

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Robert Hedrick

and

92-02004

Name of Respondents

**Texakoma Financial, Inc.
Texakoma Oil & Gas Corporation
Dean R. Kennedy
Scott Kennedy
Richard J. Kennedy**

REPRESENTATION OF PARTIES

Claimant was represented by David Westfall, Esq., Dallas, Texas.

Respondents Texakoma Financial, Inc., Texakoma Oil & Gas Corporation, Dean R. Kennedy, Scott Kennedy, and Richard Kennedy were represented by Mary L. Murphy, Esq. and Will Montgomery, Esq. of Jenkins & Gilchrist, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about June 16, 1992. First Amended Statement of Claim dated September 21, 1992. Second Amended Statement of Claim dated September 30, 1992. Claimant's Submission Agreement was signed on July 15, 1992.

Statement of Answer and Counterclaim was filed by Respondents, Texakoma Financial, Inc., Texakoma Oil & Gas Corporation, Dean R. Kennedy, Scott Kennedy, and Richard Kennedy on or about August 19, 1992. Submission Agreement of Respondent Texakoma Financial, Inc. was signed on August 18, 1992 by Dean R. Kennedy. Submission Agreement of Respondent Texakoma Oil & Gas Corporation was signed on August 18, 1992 by Dean R. Kennedy. Submission Agreements of Respondents Dean R. Kennedy, Scott Kennedy, and Richard Kennedy were signed on August 19, 1992.

HEARING INFORMATION

The hearing was held on Wednesday, January 13, 1993 for three (3) sessions and Thursday, January 14, 1993 for three (3) sessions Dallas, Texas for a total of six (6) sessions.

CASE SUMMARY

Claimant alleged that Respondents Texakoma Financial, Inc., Texakoma Oil & Gas Corporation, Dean R. Kennedy, Scott Kennedy, and Richard Kennedy (collectively as "Respondents") violated the Texas Deceptive Trade Practices Act ("DTPA"), made misrepresentations, engaged in fraudulent inducement and breached NASD rules and regulations in connection with the sale of oil & gas ventures. Claimant specifically alleged that he relied upon verbal and written representations made by or on behalf of Respondents concerning the qualifications of the officers, directors and significant employees of Texakoma Oil & Gas Corporation, the actual production from wells previously drilled in the same field, and production prospects. Claimant further alleged that Respondents failed to disclose the disciplinary history of certain individuals.

Respondents denied the allegations set forth in the Statement of Claim. Respondents also stated that all disclosures required by state or federal law were made in the Private Placement Memorandums for the investments at issue in this matter. It was specifically stated in Respondents Answer and Counterclaim that the Claimant was a sophisticated investor who had invested in prior oil and gas ventures and clearly understood the underlying risks of such ventures. Claimant also executed suitability questionnaires in which he represented and warranted that he had knowledge and experience in financial and business matters that enabled him to evaluate the merits and risks of an investment and that he understood the risks and was willing to bear the economic risk of the investments complained of herein. Respondents further stated that the Claimant was and is an employee of an NASD member.

Respondents asserted the following affirmative defenses: the claims under the DTPA are barred as a matter of law because such Act has no application to the sale of securities; parol evidence rule; waiver and estoppel; the claims are barred by the applicable statutes of limitations; the Statute of Frauds bars any recovery by the claimant; and the claimant fails to state a claim against the individual Respondents in this matter.

In their Counterclaim, Respondents seek attorney's fees and costs associated with the motion to compel arbitration that was filed in the District Court of Dallas County, Texas.

RELIEF REQUESTED

Claimant requested rescission of the transactions, actual damages in the amount of \$96,427.00, treble damages in accordance with the Texas Deceptive Trade Practices Act, punitive damages in the discretion of the arbitration panel, reasonable attorney's fees, costs, and such other relief

as the arbitration panel finds appropriate under the circumstances.

Respondents requested that the claims be dismissed and an award of approximately \$40,000.00 on its Counterclaim, attorney's fees and costs pursuant to the Texas Civil Practice and Remedies Code and the Texas Deceptive Trade Practices Act.

OTHER ISSUES CONSIDERED & DECIDED

After considering the submissions of the parties, the arbitration panel denied the request to consolidate this matter with another NASD arbitration.

Respondents requested that the panel preclude Claimant from presenting evidence. After considering the arguments on behalf of the parties, the arbitration panel denied the motion. Counsel for Respondents was advised that the panel would entertain specific objections to documents or evidence based on Claimant's failure to comply with discovery requests.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

AWARD

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

1. Based upon the evidence and how it was presented to the panel, the panel determines that the Claimant is entitled to no award. The panel's decision is not intended to condone nor support the business activities, ethical standards, sales practices or conduct of Texakoma, its affiliates or its principals.
2. Each party shall bear its own costs, expenses, and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimant. Claimant shall pay to the NASD the sum of \$5,000.00 as forum fees.

N.A.S.D. Arbitration No. 92-02004

Award

Page 4 of 4

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Ralph Steven Janvey, Esq.
Ralph Steven Janvey, Esq.
Presiding Chair
Public Arbitrator

March 10, 1993

s/ Bobby Lutz
Bobby Lutz
Public Arbitrator

March 8, 1993

s/ Stephen Denning
Stephen Denning
Industry Arbitrator

March 8, 1993

Date of NASD review: 3-15-93

N.A.S.D. DISCIPLINARY REFERRAL

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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DISCIPLINARY REFERRAL

During the course of the hearing in the above captioned arbitration certain evidence and testimony came to the attention of the undersigned arbitrators which they feel should be investigated by the appropriate District Business Conduct Committee. Specifically, the undersigned believes that the books, records and compliance procedures be investigated.

Dated:

**s/ Ralph Steven Janvey, Esq.
Ralph Steven Janvey, Esq.
Presiding Chair
Public Arbitrator**

March 10, 1993

**s/ Bobby Lutz
Bobby Lutz
Public Arbitrator**

March 8, 1993

**s/ Stephen Denning
Stephen Denning
Industry Arbitrator**

March 8, 1993