the stock to the public, to anyone anytime as long as the issue is open. I cannot refuse anyone unless, in this case, I explained, that 6,400 shares were reserved by consent of the underwriter and the issuer. But I am not under compulsion. I did not have to agree to that.

Q. Mr. Balogh, you already testified you knew the corporation subscribed and agreed on the 6,400 shares and you were holding that?

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A. Yes, sir.

Q. Did you write any letter or attempt to com-

Stephen E. Balogh.

municate in writing at all to the Board of Directors or the Executive Committee of Northern Virginia Doctors Hospital Corporation, to advise that you were sending back the checks or ask for authority to send back the checks?

A. I didn't have to ask for authority. I acted on my own authority because I am under the supervision of S. E. C. and the National Association of Securities Dealers and under no one elses authority, except the laws of the United States.

Q. Did you offer to send to the people who had sent in their stock which the checks would have represented full payment?

A. I withheld three of those who paid fully because that was a direct public sale.

Q. You had a check for $3,000 from Dr. Mitchell, did you not?

A. I don't remember, sir.

May I look at that.

Q. Yes, (handing the check to the witness).

A. Yes, sir. He bought 600 shares. He was due to pay $6,000 and he paid $3,000.

Q. He was due to pay $6,000 and that was under your arrangement?

A. Not under my arrangement. This is the rules
page 80 } and regulations that—these were sold, sir, for cash.

Q. Did you offer to send him 300 shares for his $3,000?

A. No, sir.

Q. You did not offer that?

A. No, sir, because the confirmation which was sent out and the order which was received purchased 600 shares. I could not bargain with any of these customers and retain half of the shares. I couldn't do that.

Q. Let me—

A. This has been cancelled out.

Q. Let me ask you this, Mr. Balogh: You knew about the agreement you had, you testified you knew about that. You knew this represented one-half?

A. That is right.

Q. Why did you confirm the sale?

A. Because I have to confirm every sale. When we accept any order that is the only record between the proposed purchaser and the broker that a sale is in the being. I have to confirm it because that is my only record which the Examiners will look for.

Q. If you are right, why did you not confirm to Dr. Mitchell a sale of 300 shares for the check for $3,000 he had sent you?

Stephen E. Balogh.

A. Sir, when I reserved the 6,400 shares, it was my understanding it will be divided among the sixty-three
page 81 } proposed customers, 100, 200, 300 shares as they were submitted to us. We confirmed each order as it came to our attention with the understanding that the other half of the check will come from the Northern Virginia Doctors Hospital.

Q. The two checks I have shown you, the check of Dr. Perminski for $1,000, was there anything accompanying that check so far as you were concerned which said that was to be one half payment?

A. I don't know.

Q. You don't know?

A. When these checks came in I was not there, I was in the hospital. I don't know every correspondence. I only know the confirmation which went out and the cancellation which returned the checks.

Q. All right, sir. Will you tell from receiving that check whether there was any indication 200 shares of stock had to be confirmed?

A. I assume this came as a half payment of 200 shares.

Q. So, treating Dr. Perminski as you did Dr. Spence that payment would have been for 100 shares of Northern Virginia Doctors Hospital full payment?

A. It wasn't my understanding I sell half of the order. I retained 6,400 shares, and the understanding was very clear-cut, the purchaser will pay for half of the amount he ordered and the Doctors Corporation will borrow the other
page 82 } half from the bank and deliver on the day of settlement, when the settlement is due, the entire checks, otherwise I would have never accepted these checks. That is the purpose these checks didn't go into our bank account. I was waiting for the other payment.

Q. That understanding was not with Dr. Perminski?

A. No, I didn't have any understanding with him. I didn't talk to individual purchasers.

Q. He never got any stock for it?

A. No, I cancelled out the entire order.

Q. You sent it back to him on the 3rd of August?

A. Yes, sir, with the letter of explanation, as it is printed over here.

Q. You say the Doctors Hospital was going to borrow half the money and give it to you, is that right?

A. That was my understanding, sir.

Stephen E. Balogh.

Q. Do you know of any authority for the Doctors Hospital, the corporation having the issue, to buy back its own stock?

Mr. Doherty: I object to that. I know they didn't have any authority to do it, but apparently they were going to do it. I object to that question.

The Court: I was getting ready to ask him. Somebody is going to have to advise me how that happened and what authority they had and whether this contract was good anywhere, if that were true. Get one of the questions page 83 } pertinent in there; I would like to know his answer to it. I don't know how you buy your own stock you issue under the S. E. C.

By Mr. Ball:

Q. Tell me any authority for that.

Mr. Doherty: I don't think he is the one who has to answer that. I think the defendant has to answer that.

The Witness: I am not the authority to answer that, but my understand was that the Doctors Hospital borrows the money, not buying the stock, but borrows the money. This was the verbal understanding that was given to me, and each person who is signatory to the proposed contract is obligated to sign a personal note to the bank obligating himself to the tune—to the amount he didn't pay. Let's say Dr. Perminski's case, he paid a thousand dollars and he would owe to the bank another thousand dollars. That was my understanding.

I don't believe it was proposed that the Doctors Hospital buy back its own shares, because that is illegal.

By Mr. Ball:

Q. These are the signatures on the subscription agreement that you saw, are they not (handing the document to the witness)?

Mr. Doherty: "You saw." He didn't say that.

By Mr. Ball:

Q. Do you know if they had been signed?

A. I have seen some of these pages, but they page 84 } have not been presented to me as a contract as such. In fact, many of the lines were empty yet, and Mr. O'Neill told me at that time he was waiting for signatures.

Stephen E. Balogh.

The Court: Where did you get the name and amount of the stock subscribed?

The Witness: Mr. O'Neill gave a list to us that these are correspondently the same people who signed the contract.

The Court: All right.

By Mr. Ball:

Q. Mr. Balogh, I hand you this again (handing the document to the witness). The language, of course, has not been changed?

A. Yes, sir, I believe I have seen this.

Mr. Ball: If your Honor please, I offer this subscription agreement in evidence.

The Court: Do you want it marked as a Haggerty exhibit?

Mr. Ball: Yes.

(The document referred to was marked Haggerty Exhibit No. 3 for identification and received in evidence.)

Mr. Doherty: I do object to it going in as any part of evidence showing that Mr. Balogh is the signatory to it or agreed to that. In fact, it is an agreement between the doctors and the corporation.

page 85 } The Court: You spent nearly half a day talking about it. I think I am entitled to see it. You have got my curiosity *arroused.*

By Mr. Ball:

Q. When did you first talk to Dr. Spence about the availability of this stock?

A. I think I am correct that on July 31st, late in the afternoon, he called me on the telephone and asked me are there any *Norther* Virginia Doctors Hospital shares that are unsold. I said, "I was waiting for 6,220 shares to be paid for this afternoon but I gave time to the administrator to deliver his check until Monday noon, August 3rd. If the check will not come, then we have to make a public sale out of those 6,220 shares, but right now we have none."

Q. That was the first time you talked to Dr. Spence about the availability of these shares?

A. July 31st, on the telephone,—I think on the telephone.

Q. You think on the telephone?

A. Yes, because Monday was when they—

Stephen E. Balogh.

Q. Can there be any doubt in your mind whether you talked to him on the telephone or in person?

A. Sir, I am positive it was on the telephone.

Q. Did Dr. Dolan talk to you that day?

A. Dr. Dolan—I'm not evading the question. I page 86 } can't remember because things happened in succession.

Q. Did Dr. Dolan talk to you prior to the time you talked to Dr. Spence on July 31st?

A. I talked to Dr. Dolan many other times, but not about this.

Q. Did you talk to him about this?

A. No, sir, I—

Q. You did not talk to him about this at all?

A. No, sir, I don't remember. Probably he called me Friday on the telephone. I don't know.

Q. You don't know?

A. I am trying to remember, sir.

Q. You are trying to remember?

A. Yes.

Q. Have you remembered yet, sir?

A. I don't know whether it is important whether Dr. Dolan talked to me. I made, on August 15, a chronological review of this whole thing from our records.

The Court: If you want to refer to your notes to refresh your recollection you may do so.

The Witness: May I, sir?

The Court: Go ahead.

Mr. Ball: Refer to any notes you have.

The Witness: I would like to.

I believe Dr. Dolan called me on the telephone Friday.

page 87 } By Mr. Ball:

Q. What day?

A. Friday afternoon, I believe, he called me on the telephone, some words to this effect, the exchange between Dr. Dolan and me, "I understand that there are some shares left unsold," and I repeated the same thing what I discussed with Dr. Spence on the telephone.

Q. You used some notes to refresh your recollection, Mr. Balogh?

A. Yes, sir.

Q. Do those notes show any conversation by telephone otherwise with Dr. Dolan prior to the 31st of July?

Stephen E. Balogh.

A. No, sir, they don't show any.

Q. May I look at them?

A. Yes. This is a chronological situation of the whole —ever since September 22nd, and I am trying to recall every event. (Handing the document to counsel).

This is just to refresh my mind from the records.

Q. Where did you find the note refreshing your recollection?

A. I didn't make any telephone call.

Q. As to the telephone call with Dr. Dolan?

A. Here is what I have here. This (indicating) is where it starts, from July 31st. Here is the date, July 31st, and so on. You can follow it.

page 88 } Q. Point out to me what in this memorandum refreshed your recollection about a call from Dr. Dolan on July 31st?

A. I am trying to bring to my memory who called me when. I don't have those telephone calls in the notes. I think it is correct that he called me Friday on the telephone.

Q. So you don't have anything in there about a call from Dr. Dolan?

A. Not about Dr. Dolan or Dr. Spence.

Q. Either one, is that right?

A. I have one referring to Dr. Spence when he actually purchased that Monday afternoon in my home.

Q. So nothing in your notes just now refreshed your recollection or caused you to remember the call from Dr. Dolan, did it?

A. Sir, I am under oath and I rather would say this to you, that I distinctly remember Dr. Spence called me Friday afternoon. I do not know—it is hazy in my mind when the first call came in from Dr. Dolan. I would say that Dr. Spence is the only one that called me Friday.

Q. Wasn't Dr. Spence in your office Friday?

A. Was he in my office?

Q. Yes.

A. No, sir, he called me on the telephone.

Q. How many shares did you say were left?

A. 6,220.

page 89 } Q. You told him there were 6,220 shares available?

A. Will be available if the check is not delivered to me Monday by noon, August 3rd.

Q. You hadn't sent any checks back that day, the 31st?

A. I promised not to cancel out anything until Monday noon.

Stephen E. Balogh.

Q. Did you talk to Dr. Dolan or Dr. Schwartz on Saturday, the 1st?

A. No, sir, I didn't talk to any of them over the week end. Our office is not open.

Q. The next day you were open was the 3rd?

A. Monday.

Q. Monday, the 3rd. Did Dr. Dolan come to your office that day?

A. Two or three doctors came in the afternoon to the office, and they were inquiring whether my information—

Q. I want to know who they were? Did Dr. Dolan come that afternoon?

A. I believe Dr. Spence, Dr. Dolan, Dr. Hazel. I'm not sure.

Q. Dr. Schwartz?

A. Dr. Schwartz, yes.

Q. Four came?

A. Three of them.

page 90 } Q. I am particularly interested in whether Dr. Dolan came?

A. I think Dr. Dolan—when I came back I found Dr. Spence, Dr. Dolan and Dr. Schwartz in the office.

Q. And you found them conferring with your attorney?

A. No, sir, I called the attorney, Mr. Cuviello, because I had to discuss the cancellation with him. Mr. Cuviello was there by my invitation and their visit was coincidental.

Q. What time was it when the doctors came to your office?

A. I believe around—I hope I marked that, around 2:00. 2:30. Yes. Well, about 3:00 o'clock they were there. I have this because I had to discuss with Mr. Creedon. I have that in my notes.

Q. About 3:00 o'clock they were there?

A. Yes, sir.

Q. What time at that time of day did you have the letters mimeographed?

A. Four o'clock. I ordered the mimeographing, actually, at 2:00 o'clock. I made my decision immediately in the afternoon when the check didn't come in, and this was ready for public sale.

Q. So that—

A. But it came back 4:00 o'clock—the mimeographing came back at 4:00 o'clock.

page 91 } Q. After the mimeographing came back each letter had been addressed with the number of the check, amount of the check and identification of the check included in the letter?

Stephen E. Balogh.

A. Yes, sir.

Q. What time was that completed?

A. Between 5:30 and 6:00 o'clock. Half of them was mailed out by 5:00 o'clock. It was a matter of routine.

Q. Half of the mail was there by 5:00 o'clock?

A. Yes. There were only thirty-nine or forty which were sent back.

Q. You didn't get the mimeograph until 4:00 o'clock and half of them had gone out by 5:00 o'clock?

A. Yes, sir.

Q. Were Dr. Dolan, Dr. Hazel and Dr. Spence there when you got the mimeographing back?

A. No, sir. I don't think they were concerned. I don't even think they read that letter. I asked Mr. Cuviello to come to my office and dictate a letter as attorney for the corporation, our firm, to each recipient of the letter, and he came there to dictate that letter to the girl and it was a matter of routine and it was sent out by 5:00 o'clock.

Q. It was sent out by 5:00 o'clock?

A. That is right.

Q. Some of them didn't go out until the next day, didn't they?

A. I don't know. Your information must be better than mine.

page 92 } Q. I am asking you—

A. I left the office 5:00 o'clock with the specific understanding that everything goes out that night.

Q. You left the office at 5:00 o'clock?

A. Yes, sir,—no, I left the office 4:30.

Q. By 5:30 you were home?

A. I was home about 5:00.

Q. Dr. Spence called you at 5:30 that night?

A. He called me 5:15. I was getting ready for reserve training and he called me around 5:15.

Q. And you claim that at that time he gave you what you call a firm offer?

A. Yes, sir. He called me on the telephone and he said, "I understand you cancelled out the 6,220 shares and I want to buy that." And he gave me a verbal order to confirm the sale of those shares through the First National Bank of Arlington, with Mr. O'Donnell as agent. But I told him until tomorrow morning, Tuesday morning, the confirmation can't go out.

Q. So I get this chronology straight, the doctors had been there during the afternoon, talked with you and your attorney?

Stephen E. Balogh.

A. Well, I don't know whether they talked to my attorney. The attorney was there to prepare this letter.

Q. Then you had already decided to send the letter out?

page 93 } A. Yes. I decided to send it out 1:00 o'clock in the afternoon after the check didn't come in, and I so advised Mr. Creedon. At 2:30 I called him.

Q. This is on Monday?

A. Yes, Monday.

Q. The doctors were there and discussed the matter with you?

A. At a later time, a half hour later, the doctors discussed it.

Q. What was the discussion you had with Dr. Dolan and Dr. Spence that afternoon?

A. Dr. Dolan and Dr. Spence wanted to find out whether there was any third party or somebody else who might buy the 6,000 shares and they would like to exert some effort among themselves, these shares should go to some physician instead of some unknown third party. That was the essence of the discussion. But there was no firm indication they are buying these shares. They expressed certain desires that they should be bought by doctors.

Q. Did they tell you they thought the checks ought to go back to the subscribers?

A. I have not discussed that thought either with Dr. Spence or Dr. Dolan. I made that decision in the firm, as I explained that over and over again to the attorney and the administrator.

page 94 } Q. You didn't discuss that with Dr. Dolan or Dr. Spence?

A. I didn't discuss that to the effect I would ask their consent or advice or desirability. I had made my decision because I couldn't string this sale out longer.

Q. Did they have any attorney with them on that day?

A. Only three doctors were there as our visitors.

Q. Mr. O'Donnell wasn't with them that day?

A. Do you mean the President of the bank?

Q. From the First National Bank?

A. No, sir. No, sir. I only heard Mr. O'Donnell's name on the telephone Monday evening later, as a designated agent.

Q. Did you tell Dr. Schwartz who was there in your office you were mailing him his check back by letter?

A. I didn't even remember Dr. Schwartz was one of the half payers, and I never mentioned this to Dr. Schwartz.

Stephen E. Balogh.

Q. You never mentioned it to him?

A. No, sir. It was a matter of routine. Our executive officer, Mr. Franklin, had done this; there were three girls and the cashier, and once the decision was made I wasn't involved in mailing back these checks.

Q. Dr. Schwartz is Vice President of this corporation, you knew that, didn't you?

A. I understood later. The last time I met the officers Dr. Hazel was the President.

Q. You didn't even know that his check was one page 95 } of the checks going back, is that right?

* * * * *

A. There was no question about mailing back the check and cancelling. I didn't involve the gentlemen in this cancelling. That was none of their business why we had the 6,000 shares open for public sale.

The Doctors Hospital administrator did not deliver the check which was his obligation and I told him, the page 96 } attorney also warned me not to close the issue, but I said, "I cannot do it anymore." And I said, "It's open for sale." I had no idea they were going to purchase it that afternoon or the next morning.

Q. That night you got the call from Dr. Spence, he ordered it for the account of Mr. O'Donnell at the First National Bank?

A. As an agent, yes.

Q. Whose agent was he?

A. There were no names given to me. It was a hurried telephone call, I was on my way to the reserve camp, and I said to Dr. Spence, "I cannot expedite any of your order tonight. Tomorrow morning it will be confirmed." That is all I knew, we were designating the First National Bank, respectively Mr. O'Donnell, as our agent.

Q. Whose agent? You said, "Our agent"?

A. He purchased it. I have known Dr. Spence for a number of years. He is a good friend of mine.

Q. I know him, too, but I am not criticizing Dr. Spence. I am asking you whose account he bought the stock for?

A. For all practical purposes, he gave me his oath he is a good customer for $62,000. I accepted him as the customer.

Q. You accepted him as the customer for the account of the bank?

Stephen E. Balogh.

A. He was the man to purchase the stock and he
page 97 } designated the bank as the paying agent.

Q. Tell me one thing: If that is so, why did you confirm it to the bank instead of Dr. Spence?

A. Because that is the instruction I received from the customer. The customer says, "You send this to the Riggs National Bank." or send it someplace else, whoever is the collection agent. I may be the agent for one of the accounts. I am following the instructions of the customer.

Q. In the case of these subscribers, you understood the paying agent to be Northern Virginia Doctors Hospital for the remaining amount of the payment, is that right? Why didn't you send the confirmation to Northern Virginia Doctors Hospital who you expected the payment from?

A. They were not a purchaser, not a customer, not an agent. Northern Virginia Doctors Hospital could not buy stocks from me.

Q. Weren't you looking to them for payment?

A. I was looking for the other half as a corporation to raise or borrow money from the bank.

Q. You didn't send them any confirmation?

A. I could not send double confirmations. We confirmed it to the individual customer.

Q. You got a night letter before opening of business on the morning of the 4th, didn't you?

A. Yes, sir.

page 98 } Q. Severing your relations with Northern Virginia Doctors Hospital?

A. Yes, sir.

Q. You also got a letter—

A. Yes, sir, a day letter.

Q. In spite of that, you attempted to confirm to O'Donnell the sale of 6,220 shares?

A. I not only attempted, I confirmed it because our agreement calls for five days written notice or notice to be dismissed between the issuer and the underwriter. There are certain four or five days' obligations which cannot be summarily dismissed from the contractual agreement. We are not hired—

Q. We will argue that question of law to the Court.

After you had a notice from the corporation you did send that, is that right?

A. Prior to that?

Stephen E. Balogh.

Q. Let's put it this way—
A. He called me up personally.
Q. Dr. Spence called you?
A. No.
Q. Dr. Haggerty?
A. Yes, 10:30 Monday, after calling me at my home and he asked me under what authority did I cancel these checks and these orders, and I said, "On my own au-
page 99 } thority."
Q. And you hung up on him, didn't you?
A. I did not. He hung up on me. I never hang up on anybody.
Q. So you already had the word from Dr. Haggerty, as President, and the action of the Executive Committee by telegram when you sent out this confirmation, is that right, on the 4th?
A. I don't see what relevancy it has when I get a telegram and telephone call. I am acting under the agreement.

Mr. Ball: May I ask the witness be required to answer the question whether he had those before him before he sent out the confirmation?
The Court: Did you?
The Witness: Yes, sir. I had the telephone call and telegram, and after that I sent out the confirmation.

By Mr. Ball:
Q. When was it that somebody brought you a check?
A. On the 6th of August, Mr. O'Donnell himself brought the check in.
Q. And in his company were Dr. Dolan, Dr. Spence and Dr. Hazel and Dr. Schwartz on that day?
A. I don't know if Dr. Hazel was there. I believe he was there, yes.
Q. And that was his cashier's check of the First National Bank of Arlington?
page 100 } A. That is right.
Q. Made payable to who?
A. Made payable to Balogh & Company.
Q. Balogh & Company or Riggs National Bank?
A. I have to see that check. I believe it was Riggs National —no, Balogh & Company. Balogh & Company, and we endorsed it to the Riggs National Bank.

Stephen E. Balogh.

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Q. Was the $62,200 ever deposited to the credit of the Northern Virginia Doctors Hospital?
A. No, sir.

Mr. Ball: That is all. Thanks.
The Witness: Excuse me, may I say something in connection with that?
Mr. Ball: I am through questioning you.

RE-DIRECT EXAMINATION.

By Mr. Doherty:
Q. What was it you wanted to say? Please explain.
A. The $62,200, we never deposited any check
page 110 } to the issuer's account until we give the transfer instructions to the transfer agent or the issuer. We pay for the purchased shares when we give the transfer instructions, and we have deposited with the Riggs National Bank the $62,000 with the transfer instructions after. After they refused the check we had to put it in an escrow account.
Q. Mr. Balogh, one question,—

Mr. Ball: Did you say after they refused the check?
The Witness: That is right. We gave that into the hands of the trust officer of the Riggs National Bank.

By Mr. Doherty:
Q. How many shares of stock were sold on this supposed subscription contract, where there was half down and the other half to be paid the 31st of July? How many shares of stock was actually sold?
A. Actually, paid for and sold a hundred and fifty shares. They were paid for. Half of the money came in for about 1,700 shares, approximately $17,000.
Q. Which would mean if they came in with the other $17,000 they would have sold 3,400?
A. A little less.
Q. That would have left 3,000 shares under the 6,400 that you had in reserve?

Stephen E. Balogh.

A. Approximately 3,000 would have been left unsold.

Mr. Doherty: That is all.

page 111 } RE-CROSS EXAMINATION.

By Mr. Ball:

Q. Did you ever communicate to the Board of Directors of the Northern Virginia Doctors Hospital Corporation requesting that they call, under the subscription agreement, the remaining balance of the stock? The Board of Directors now?

A. I never communicated with the Board of Directors because I was made to understand by the attorney of the corporation and by the administrator that all these details are to be communicated through them and with them.

Q. Did you ever communicate to the President of the corporation and ask him to have the Board of Directors to call the remaining amount of the stock?

A. I never called to Mr. Haggerty.

Q. Did you ever communicate with the vice president about this?

A. I have communicated with Dr. Hazel repeatedly before this agreement was ordered to be signed, and I discussed this at that time when he was the President. I discussed this face to face with Dr. Hazel many times.

Q. Dr. Hazel went out of office the 22nd of May.

A. When this subscription agreement was in the offing in the beginning I discussed this with Dr. Hazel.

Q. Did you discuss it with Dr. Schwartz? Did you ask Dr. Schwartz to call upon the Board of Directors?

page 112 } A. No, sir. May I explain why?

Q. Yes.

A. Ever since May the Doctors Hospital Corporation never invited me to any of their Board meetings, and always communicated with the underwriter through the attorney and through the administrator. I cannot go to the Board of Directors meetings unless I am invited.

Q. Did you ever ask to go, sir?

A. I never asked specifically about this issue that I should go there and discuss this. I was made to understand, without any doubt, that Mr. Creedon and Mr. O'Neill are representing the corporation.

Q. Of course, you didn't take their signatures on your contract, did you?

A. No, sir.

Stephen E. Balogh.

Q. You took that to the President and Secretary?
A. I took entirely different signatures.
Q. You know Dr. Perminski is the Treasurer?
A. Yes.
Q. Did you ever ask him to ask the Board of Directors to call the remaining amount due to the subscription?
A. No. Dr. Perminski called me up at my home August 3rd, around 6:00 p. m. He said, "I am the Treasurer of the corporation and I would like to ask you not to cancel these sales." I said, "Dr. Perminski, it is too late."
page 113 } He said, "As the Treasurer, this is the first time I heard these checks were supposed to be delivered to you as of July 31st."
I simply expressed my difficulty to understand such a situation that the Treasurer didn't know about this arrangement, and I called our attorney, Mr. Cuviello and related this question to him and asked if it is necessary to get in touch with Dr. Perminski. But I was absolutely astonished, an officer of the corporation was not informed about the due time of payment when the settlement day was July 22nd.
Q. My question is, did you ever call Dr. Perminski to call upon the Board of Directors?
A. I have not.
Q. Have you related all the conversation you had with Dr. Perminski?
A. In essence—no, no, he went further on.
Q. Didn't Dr. Perminski offer to bring to you right then and there a check for the remaining money?
A. Around 6:00 p. m. he said, "Don't send out the cancellations." I said, "Doctor, it is too late." He said, "We have called your office and one of the girls who was supposed to mail out all of the letters informed"—whoever called him —"it is in the process of being mailed. Half of them have been mailed out," and Dr. Perminski said, "we can pay for the sale now."
Q. Didn't he say he would *hand* bring it to your
page 114 } house?
A. It may be so, but I said, "Doctor, it is too late, the cancellations went out."
Q. Mr. Balogh, you said it may be he said that. Didn't he say that he would hand bring it to your house?
A. I don't remember. I am sure that was his intention.
Q. How much money was required at that time?
A. Well, $62,200, minus $17,000, which would be over $40,000.

Stephen E. Balogh.

Q. That was in accordance with what you say, over $40,000?
A. Yes, sir.
Q. That would have paid up everything in full?
A. For the remaining 62,000.
Q. You knew Dr. Perminski was willing to bring the payment and you wouldn't accept it?
A. At 6:00 o'clock Monday evening I could not accept the check.
Q. That was August 3rd, sir?
A. August 3rd, around 6:00 p. m.
Q. Within thirty minutes that you had the telephone conversation with Dr. Spence, is that right?
A. I believe Dr. Perminski called me after Dr. Spence called.
Q. Within thirty minutes?
A. Yes.
page 115 } Q. And before any confirmation had gone to Dr. Spence? It didn't go until the next day?
A. That is right, but I accepted his order verbally.

Mr. Ball: That is all.

FURTHER RE-DIRECT EXAMINATION.

By Mr. Doherty:
Q. You considered that a binding agreement?
A. It is a binding agreement.

Mr. Doherty: That is all.

FURTHER RE-CROSS EXAMINATION.

By Mr. Ball:
Q. You say it is a binding agreement for somebody to call you on the telephone and give you an order?
A. Yes, sir. If I know the customer, then his verbal order between the broker and the customer is a binding contract.
Q. So you don't need any confirmation to bind a contract?
A. I needed it for the record. I needed it for the execution of the order. I needed it for collection of the money.
Q. But as the sales agent for this corporation, you considered that you had made a binding contract by a telephone call?
A. With a customer whom I know, I accepted his order, it is a binding contract.

Walter J. O'Donnell.

Q. At your home in the evening?
page 116 } A. Anytime.

* * * * *

WALTER J. O'DONNELL,
was called as a witness by counsel for the plaintiffs and, having first been duly sworn, took the stand, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Doherty:
Q. Would you state your name, please, Mr. D'Donnell.
A. Walter J. O'Donnell.
Q. Where do you live?
A. 4414 North 36th Street, Arlington.
Q. What is your business?
A. Banker.
Q. What bank?
A. First National Bank of Arlington.
Q. What is your position with the bank?
A. President.
Q. Did there come a time, sometime around the latter part of June or the early part of July, that you met with a Philip O'Neill representing the Doctors Hospital Corpo-
page 117 } ration for Northern Virginia?
A. I did.
Q. Do you have the date when you saw Mr. O'Neill?
A. I don't recall the date. It was the latter part of June.
Q. What was the purpose of his visit to your office?
A. The purpose of his visit was substantially to apply for a loan in approximately the amount of $35,000, for the purpose of paying 50 per cent of a stock subscription, the unissued balance of a stock subscription, of about $7,000.
Q. $7,000?
A. 7,000 shares, excuse me. He had with him stock subscription—emergency agreement, I would define it—containing, I would say, names of thirty-five doctors which they agreed to provide on or before July 15, 1959, the remaining 50 per cent balance for the purchase price of approximately 7,000 shares of stock.
I took the subscription—emergency agreement—to our discount committee and they unanimously approved a $35,000 loan, conditioned upon the security of the stock on a reissued

basis and assignment of this subscription, emergency agreement, to be paid—set up on a one-year maturity.

Q. When was that money delivered by you to Mr. O'Neill or to the seller of the stock?

A. Upon evidence in hand—or rather, evidence satisfactory to the management of the bank that $35,000 had been paid in by the doctors who had agreed to pay $35,000 on or before July 15.

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Q. That was to be paid on or before July 15?

A. That is right.

Q. $35,000. And you then would have put up $35,000?

A. We would match the fund.

Q. Did you have any minutes or a record made of that particular meeting with Mr. O'Neill?

A. I have an excerpt of the minutes of the discount committee acting upon the application. But the discussion with Mr. O'Neill was an oral application discussed across the desk in the office.

Q. But there was a minute made with this group that you have—the committee?

A. Committee of our directors. (Handing the document to counsel).

Q. And this is a copy of the minutes?

A. That is a certified excerpt of the minutes.

Mr. Doherty: I offer this in evidence as Plaintiffs' Exhibit 17.

The Court: All right.

(The document referred to was marked Plaintiffs' Exhibit No. 17 for identification and received in evidence.)

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By Mr. Doherty:

Q. Did you advise Mr. O'Neill that the bank would allow this loan?

A. Oh, yes, I did. We discussed it on several occasions after the action of—

Q. Of the committee?

A. Of the committee. I don't remember the date; the end of June.

Q. Did Mr. O'Neill come back to see you after the 15th of June about the subscription signature?

A. He came back and picked up the agreement and said he

would need it, and I could understand that. And I discussed the terms and conditions of the loan with him.

Q. That was after?

A. That was after the action of the directors. And on or about July 15 I became anxious and again discussed with Mr. O'Neull as to what, if any, progress was made and where we stood.

Q. After July 15 when did you again hear from Mr. O'Neill?

A. I can't be sure. As in most cases, when a concern applies to us for funds and we approve the loan, they are in touch with us from time to time, and I don't keep a running record of phone calls and things of that nature.

Q. Did he ever bring back the subscription contract?

A. No, sir.

page 120 } Q. Did you ever hear from him around July 31st or August 3rd?

A. I heard from him at 5:00 o'clock on Monday, August 3rd, and he asked me whether we would be agreeable to a partial disbursement, and I told him flatly, "no," that the terms and conditions—it was all or nothing.

Q. Did you talk to him after that?

A. That is the last time I talked to him.

Mr. Doherty: That is all.

CROSS EXAMINATION.

By Mr. Ball:

Q. Mr. O'Donnell, I notice the minutes say, "Application of Northern Virginia Doctors Hospital, Inc."

A. Mr. O'Neill represented himself as representing the corporation.

Q. The minute says that, does it not?

A. Yes, sir.

Q. Do you usually deal with corporations without a letter from the president?

A. We deal with the representative of the corporation. We discussed—I had an earlier meeting with Dr. Haggerty, Dr. Alexander, Dr. Perminski and Mr. O'Neill, and I had every reason to believe he was the representative, however, the loan would not have been closed without taking care of all the legal technicalities.

* * * * *

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* * * * *

STEPHEN E. BALOGH,

a witness called for examination by counsel for the Plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Doherty:

Q. Mr. Balogh, you have been sworn in this case already, have you not?

A. Yes.

Q. First, Mr. Balogh, where were all of the sales indicated on the subscription contract which has already been referred to as Haggerty's Exhibit No. 3, where are those sales confirmed?

A. They are not sales. You are referring to the offer?

Q. Offer to purchase.

A. Yes, sir, the offer to purchase has been recorded, received at the Washington office where all the bookkeeping is being done. I was not present when Mr. O'Neill brought in the list of names who indicated their willingness to purchase so many shares.

He presented his list to Mr. Lafayette Franklin

page 355 } who is in charge of the management in the office, and when I came back to the office on July 26th Mr. Franklin so reported it to me.

* * * * *

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* * * * *

Q. First, how many shares were you authorized to sell by the corporation in your contract?

A. 16,552.

Q. And that was in accordance with the offering circular, Plaintiff's Exhibit No. 3 in evidence?

Stephen E. Balogh.

A. Yes, sir.

Q. At the time Mr. O'Neill brought in this paper with certain names on it, these indications of purchase were sent out to each one of those, is that right?

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A. Yes.

Q. Have you, at my request, checked your records to ascertain the number of shares that were subscribed to at that time?

A. Yes.

Q. Can you tell me just how many that is?

The Court: Is that at the time that this subscription agreement or the list was brought in?

Mr. Doherty: Yes, your Honor. I am going to show that it was brought in about the 16th of July.

The Court: All right.

The Witness: Yes, sir. May I refer to the fact that on March 30th when I signed the continuing agreement to sell the unsold shares from three sources we have gathered our information, namely from the transfer agent at Riggs National Bank, secondly from our daily record we are always running a record of how many shares are sold and, thirdly, I have discussed with the Executive Committee in the offices of the Northern Virginia Doctors Hospital Corporation and compared their records and I have ascertained on April 8th—and may I refer to this record, this letter?

Q. If there is no objection, go ahead.

A. Which I have written to Mr. Stephen G. Creeden, and this is what I have written; at the time of our discussion in Arlington with the Executive Committee of the Northern Virginia Doctors Hospital Corporation I mentioned that we were on the verge of selling out the Doctors Hospital stock.

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I also mentioned that approximately 1,760 shares were still dubious because they were not paid for, only indicated by overdue confirmations. These shares were canceled out and today we have a total of 8,503 shares unsold.

Consequently we had to revise the agreement accordingly and it is enclosed for your attention and file. Duly complete it and sign.

Q. What was the date of that letter?

A. April 8, 1959.

Q. I show you Plaintiff's Exhibit No. 2 in evidence. Does that show that figure of 8,503 shares?

A. Well, the amended underwriting agreement has been corrected accordingly and it is duly signed 8,503 shares.

Stephen E. Balogh.

Mr. Doherty: If your Honor please may I offer a copy of this letter in evidence? Have you seen it?
Mr. Ball: His letter.
Mr. Doherty: Yes.
Mr. Ball: We have no objection.
Mr. Doherty: I offer it in evidence.

By Mr. Doherty: Directing your attention to somewhere around the 15th of July, 1959, how many shares were in this offer brought in by Mr. O'Neill to purchase stock
page 360 } of the corporation, the Defendant corporation?

A. Could I have the record which I typed up?
Q. This is what, Mr. Balogh?
A. This is my tabulation which I made on your request on September 30th, looking over all of our records from that tabulation of April 8th to September 30th, inclusive.
On July 16, 1959, Mr. Philip D. O'Neill presented a list of sixty-two customers' names to Mr. Lafayette Franklin, Executive Vice President of Balogh & Company, Inc. It requested that each prospective customer should receive individual confirmation advising them that Balogh & Company, Inc., acted in the capacity of principals and we confirm the purchase of the Northern Virginia Doctors Hospital Corporation stock, in the amount of shares designated by Mr. O'Neill. Mr. O'Neill assumed full responsibility for the correctness of this notification and supported the indication of each customer with the list he submitted for our records.
Balogh & Company, Inc. issued confirmation to sixty-two prospective customers on July 16, 1959. From this date to the final settlement date, which was mutually agreed upon between Mr. O'Neill, Hospital Administrator and Balogh & Company, Inc., that is, July 31, 1959, the sixty-two prospective customers paid in the following:

1. Three confirmations were fully paid. Each customer having purchased and paid fifty shares, rendering
page 361 } a payment of a total of $1,500 before July 31, 1959. The names of these customers, each of them paying for fifty shares—

Q. What are the names? Are the names on this list?
A. Yes, the names of these customers are; William L. Stone, Gunther K. Kessler, and Irving Berman, each of them buying fifty shares.

Stephen E. Balogh.

Q. And paid for in full?
A. Paid for in full before July 31, 1959.

2. Eighteen prospective customers alledgedly purchased a total of 1,760 shares, have not responded to the request of payment at all and have not acknowledged the receipt of our confirmation. I submitted the list of confirmations, if I may please, sir. These were the eighteen names who paid nothing at all. You don't care to have me read those?

Q. No.
A. The lack of response automatically canceled the indicated purchase of each of these eighteen prospective customers by July 23, 1959, which was the date of settlement.
Q. Is that the 22nd or the 23rd?
A. Some of them received it on the 23rd, one or two customers, because the list I have could not have been completed on July 16th, and two or three customers have the settlement date of the 23rd.
Finally, forty-one prospective customers indicating the aggregate purchase of 4,380 shares, had paid for half of their shares, that is, for 2,190 shares. Because the page 362 } second half of the agreed amount for the other 2,190 shares were not paid by July 31, 1959, all of the forty-one partial payments have been returned to the prospective customers and on August 3, 1959, the entire transaction was canceled with a letter of explanation addressed to each prospective customer.
Q. After they were returned, how many shares of stock were still left as a public offering for sale by you?
A. On the morning of August 3rd, 1959 I tabulated that the left over total shares were 6,220 unsold, and selling of those shares completed the public offering.
Q. And that was the 6,220 shares of stock that was sold to—
A. To Dr. Spence on his order of August third.
Q. And confirmation was sent to Walter O'Donnell?
A. As agent, yes, on August fourth. We have been very careful and we have to be careful when underwriting syndicate shares, Mr. Counsel. We cannot oversell any of those shares.
Q. The 6,220 shares brought up your aggregate to?
A. 16,552.
Q. Which were the number authorized by the corporation for you to sell under this circular?

Stephen E. Balogh.

A. On the basis of the agreement.

Q. And in accordance with the circular also, was it not?

A. Yes, and I so reported to the Securities and Exchange Commission on August seventh.

page 363 } Q. That the entire—

A. That we have completed the agreement and that the entire public issue has been sold.

Q. And all these contracts were confirmed in the District of Columbia?

A. Yes, in our main office.

Q. And the sales of the stock that were confirmed to Walter O'Donnell as agent?

A. Also in the District of Columbia.

Q. And in accordance with the rules of the Securities and Exchange Commission?

A. In full compliance with the rules of the Securities and Exchange Commission, yes, sir.

Mr. Doherty: That is all.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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