

NASD Regulation, Inc., Award

In the Matter of Arbitration Between

**Richard Hittle,
Claimant,**

and

No. 96-01248

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

REPRESENTATION OF PARTIES

Claimant, Richard Hittle ("Hittle") was represented by G. David Westfall, Esquire, of Dallas, Texas.

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

CASE INFORMATION

Claimant, Hittle's Statement of Claim was filed on or about May 15, 1996.
Claimant, Hittle's Submission Agreement was signed on December 18, 1995.

Respondents, Texakoma Financial's, Texakoma Oil & Gas's, Dean R. Kennedy's, Scott D. Kennedy's and Richard J. Kennedy's Motion to Dismiss and Answer was jointly filed on or about June 19, 1996. Respondents, Dean R. Kennedy's, Scott D. Kennedy's and Richard J. Kennedy's Submission Agreements were each signed on June 28, 1996. Respondent, Texakoma Financial's and Texakoma Oil & Gas's Submission Agreements were each also signed on June 28, 1996 by Dean R. Kennedy, President of both companies.

HEARING INFORMATION

There was a Large and Complex Administrative Conference with the staff on June 11, 1997. There were several pre-hearings held for one (1) session each day, on July

22, 1997 at 1:00 p.m., and on December 4, 1997 at 11:00 a.m. The hearing was held on December 8th, 9th, 10th, and 11th in 1997, at 9:00 a.m., for two (2) sessions each day, and on July 21st and 22nd in 1998, at 9:00 a.m., also for two (2) sessions each day, in Dallas, Texas.

CASE SUMMARY

Richard Hittle ("Claimant,") asserted that Respondents solicited investments in various oil well ventures offered by Texakoma Oil & Gas Corporation, through its affiliate, Texakoma Financial, Inc., in violation of the Deceptive Trade Practices Act, and constituting misrepresentation, fraudulent inducement, fraud, fraud in real estate and stock transactions codified at ' 27.0-1 of the Texas Business and Commerce Code, sale of unregistered securities pursuant to ' 4(a) of the Texas Securities Act, codified at Rex. Rev. Civ. Stat. Ann. art. 581-1, et seq., and breach of NASD rules and regulations. Respondents, Dean R. Kennedy, Scott Kennedy and Richard J. Kennedy were said to be officers of the Respondent Texakoma Financial, Inc., and Respondent Texakoma Oil & Gas Corporation, and were also responsible for solicitation of investments. Claimant said he relied upon verbal representations by Texakoma Financial's account representatives and officers and upon written representations contained in Private Placement Memorandum ("PPM") concerning, among other things: the qualifications of the officers, directors and significant employees of Texakoma Oil & Gas; the actual production from the wells already drilled in the same field; the production prospects for various wells described as "prospects"; and, various services which Respondents were offering to perform in connection with the sales. As asserted, Claimant purchased units in the various wells at a total cost of \$363,178.00. In addition, Claimant contended that prior to and at the time the purchases were made, certain representations about the characteristics and quality of securities consisting of fractional undivided working interest in various leases and, or oil wells or "real estate" designed to induce Claimant to act, were made. Claimant alleged that but for the misrepresentations and omissions of material facts, he would not have purchased the units or interest in the wells.

Texakoma Financial, Inc., Texakoma Oil & Gas Corporation, Dean R. Kennedy, Scott D. Kennedy and Richard J. Kennedy ("Respondents,") denied any wrongdoing or liability as alleged in the Claimants' Statement of Claim. Instead, Respondents said the case was frivolous because Claimant was a disgruntled investor who knew the risks of the investment he was making, but was dissatisfied with the results of the investment. Respondents explained that the units sold to investors are exempt from registration under the securities laws, and that Texakoma Financial scrupulously complies with the requirements for exemption from registration and ensures that the investments are suitable for each individual investor. Respondents contended that Claimant was well aware of the risks of his investment because he went through the

same process that the rest of their investors go through. Respondents said that a financial consultant screens each investor before recommending that the investor consider purchasing a unit, and if an investor expresses interest, then he is mailed a PPM, which details all aspects of the drilling program. Then, they said that each potential investor fills out a "Purchaser Suitability Questionnaire" and once the compliance department reviews the questionnaire and the investor is satisfied with the terms of the proposed investment, he signs a Subscription and Customer Agreement for the prospect. Furthermore, Respondents said that at regular and frequent intervals after spudding, or drilling, Claimant received reports from Texakoma Oil & Gas detailing progress of the drilling, and what the geological reports showed and received production reports on a regular basis once production began on the wells. Respondents said that Claimant's claims should be barred based on the affirmative defenses of the doctrines of laches, waiver, estoppel and the statute of limitations. Furthermore, Respondents filed a Motion to Dismiss all claims against them on the grounds that the applicable statute of limitations bars each of Claimant's claims, and Claimant's DTPA and breach of NASD rules and regulations claims fail as a matter of law.

RELIEF REQUESTED

Claimant, Richard Hittle, requested an award for actual damages, trebled damages in accordance with the Texas Deceptive Trade Practices Act, rescission of the transactions, punitive damages in the sound discretion of the jury not to exceed ten (10) times his actual damages; reasonable attorneys' fees; costs and expenses; pre-judgment and post-judgment interest at the maximum rate allowed by law; and such other relief as Claimant may show himself to be justly entitled.

Respondents, Texakoma Financial, Inc., Texakoma Oil & Gas Corporation, Dean R. Kennedy, Scott D. Kennedy and Richard J. Kennedy, requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees in defending this matter.

OTHER ISSUES CONSIDERED AND DECIDED

The Motion of Respondents, Texakoma Financial, Inc., Texakoma Oil & Gas Corporation, Dean R. Kennedy, Scott D. Kennedy and Richard J. Kennedy to dismiss the Claims of Claimant, Richard Hittle, was denied by the undersigned arbitrators.

Upon review of the file and the representations made by/on behalf of Claimant, Richard Hittle, the undersigned Arbitrators have determined that Respondents, Texakoma Financial, Inc., Texakoma Oil & Gas Corporation, Dean R. Kennedy, Scott D. Kennedy and Richard J. Kennedy, 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, Texakoma Financial, Inc., Texakoma Oil & Gas Corporation, Dean R. Kennedy, Scott D. Kennedy and Richard J. Kennedy, 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, the undersigned Arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent, Scott D. Kennedy is hereby dismissed with prejudice;
 - a)
2. That Respondents, Texakoma Financial, Inc., Texakoma Oil & Gas Corporation, Dean R. Kennedy and Richard J. Kennedy are jointly and severally liable for and shall pay to Claimant, Richard Hittle, the sum of \$354,300.00 (three hundred fifty four thousand, three hundred dollars and no cents) in compensatory damages, with interest calculated at the legal Texas rate thereon, from December 1, 1989, until the award is paid in full; and,
 - a)
3. 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 and \$300.00 for each pre-hearing conference, if any. There were two (2) pre-hearing conferences x \$300.00 = \$600.00 plus (+) there were twelve (12) hearing sessions x \$1,500.00 = \$18,600.00 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, Claimant, Richard Hittle, has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$300.00 and has also paid the hearing session deposit of \$1,200.00. Respondents, Texakoma Financial, Inc., Texakoma Oil & Gas Corporation, Dean R. Kennedy and Richard J. Kennedy, are jointly and severally liable for the majority of the remaining forum fees in this matter and shall pay the sum of \$17,100.00 to NASD Regulation, Inc., Office of Dispute Resolution, and shall reimburse the Claimant, Richard Hittle for the \$1,200.00 hearing session deposit already paid. Claimant shall pay \$300.00 for the pre-hearing on the discovery disputes 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., has paid to NASD Regulation, Inc., Office of Dispute Resolution, the \$500.00 member surcharge previously invoiced.

Concurring Arbitrators' Signatures:

/s/ Charles F. Guittard

September 12, 1998

Charles F. Guittard
Chairperson
Public Arbitrator

Date

/s/ William M. Lamoreaux

September 11, 1998

William M. Lamoreaux
Panelist
Public Arbitrator

Date

/s/ Thomas F. O'Toole

September 14, 1998

Thomas F. O'Toole
Panelist
Industry Arbitrator

Date