

**NASD Regulation, Inc., FINAL ORDER**

**In the Matter of Arbitration Between**

**Douglas Casavant, Michael Moore,  
Noel Adams, Ruby Adams, Edward Ferrari,  
Lute Eldridge, David Williams, Mark Lunski,  
William Ray, and Carolyn Browning,  
Claimants,**

**and**

**No. 95-04673**

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

**REPRESENTATION OF PARTIES**

Claimants, Douglas Casavant, Michael Moore, Noel Adams, Ruby Adams, Edward Ferrari, Lute Eldridge, David Williams, Mark Lunski, William Ray, and Carolyn Browning, (together, hereinafter "Claimants") were represented by G. David Westfall, Esquire of Dallas, Texas.

Claimants, Douglas  
Ferrari, Lute Eldridge  
Browning, (together  
Westfall, Esquire of

Respondents, Dean R. Kennedy, Scott Kennedy, Richard J. Kennedy, Texakoma Financial, Inc., and Texakoma Oil & Gas Corporation (together, hereinafter "Respondents") were represented by Will S. Montgomery, Esquire of Jenkins & Gilchrist, located in Dallas, Texas.

Respondents, Dean R.

**CASE INFORMATION**

Claimants' Statement of Claim was jointly filed on or about October 2, 1995. Claimants' First Amended Statement of Claim was jointly filed on or about May 3, 1996. Claimant, Douglas Casavant's Submission Agreement was signed on December 4, 1995. Claimant, Michael Moore's Submission Agreement was signed on November 9, 1995. Claimant, Noel Adams' Submission Agreement was signed on December 5, 1995. Claimant, Ruby Adams' Submission Agreement was signed on December 5, 1995. Claimant, Edward Ferrari's Submission Agreement was signed on December 11, 1995. Claimant, Lute Eldridge's Submission Agreement was signed on November 10, 1995. Claimant, David Williams' Submission Agreement was signed on.

Claimant, Mark Lunski's Submission Agreement was signed on November 13, 1995.  
Claimant, William Ray's Submission Agreement was signed on November 14, 1995.  
Claimant, Carolyn Browning's Submission Agreement was signed on November 11, 1995.

Respondents' Motion to Dismiss and Answer was jointly filed on or about March 15, 1996. The Submission Agreements of Respondents, Dean R. Kennedy, Scott Kennedy, Richard J. Kennedy, Texakoma Financial, Inc., by President, Dean R. Kennedy and Texakoma Oil & Gas Corporation also by President, Dean R. Kennedy were each signed on February 19, 1996.

### HEARING INFORMATION

There was a telephonic pre-hearing with the full panel held on March 24, 1998 at 10:00 a.m. for one (1) session, and an in-person pre-hearing with the full panel for oral argument on the Motion to Dismiss and Motion to Sever on July 27, 1998, at 9:00 a.m. for one (1) session.

### CASE SUMMARY

#### REPRESENTATION OF PARTIES

Douglas Casavant, Michael Moore, Noel Adams, Ruby Adams, Edward Ferrari, Lute Eldridge, David Williams, Mark Lunski, William Ray, and Carolyn Browning ("Claimants,") asserted that they would not have invested in Texakoma Oil & Gas Corporation through Texakoma Financial, Inc., but for the misrepresentations and omissions of material facts of Respondents. Claimants said that they were each induced to invest in the "Drilling Programs" of Texakoma Oil & Gas Corporation in an amount as follows: Douglas Casavant, \$95,660.00; Michael Moore, \$16,425.00; Noel Adams, \$279,467.00; Ruby Adams, \$14,984.00; Edward Ferrari, \$13,750.00; Lute Eldridge, \$17,925.00; David Williams, \$16,425.00; Mark Lunski, \$32,850.00; William Ray, \$17,925.00; and Carolyn Browning, \$26,374.00. Initially, Claimants said that after they received cold calls from Texakoma Financial employees who sent misleading promotional materials and Private Placement Memoranda ("PPMs") that indicated that as a reputable company and an industry leader with executives who had strong business backgrounds, the company would be a sound business investment which would reap large and certain rewards as evidenced by geological reports. Claimants asserted that Respondents actions constituted: violations of the Texas Deceptive Trade Practices Act; misrepresentation; fraudulent inducement; fraud; fraud in real estate and stock transactions; the sale of unregistered securities and breach of NASD Rules and Regulations. Claimants contended that under their claims of fraud, fraud in real estate and stock transactions, and fraudulent inducement, they would be entitled to recover exemplary damages for intentionally, wantonly or willfully causing

harm to the Claimants and in the alternative, for acting recklessly, and consciously disregarding the risk of harm to Claimants.

Dean R. Kennedy, Scott Kennedy, Richard J. Kennedy, Texakoma Financial, Inc., and Texakoma Oil & Gas Corporation ("Respondents,") denied any wrongdoing or liability as alleged in the Claimants' Statement of Claim. Instead, Respondents said that the financial consultant employed by Texakoma Financial carefully screened each investor before recommending that the investor consider purchasing a unit. Then, they said each potential investor filled out a "Purchaser Suitability Questionnaire" in which the potential investor outlined his or her net worth, his or her experience investing and other financial information, which was then reviewed by the compliance department at Texakoma Financial before the investor was accepted into the program. Respondents said that each Claimant then signed a Subscription and Customer Agreement only after being satisfied with the terms of the proposed investment and after each of the investors reviewed a PPM before they made their investments. Furthermore, Respondents stated that Claimants received reports detailing progress of the drilling and later received production reports on a regular basis. Therefore, Respondents asserted that Claimants were knowledgeable of the risks of their investments and were kept abreast of the status of their investments, yet did not complain of problems with their investments until years later. Respondents further contended that Claimants' claims should be dismissed as the applicable Statute of Limitations barred each of Claimants' claims and because the Claimants' Texas Deceptive Trade Practices Act claims and breach of NASD rules and regulations claims failed as a matter of law. Respondents also asserted the affirmative defenses of the doctrine of laches, waiver, estoppel and again, the applicable Statute of Limitations.

#### **RELIEF REQUESTED**

Claimants, Douglas Casavant, Michael Moore, Noel Adams, Ruby Adams, Edward Ferrari, Lute Eldridge, David Williams, Mark Lunski, William Ray, and Carolyn Browning, requested an award for actual damages of \$531,785.00 for all units purchased, and \$750,000.00 for mental anguish and loss of business opportunities, treble damages in accordance with the Texas Deceptive Trade Practices Act, rescission of the transactions, punitive damages not to exceed ten (10) times their actual damages, reasonable attorney's fees and costs, pre-judgment and post-judgment interest at the maximum rate allowed by law and any other such relief as Claimants may show themselves to be justly entitled.

Respondents, Dean R. Kennedy, Scott Kennedy, Richard J. Kennedy, Texakoma Financial, Inc., and Texakoma Oil & Gas Corporation, requested that the claims

asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees.

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

That after an in-person pre-hearing conference, the panel voted unanimously to grant the Motion to Dismiss of Respondents, Dean R. Kennedy, Scott Kennedy, Richard J. Kennedy, Texakoma Financial, Inc., and Texakoma Oil & Gas Corporation.

Upon review of the file and the representations made by/on behalf of Claimants, Douglas Casavant, Michael Moore, Noel Adams, Ruby Adams, Edward Ferrari, Lute Eldridge, David Williams, Mark Lunski, William Ray, and Carolyn Browning, the undersigned Arbitrators have determined that Respondents, Dean R. Kennedy, Scott Kennedy, Richard J. Kennedy, Texakoma Financial, Inc., and Texakoma Oil & Gas Corporation, have been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure ("the Code.")

The undersigned Arbitrators have also determined that Respondents, Dean R. Kennedy, Scott Kennedy, Richard J. Kennedy, Texakoma Financial, Inc., and Texakoma Oil & Gas Corporation, did receive due notice of the hearing as required under Rule 10318 of the Code.

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 Regulation, Inc. Office of Dispute Resolution.

#### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing on the Motion to Dismiss and Motion to Sever, the undersigned Arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- a)
  1. That all claims made by Claimants, Douglas Casavant, Michael Moore, Noel Adams, Ruby Adams, Edward Ferrari, Lute Eldridge, David Williams, Mark Lunski, William Ray, and Carolyn Browning, against Respondents, Dean R. Kennedy, Scott Kennedy, Richard J. Kennedy, Texakoma Financial, Inc., and Texakoma Oil & Gas Corporation, are hereby dismissed with prejudice;

a)

2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$1,500.00 per hearing session. There were (2) pre-hearing conferences x \$1,500.00 = \$3,000.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code,") 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 Rule 10332(c) of the Code, Claimants, Douglas Casavant, Michael Moore, Noel Adams, Ruby Adams, Edward Ferrari, Lute Eldridge, David Williams, Mark Lunski, William Ray, and Carolyn Browning, have paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$300.00 and have also each paid the hearing session deposit of \$300.00.

Respondents, Dean R. Kennedy, Scott Kennedy, Richard J. Kennedy, Texakoma Financial, Inc., and Texakoma Oil & Gas Corporation, are jointly and severally liable for one-half (2) of the forum fees in this matter and shall pay the sum of \$1,500.00 to NASD Regulation, Inc., Office of Dispute Resolution.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

#### **OTHER FEES**

Pursuant to Rule 10333 of the Code, Respondent, Texakoma Financial, Inc., shall pay to the NASD Regulation, Inc., Office of Dispute Resolution, the \$500.00 past due member surcharge previously invoiced.

#### **Concurring Arbitrators' Signatures:**

/s/ Ralph Janvey

September 15, 1998

Ralph Steven Janvey  
Chairperson  
Public Arbitrator

Date

/s/ Winston C. Fournier

September 22, 1998

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Winston C. Fournier  
Panelist  
Public Arbitrator

\_\_\_\_\_  
Date

/s/ Jack C. Payne

September 21, 1998

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Jack C. Payne  
Panelist  
Industry Arbitrator

\_\_\_\_\_  
Date