

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Kenneth Hewyard Driggers

91-03858

Name of Respondents

Luther C. Thompson  
Ralph Kelly

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**REPRESENTATION**

For Claimant: Kenneth Heyward Driggers appeared pro se.

For Respondents: Luther C. Thompson appeared pro se.  
Ralph Kelly appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: October 14, 1991.

Claimant's Submission Agreement signed on: February 3, 1992.

Claimant's Response to Respondent Luther C. Thompson's Motion to Dismiss filed on: October 28, 1992.

Statement of Answer filed by Respondent Luther C. Thompson on: March 23, 1992.

Respondent Luther C. Thompson's Submission Agreement signed on: March 19, 1992.

Respondent Luther C. Thompson's Motion to Dismiss filed on: September 9, 1992

Statement of Answer by Respondent Ralph Kelly filed on: June 1, 1992.

Respondent Ralph Kelly's Submission Agreement signed on: May 29, 1992.

### HEARING INFORMATION

Hearing Dates/Sessions: November 18, 1992. 1 Session.

Hearing Location: NASD Offices in Atlanta, GA.

### CASE SUMMARY

The Claimant alleged that he met with Respondents Luther C. Thompson and Ralph Kelly at Applebee's Restaurant on Saturday morning, October 10, 1987. He was introduced to Respondent Luther C. Thompson by Respondent Ralph Kelly, who was a mutual friend. Luther C. Thompson gave a presentation on TCD Energy Corporation and offered the Claimant an opportunity to invest in a natural gas fund. Luther C. Thompson represented that he had only five thousand (5,000) units remaining to sell, and if Claimant was interested, he had only until approximately 12:00 noon that day to deliver a check in the amount of twenty-five thousand dollars (\$25,000.00). Claimant was informed that there would be a 120 day redemption period, during which he could cash in his stock. Claimant alleged that this was presented to him as a great deal with no risk. Several high level people were supposedly involved in the company or were investing in the company. Two months later, he was informed that the first well had been sunk and natural gas found, as expected. Claimant subsequently had difficulty obtaining information, but eventually learned that the company was defunct, and his investment was a total loss.

*Respondent Luther C. Thompson agreed that he met with the Claimant on October 10, 1987 at Applebee's Restaurant, where he made a presentation to the Claimant, regarding the potential of a gas field in Texas, as assessed by a noted geologist. Respondent Luther C. Thompson had only five thousand (5,000) units remaining of his original thirty-five thousand dollar (\$35,000.00) allotment, and he gave Claimant five (5) days in which to decide whether to invest. He gave Claimant a Confidential Private Placement Memorandum including a statement on page one that read " THIS OFFERING IS SPECULATIVE AND INVOLVES A HIGH DEGREE OF RISK", and other warnings elsewhere in the Offering Memorandum. Respondent Luther C. Thompson believed Claimant to be a qualified investor, as evidenced by Claimant's signature attesting to a net worth in excess of one million dollars (1,000,000.00) and to annual income for the current and previous two years in excess of two hundred thousand dollars (\$200,000.00) per year. Claimant also signed that he had read and reviewed the Offering Memorandum. Claimant's check was dated October 15, 1987. Unfortunately, TCD was dissolved in late 1989 due to unpaid debts resulting in the bank's repossession of the gas wells. The state of Texas declined to extend the leases. The market crashed in October, 1987 and it was not feasible to make a public offering of the stocks. Since that time, gas prices have been down and there has been no incentive for development of the wells. According to Respondent Luther C. Thompson, the wells were successful but there were insufficient funds to continue the project.*

As an additional defense, Respondent Luther C. Thompson alleged that the Statute of Limitations had expired on this claim. Prior to the hearing, he filed a Motion to Dismiss based on the Statute of Limitations, which motion was denied. At the close of the arbitration hearing, the record was reopened for Luther C. Thompson's inquiry as to why his motion was denied. The panel of arbitrators informed Respondent Luther C. Thompson of its rationale for denying the motion.

Respondent Ralph Kelly maintained that he was the man in the middle, being friends with both the Claimant and Respondent Luther C. Thompson. He alleged that he was not acting as a broker for this transaction, but rather that he was inactive at the time, that his license was then held by Luther C. Thompson, and has subsequently expired. He admitted having received a fee or commission of approximately \$700.00 to \$750.00 in connection with this transaction. Respondent Ralph Kelly alleged that Respondent Luther C. Thompson had made the entire sales pitch, while acknowledging that his own presence had probably influenced the Claimant in his decision to make the investment. Respondent Ralph Kelly acknowledged picking up the Claimant's purchase check on or about October 12, 1987, and delivering said check to Respondent Luther C. Thompson. He subsequently attempted to assist the Claimant in obtaining information on the progress, if any, of the gas wells and the status of Claimant's investment.

#### **RELIEF REQUESTED**

Claimant requested damages of twenty-five thousand dollars (\$25,000.00), the amount of his investment, as actual damages. Claimant requested an additional ten thousand dollars (\$10,000.00) as punitive damages. Claimant further requested a dismissal of Respondent Luther C. Thompson's Motion to Dismiss.

Respondents made no counterclaim for monetary damages; requested a dismissal of Claimant's claims and Respondent Luther C. Thompson filed a Motion to Dismiss based upon the Statute of Limitations.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by the Claimant against both Respondents be and hereby are dismissed in all respects.

2. Each party shall bear their respective costs including attorneys' fees.

**FORUM FEES**

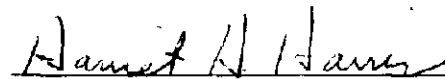
Pursuant to Section 43c of the Code of Arbitration Procedure the NASD shall retain the \$120.00 claim filing fee and \$400.00 hearing session deposit previously paid by the Claimant.

**ARBITRATOR SIGNATURES**



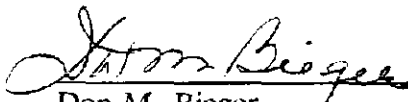
Ruth F. Claiborne, Esq.

Public Arbitrator



Harriet H. Harris, Esq.

Public Arbitrator



Don M. Bieger

Industry Arbitrator

Date of Decision: December 14, 1992