

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Charles and Lavella Moore

and

93-01001

Name of Respondent

Kinlaw Securities Corp.
Joe D. Kinlaw

REPRESENTATION OF PARTIES

Charles and Lavella Moore ("Claimants") were represented by Charles M. Hamilton, Esq., Law Offices of H. Dawson French, Dallas, TX.

Kinlaw Securities Corp. ("Respondent KSC") and Joe D. Kinlaw ("Respondent Kinlaw") were represented by Joel Held, Esq. and Jane E. Dillinger, Esq., Mankoff, Hill, Held & Goldberg, Dallas, Tx.

CASE INFORMATION

The Statement of Claim was filed on or about March 16, 1993. Submission Agreement of Claimants Charles and Lavella Moore was signed on March 9, 1993.

Objection to Claimants' Statement of Claim and Motion to Dismiss was filed by Respondents Kinlaw Securities Corp. and Joe D. Kinlaw on or about June 16, 1993. Statement of Answer was filed by Respondents Kinlaw Securities Corp. and Joe D. Kinlaw on or about September 14, 1993. Submission Agreement of Respondent Kinlaw Securities Corp. was signed on July 12, 1993 by Joe D. Kinlaw. Submission Agreement of Respondent Joe D. Kinlaw was signed on July 12, 1993.

HEARING INFORMATION

A pre-hearing conference with Jerry C. Gilmore, Esq. was held on November 11, 1993 for one (1) session.

The hearing was held on January 17, 1995 for three (3) sessions, January 18, 1995 for three (3) sessions, January 19, 1995 for two (2) sessions, February 13, 1995 for two (2) sessions and

February 14, 1995 for three (3) sessions in Dallas, Texas for a total of one (1) pre-hearing and thirteen (13) hearing sessions.

CASE SUMMARY

Claimant alleged that Respondents violated §12 of the Securities Act of 1933, §10(b) of the Securities Exchange Act of 1934 and Rule 10(b)5 thereunder, §§7 and 33 of the Texas Securities Act, and the Texas Deceptive Trade Practices Act. Specifically, Claimants alleged that Respondents made material misrepresentations and made omissions of material facts in connection with their purchase of joint venture interests in four horizontal wells. Claimants, alleged that Respondents made omissions of material facts in its sales literature and oral representations made prior to their purchase of interests in the wells. It was also alleged that Respondents made material misrepresentations regarding the anticipated success and viability of the wells prior to their purchase of the interests. In particular, Claimants alleged that the sales literature and representatives of Respondents failed to inform them of the actual risks associated with the proposed horizontal drilling program.

Respondents denied the allegations set forth in the Statement of Claim. Specifically, Respondents stated that Mr. Moore represented to them that he was an experienced investor who spent his time effectively managing all of his investments and that he had previous experience in investing in drilling ventures in addition to stocks, commodities, real estate and tax shelters. Respondents also stated that Claimants had a net worth in excess of \$1,000,000. It was further stated by Respondents that the Claimants had received numerous documents, including but not limited to, a Confidential Information Memorandum for each Program which contained a full, fair and complete description of the inherent risks relating to the Programs and the drilling of oil wells. Respondents further stated that their representatives also repeatedly verbally disclosed to the Claimants the risks associated with the drilling of oil wells, including the risks of a dry hole and a minimal producer. Numerous affirmative defenses were asserted by the respondents, including but not limited to the following:

- the Statement of Claim fails to state a claim upon which relief can be granted;
- the claims are barred by the applicable statutes of limitations;
- estoppel; and
- waiver;

RELIEF REQUESTED

Claimant requested judgment granting rescission to them of their purchase of the securities complained of herein and awarding them recovery from Respondents, jointly and severally, of the unrecovered balances of the purchase prices by them, respectively, with legal interest thereon as provided by law. In addition, Claimants requested judgment ordering Respondents, jointly

and severally, to pay them exemplary damages together with reasonable attorneys' fees incurred in connection with this matter, at law or in equity, to which they might justly be entitled.

Respondents requested that the claims asserted against it be denied in all respects, and that they be awarded their costs, expenses and reasonable attorneys' fees incurred in this matter.

OTHER ISSUES CONSIDERED & DECIDED

Kinlaw Oil Corporation and KOC 1990 and 1991 Joint Ventures were named as Respondents in the Statement of Claim and refused to voluntarily submit to arbitration of the claims asserted against them.

The Motion to Dismiss based upon the statutes of limitation asserted in this matter was **denied**.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. Respondents Kinlaw Securities Corp. and Joe D. Kinlaw shall be and hereby are jointly and severally liable for and shall pay to the Claimants Charles and Lavella Moore the sum of **Seventy thousand eight hundred sixty nine dollars (\$70,869)**.
2. Respondents Kinlaw Securities Corp. and Joe D. Kinlaw shall be and hereby are jointly and severally liable for and shall pay to the Claimants Charles and Lavella Moore the sum of **Thirty three thousand dollars (\$33,000)** as attorneys' fees.
3. Respondents Kinlaw Securities Corp. and Joe D. Kinlaw shall be and hereby are jointly and severally liable for and shall pay to the Claimants Charles and Lavella Moore the sum of **Five thousand dollars (\$5,000)** as reimbursement for expert witness fees incurred in this matter.
4. Respondents Kinlaw Securities Corp. and Joe D. Kinlaw shall be and hereby are jointly and severally liable for and shall pay to the Claimants Charles and Lavella Moore the sum of **Seventy five thousand dollars (\$75,000)** as punitive damages. In making this award of punitive damages, the undersigned arbitrators have considered the arguments and written submissions of the parties.

5. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$300 and were thirteen (13) sessions x \$500 = \$6,500 for a total of \$6,800 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §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 \$150 and shall refund the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimants Charles and Lavella Moore. The interim forum fee deposit previously made by the Claimants shall be refunded by the NASD. Respondents Kinlaw Securities Corp. and Joe D. Kinlaw shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$6,800 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ Jerry C. Gilmore, Esq.

Jerry C. Gilmore, Esq.

Public Arbitrator, Presiding Chair

May 15, 1995

/s/ K. Steve Kimball

K. Steve Kimball

Public Arbitrator

May 26, 1995

/s/ Daniel C. Dooley, CPA

Daniel C. Dooley, CPA

Industry Arbitrator

May 15, 1995