

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of Arbitration Between

Name of Claimant

Walter J. Belinski

vs.

Case # 92-01336

Name of Respondents

Kinlaw Securities Corporation  
Joe D. Kinlaw  
Wilbur Anthony Westmoreland

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**REPRESENTATION**

For Claimant, Walter J. Belinski ("Claimant"), Timothy J. O'Connor, Esq., from the law firm of Ainsworth, Sullivan.

For Respondents, Kinlaw Securities Corporation ("KSC"), Joe Kinlaw ("Kinlaw") and Wilbur Anthony Westmoreland ("Westmoreland"), Joel Held, Esq. and Stephen T. Johnson, Esq. from the law firm Mankoff, Hill, Held & Goldberg, P.C.

**CASE INFORMATION**

Statement of Claim was filed on April 14, 1992.

Claimant's Submission Agreement was signed on April 9, 1992.

Reply to Counterclaim was filed on July 20, 1992.

Joint Statement of Answer and Counterclaim was filed by KSC, Kinlaw and Westmoreland on June 29, 1992.

KSC's Submission Agreement was signed on June 25, 1992.

Kinlaw's Submission Agreement was signed on June 25, 1992.

Joint Response to Claimant's Reply to Counter Claim was filed on July 27, 1992.

Westmoreland's Submission Agreement was signed on June 25, 1992.

### **HEARING INFORMATION**

Pre-hearing Conferences	January 12, 1993	-	2 sessions
	October 28, 1993	-	1 session
Hearing Dates/Sessions:	February 10, 1993	-	2 sessions
	February 11, 1993	-	2 sessions
	April 22, 1993	-	2 sessions
	April 23, 1993	-	2 sessions
	June 23, 1993	-	2 sessions
	June 24, 1993	-	2 sessions
	August 9, 1993	-	2 sessions
	August 10, 1993	-	2 sessions
	November 1, 1993	-	2 sessions
	November 2, 1993	-	3 sessions
	November 3, 1993	-	2 sessions

Hearing Location: Albany, New York.

### **CASE SUMMARY**

Claimant contends that he is entitled to recover against the Respondents, KSC and Kinlaw, under the following theories:

- I. Generally accepted common law principles of agency and the doctrine of apparent authority and actual authority as recognized and applicable under New York State and Federal Law (the first cause of action of the Statement of Claim).
- II. Pendent state and common law principles sounding in respondeat superior (the third cause of action set forth in the Statement of Claim).
- III. 15 U.S.C. Section 771(2), 15 U.S.C. Section 77q(a) (1) through (a)(3), inclusive, and 15 U.S.C. Section 77o, also known as securities fraud and controlling person liability, respectfully, under The Securities Act of 1933. (These legal theories are asserted in Claimant's fifth cause of action.)
- IV. 15 U.S.C. Section 78t(a) and 15 U.S.C. Section 78j(b) controlling person liability and securities fraud/unsuitability, respectfully, under The Securities Exchange Act of 1934. (These legal theories are asserted in Claimant's seventh cause of action set forth in the Statement of Claim.)

- V. Claimant asserts pendent state and common law causes of action in negligence and securities brokerage malpractice and breach of fiduciary duty against each Respondent, jointly and severally. (These legal claims are set forth in the second cause of action set forth in the Statement of Claim.)
- VI. Pendent state and common law causes of action for fraud against all Respondents, jointly and severally. (This cause of action is set forth in the fourth cause of action of the Statement of Claim.)
- VII. 15 U.S.C. Section 771(2) and 15 U.S.C. Section 77q(a)(1) through (a)(3), inclusive, against Respondent, Westmoreland, for securities fraud under the Securities Act of 1933. (This is the sixth cause of action set forth in the Statement of Claim.)
- VIII. 15 U.S.C. Section 78j(b) and 15 U.S.C. Section 78cc(b) against the Respondents, Kinlaw and Westmoreland for securities fraud under The Securities Act of 1933. (This is the eighth cause of action set forth in the Statement of Claim.)

Respondents deny all allegations of wrongdoing and allege that: 1) Claimant was an experienced and knowledgeable investor; 2) Claimant was advised of all risks involved in participation of joint ventures formed to search for oil and gas; and 3) The NASD suitability rule does not apply to the purchase of joint venture interests, a non-security.

Respondents allege the following affirmative defenses:

- 1. Claimant's Statement of Claim fails to state a claim upon which relief can be granted;
- 2. Claimant is estopped by his own admissions from claiming that he justifiably relied on any purported oral misrepresentations or purported written representations not contained in the documents to provided to him;
- 3. Claimant knew, or in the exercise of reasonable care should have known, of all facts and information which Claimant claims were misstated or omitted;
- 4. Claimant is barred from asserting any claim for rescission because after he knew or should have known of his alleged claims, he continued to exercise the incidents of ownership of his joint venture interests by benefiting from the significant tax benefits passed through by the joint ventures to the venturers;

5. The alleged untrue oral representations pled in the Statement of Claim are in direct conflict with the written documents, thereby precluding reasonable reliance by Claimant;
6. KSC maintained and enforced an adequate system of training and internal control to prevent its account executives from making unauthorized oral representations or committing violations of the securities laws;
7. The joint venture interests in the joint ventures are not securities for the purposes of applicable state and federal securities also;
8. Any decline in the value of Claimant's joint venture interests did not result from the alleged defects in the documents provided to him or the other misstatements or omissions alleged by Claimant;
9. Claimant is estopped from any right of recovery for any amounts prayed for in this action since he was fully aware of the risks involved;
10. Claimant, by his words, conduct and agreements, waived his right to assert the claims raised in his Statement of Claim;
11. Claimant's claims against Respondents are barred, in whole or in part, by the parol evidence rule.
12. Claimant's loss, if any, was caused by events unrelated to any action of Respondents, including field wide pressure depletion and production loss;
13. Claimant's claims against Respondents are barred by the doctrine of unclean hand and *in pari delicto*; and
14. Any loss occasioned by Claimant is attributable in wholly new, independent and intervening proximate cause of his alleged damages.

Respondents assert a Counterclaim that Claimant is liable for indemnification and misrepresentation arising out of his written representations and warranties to Respondents.

The claimant denies any wrong doing and denies any liability for any wrong doing asserted by the respondents in their first and second counterclaims.

### **RELIEF REQUESTED**

Claimant requests an award of \$1,135,000.00 together with interest from the respective date of investment of monies; together with lost opportunity; compensatory damages; punitive damages; attorneys' fees; reimbursement of expert witness fees, printing fees, NASD filing and forum fees; rescission of all of Claimant's purchases of investment vehicles nominated as KOC 1991 Horizontal #21 through #36 Joint Ventures; together with any other further relief which this arbitration panel deems just and appropriate under the circumstances. Claimant also requests that the Counterclaim be denied.

Respondents request that the Statement of Claim be denied and that they prevail on their claim for indemnification.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

After the presentation of Claimant's presented his case, Respondents moved for summary judgment. This Motion was denied by this Panel.

Respondents requested and was granted a postponement of the hearings scheduled for May 3 and 4, 1993. This Panel assessed a \$1,000.00 fee which has been paid. Respondent also requested postponement of the hearings that were scheduled for September 20, and 21st, 1993. The hearing was postponed and a decision on the assessment of fees was reserved until the final decision was rendered in this matter. The fee is waived.

### **AWARD**

1. Respondents, KSC and Kinlaw, are jointly and severally liable to Claimant and shall pay Claimant **FOUR HUNDRED AND FIFTY TWO THOUSAND DOLLARS AND ZERO CENTS (\$452,000.00)**.
2. Respondent, Westmoreland, is severally liable to Claimant and shall pay Claimant **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000.00)**.
3. This Panel requested that the parties file post-hearing submissions. Respondent moved to preclude a portion of Claimants' post-hearing submission. That motion is denied by this Panel.

4. All other claims for relief is denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Non-refundable Filing Fee:	\$250.00
Non-refundable Filing Fee for Counterclaim:	\$500.00
Hearing Session Fees:	\$1,000.00 x 23 sessions = \$23,000.00
Pre-hearing Conferences:	\$300.00 x 3 sessions = \$900.00
Postponement fee:	\$1,000.00
Total fees:	\$25,650.00

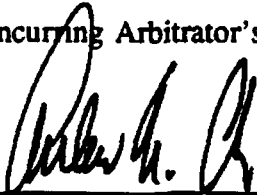
1. Claimant is assessed the \$250.00 non-refundable filing fee. Claimant previously paid \$250.00.
2. Claimant is further assessed \$1,000.00 which was previously deposited by Claimant.
3. Respondents are assessed a \$500.00 non-refundable Counterclaim filing fee which has been paid.
4. Respondents were also assessed \$1,000.00 postponement fee which has been paid.
5. Respondents jointly and severally assessed \$22,900.00 in forum fees. Respondents deposited \$1,000.00 and shall receive a credit so that the balance due is \$21,900.00.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Andrew N. Carnell, Esq.	-	Public Chairperson
Maureen J. Ely	-	Public Panelist
Jay F. Donnarama	-	Industry Panelist

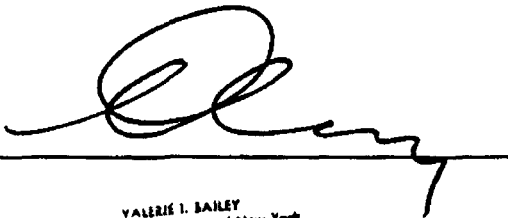
Concurring Arbitrator's Signature



Andrew N. Carnell, Esq.

Date of Decision January 21, 1994

On this <sup>10</sup> day of ~~December~~ <sup>January</sup>, 1994, before me personally appeared Andrew N. Carnell, Esq. known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



VALERIE I. BAILEY  
NOTARY PUBLIC, State of New York  
No. 24-6940303  
Qualified in Kings County  
Commission expires July 18, 1994

**ARBITRATION PANEL**

Andrew N. Carnell, Esq.	-	Public Chairperson
Maureen J. Ely	-	Public Panelist
Jay F. Donnarama	-	Industry Panelist

Concurring Arbitrator's Signature

Maureen J. Ely  
Maureen J. Ely

Executed on:  
~~Date of Decision~~ Nov. 30, 1993

Date of Decision: January 21, 1994

STATE OF NEW YORK  
COUNTY OF Albany

s.s:

On this 21 day of January, 1994, before me personally appeared Maureen J. Ely known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Lisa M. Tenney  
LISA M. TENNEY  
Notary Public, State of New York  
Qualified in Rensselaer County  
Reg. No. 4961780  
My Commission Expires 215 12.19.94

**ARBITRATION PANEL**

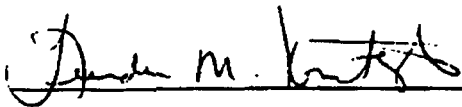
Andrew N. Garnell, Esq.	-	Public Chairperson
Maureen J. Ely	-	Public Panelist
Jay F. Donnarama	-	Industry Panelist

Concurring Arbitrator's Signature

  
Jay F. Donnarama

Date of Decision January 21, 1994

On this    day of December, 1993, before me personally appeared Jay F. Donnarama known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

  
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LINDA M. KONITSKI  
NOTARY PUBLIC, State of New York  
Qualified in Rensselaer County  
No. 4892247  
Commission Expires May 4, 1995 <sup>95</sup>