

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Daniel J. Schlewitz

93-01823

Name of Respondent

Coordinated Capital Securities of Wisconsin, Inc.

REPRESENTATION

For Claimant: Daniel J. Schlewitz ("Schlewitz") was represented by Bruce Pearson of Fargo, North Dakota..

For Respondent: Coordinated Capital Securities of Wisconsin, Inc. ("Coordinated Capital") was represented by Stephen L. Morgan, Esq. of Murphy & Desmond, P.C., located in Madison, Wisconsin.

CASE INFORMATION

Statement of Claim filed: May 6, 1993.

Claimant's Submission Agreement signed on: April 1, 1993.

Statement of Answer filed by Respondent on: June 30, 1993.

Respondent's Submission Agreement signed on: June 30, 1993 by Larry E. Peters, President, Coordinated Capital Securities of Wisconsin, Inc.

HEARING INFORMATION

Pre-Hearing Conference: None Held
Hearing Dates/Sessions: March 15, 1994 for Two (2) sessions;
March 16, 1994 for Two (2) sessions.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Schlewitz alleged that Coordinated Capital misrepresented an partnership investment in Signal Natural Gas Partners. Schlewitz specifically alleged that Coordinated Capital made the following representations:

1. The key selling point of the investment was the "Principal Investment Guarantee" which appeared in the offering circular and stated:

"The investors are jointly and severally guaranteed that the full amount of the investment in the program, less any cash distributions paid, will be paid to the investing partners in the event Signal has not returned 100% of their investment at the dissolution or termination of the program;"

2. Coordinated Capital represented that cash flow to the investors would commence within 150 days, with a guaranteed minimum production of 155,000 cubic feet of natural gas production per day and no dry wells; and
3. The two principal officers of Signal were men of sound character and were both highly regarded in the industry.

Coordinated Capital performed its own due diligence and Schlewitz relied solely on its representations. In actuality, the following occurred:

1. The two principal officers of Signal are under investigation by several states and the F.B.I., and the general partners have been removed from operations;
2. There has been no cash flow from operations that has accrued to the investors;
3. The "Principal Investment Guarantee" has been determined to be non-existent with no hope of ever collecting on it;

4. There has been no accurate assessment of total gas reserves or of the number of dry holes drilled.

Based upon the above allegations, Schlewitz asserted violations of Rule 10b-5 for Coordinated Capital's failure to perform adequate due diligence, misleading statements, omission of material facts and breach of fiduciary duty.

Coordinated Capital denied the material allegations of the Statement of Claim, alleging that:

1. Schlewitz purchased two general partnership interests in September of 1990. At a later date it was contemplated that the general partners would convert the partnership to a limited partnership, but no vote has been taken;
2. Coordinated Capital was not the sole broker-dealer, or the lead or managing broker-dealer for the offering. Coordinated Capital provided Schlewitz with a copy of the April, 1990 offering memorandum which stated that 20 gas wells would be drilled. In addition, Respondent conducted its own due diligence by conducting on-site visits and interviewing controlling organizers of the venture. Included were sworn statements that none of the organizers had previously violated federal or state laws or violations of the Regulation D provisions;
3. The partnership began to experience problems in 1991 when several wells were not hooked to the gas delivery pipeline and there were minimum revenues from those hooked up. The partnership purchased a performance guarantee agreement which provided that each general partner would receive the amount of their original capital account balance, less any distributions, in the event the general partners receive less than the \$3,000,000.00 purchase price. As of the date of the Answer, no claim had been filed on the guarantee and it was not known if payment would be made. Coordinated Capital acquired a variety of information about the agreement;
4. Schlewitz's questions regarding the expected cash flow, the background of the organizers and the performance guarantee agreement were known to Schlewitz since at least December, 1991;
5. The transaction was presented to Schlewitz through the April 5, 1990 offering memorandum and he possessed all material information prepared by the partnership prior to making his purchase. Schlewitz understood at all times that he was a general partner with joint and several liability for the obligations of the partnership as well as full voting power to control the operations of the Partnership.

Respondent asserted several affirmative defenses, including the following:

1. The general partnership interest purchased by Schlewitz are not "securities" under the federal law and there is no violation of Rule 10b-5;
2. The claim under Rule 10b-5 is time-barred by the applicable statute of limitations as determined by the United States Supreme Court decision of Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 111 S. Ct. 2773, 115 L.Ed. 2d 321 (1991);
3. Respondent performed an appropriate due diligence investigation and in the exercise of reasonable care could not have known of the facts forming the basis of the Statement of Claim;
4. Schlewitz's control of the Partnership constituted a waiver, estoppel or ratification of the events that occurred to the Partnership since his purchase; and
5. Respondent did not owe any fiduciary obligations to Schlewitz.

RELIEF REQUESTED

Claimant requested entry of an award against Respondent for return of principal in the sum of \$50,000.00, interest at the rate of 7%, filing fees of \$650.00 and representative costs of \$5,000.00.

Respondent requested that the Statement of Claim be dismissed in its entirety, that the costs of the proceeding be assessed against the Claimant, and for such other relief that the Panel deemed proper.

OTHER ISSUES CONSIDERED & DECIDED

In its initial pleading, Respondent requested that the hearing situs be changed from St. Louis, Missouri to either a location in Wisconsin or Chicago, Illinois. On May 26, 1993, the Director of Arbitration preliminarily denied the Motion, stating that a final determination of the hearing location would be provided at a later date. On July 6, 1993, the final determination that St. Louis, Missouri would be the hearing location was forwarded to the parties. No further motion regarded the hearing location was presented to the arbitration panel for determination.

Respondent presented two Motions at hearing. The first was a Motion to Dismiss based upon the statute of limitations for Rule 10b-5 claims. After reviewing the arguments of the parties, the Panel determined that the Motion would be denied. The second Motion was a request that if the Panel found in favor of the Claimant, that the award entered be cut in half because one-half the sum invested was furnished by another party. The Panel's decision renders this Motion moot.

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 originals remain on file with the NASD.

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. The Statement of Claim is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' or representative fees, except for those specifically enumerated herein; and
3. Any relief request not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) hearing sessions x \$400.00 per session = \$1,600.00.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 claim filing fee and the \$530.00 hearing session deposit previously deposited by the Claimant, Daniel J. Schlewitz. In addition, Claimant Daniel J. Schlewitz is liable for and shall pay to the NASD additional forum fees in the sum of \$1,070.00.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Robert M. Livingstone, Esq.
Robert M. Livingstone, Esq.
Public Arbitrator
Chairperson

May 25, 1994

/s/ Richard L. Puhl
Richard L. Puhl
Public Arbitrator

May 25, 1994

/s/ Daniel O. Birkle
Daniel O. Birkle
Industry Arbitrator

May 24, 1994

For NASD Use Only

Date of Decision: 5-27-94