

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PAUL SEMO, RICHARD HINKLE, :  
JEAN RECLA, Individually and :  
on behalf of all others :  
similarly situated, :  
Plaintiffs :  
vs. : NO. 03-00299  
:  
JOHN BAUSCH; WALNUT STREET : CIVIL ACTION  
SECURITES, INC.; :  
INTERSECURITIES, INC.; and :  
COMMONWEALTH EQUITY SERVICES, :  
INC., : Preliminary Objections  
Defendants :

ORDER

AND NOW, this \_\_\_\_day of June 2004, upon consideration of the preliminary objections filed by Walnut Street Securities, Inc., Intersecurities, Inc., and Commonwealth Equity Services, Inc., it is ORDERED and DIRECTED as follows:

1. The Court DENIES the preliminary objection raising the statute of limitations. The statute of limitations is an affirmative defense and is not properly raised as a preliminary objection. Pa.R.Civ.P. 1028(a)(4), explanatory note ("The defense of the bar of a . . . statute of limitations can be asserted only in a responsive pleading as new matter under Rule 1030."); see also Kyle v. McNamara & Criste, 506 Pa. 631, 635, 487 A.2d 814, 816 (1985); Ramsay v. Pierre, 822 A.2d 85, 88 n.2 (Pa.Super. 2003).

2. The Court DENIES the preliminary objection asserting Plaintiffs cannot present a Securities Act claim against a broker/dealer. Feninger v. Capital Accumulation Services, 439 Pa.Super. 366, 654 A.2d 560 (1994).

3. The Court DENIES Defendants' preliminary objections regarding the sufficiency of the factual allegations for a class action. Whether the numerosity of the potential class and subclasses and/or the commonality of questions of law and fact justify a class action and the formation of subclasses are issues for a certification hearing.

4. The Court DENIES the Defendants' preliminary objections regarding Plaintiffs standing to bring a class action suit against them. Plaintiffs in their complaint allege that Paul Semo invested in Premium Finance Trust through Defendant Bausch when he was acting as a registered representative and/or authorized agent of Walnut Street Securities. Therefore, Paul Semo has standing to bring claims against Walnut Street Securities. Similarly, Richard Hinkle has standing to bring claims against Intersecurities and Jean Recla has standing to bring claims against Commonwealth Equity Services. The Court believes the Defendants reliance on D'Amelio v. Blue Cross of Lehigh Valley, 414 Pa.Super. 310, 606 A.2d 1215 (1992) is misplaced and finds it is distinguishable from the case at bar. First, the sole named

plaintiff in D'Amelio was not involved in any transaction with the other defendant-hospitals it sought to join. Here, there is one named plaintiff for each of the alleged principals of Defendant Bausch. Second, and perhaps more importantly, D'Amelio arose in a different procedural context. In D'Amelio the plaintiff sought to amend his complaint to join additional hospitals as defendants after the trial court had denied defendant class certification for these same hospitals, which decision the plaintiff failed to appeal.

5. The Court GRANTS the Defendants' preliminary objection that asserts Plaintiffs need separate counts for claims under the Securities Act, their claims of negligence, and their claims of breach of fiduciary duty. The Court believes these are separate causes of action that may have different statutes of limitation and/or different elements. The Court gives Plaintiffs twenty (20) days within which to file an amended complaint.

By The Court,

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Kenneth D. Brown, P.J.

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