O/A 6-7-85

IN THE SUPREME COURT OF FLORIDA

CASE NO: 65,872

HELEN MELAMED,

Petitioner,

vs.

MERRILL LYNCH PIERCE FENNER & SMITH, INC., and BRIAN SHEEN,

Respondents.

_____/

APPELLANT/PETITIONER'S REPLY BRIEF ON THE MERITS

F. KENDALL SLINKMAN
Attorney for Petitioner
501 Forum III
1665 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33401
(305) 686-3400

INDEX

AUTHORITIES CITED

AUTHORITIES CITED

I

INTRODUCTION

In Defendant Merrill Lynch's supplemental brief, it is asserted that this Court lacks discretionary review jurisdiction because the United States Supreme Court has quashed and remanded this Court's decision in Oppenheimer v Young, 456 So2d 1175 (Fla. 1984). This, in no way, resolves the conflict existing between Oppenheimer and the instant case. Although Oppenheimer has been vacated, it has been remanded to this Court for consideration in light of Dean Witter Reynolds v Byrd, 470 U.S. 53 USLW 4222 (March 4, 1985). Furthermore, the Melamed III decision by the Fourth District Court of Appeal, which is before this Court for review, held Florida Statute §517.24 FSA unconstitutional and despite Defendant Merrill Lynch's argument that this holding was correct, Defendant concedes at page two of its supplemental brief that direct appeal jurisdiction exists herein in light of this holding. The correctness or lack or correctness of that holding of unconstitutionality will be dealt with under the argument portion of this brief. Furthermore, at page four, footnote one, Merrill Lynch conceds that, in the very least, in light of Dean Witter Reynolds, Inc., v Byrd, supra, the Fourth District acted erroneously in staying litigation pending arbitration. Therefore, this Court must reverse that aspect of the decision under review.

STATEMENT OF THE CASE AND FACTS

Plaintiff reaffirms her first statement of the case and facts. The statement of the case and facts found at pages 3 through 11 of the Brief of Appellee violates Fla. Appellate Rule 9.210 (c) which requires that a statement of the case and facts be omitted unless specific areas of disagreement exist. Those areas should be clearly specified. Instead, the Defendants recite their own view of the history of this case, much of

which is not in dispute. Certain misstatements should be corrected. At page 3 of the Brief of Appellee, it is asserted that Plaintiff's original complaint contained "a count specifically referring to the 1934 Securities Act". Presumably, Defendants are referring to Count IV of the initial complaint which was dismissed by the Court because the Court was pursuaded to read it as asserting a cause of action exclusively under the 1934 Act although it did not cite exclusively to the 1934 Act. Any any rate, this was later clarified by Plaintiff's amendment asserting a specific cause of action under the 1933 Securities Act. (A 127-129).

At page 4, Defendants assert, without record reference, that they initially sought dismissal of the Chapter 517 count (Count V of the original complaint) "because, among other reasons, in alleging churning, it asserted a cause of action which arises only under the Securities Exhange Act of 1934". The original Motion to Dismiss appears to seek dismissal exclusively on the basis that the Florida Securities Act count was not pled with sufficient particularity.(A43) Moreover, when the Motion to Compel Arbitration of May 14, 1981 was filed, the Appellees specifically excepted from the Motion both the federal and the Florida Securities Act counts. (A47).[1/]

At pages 4 and 5, Defendants assert that at the time of the hearing on their motion, they asked the trial court to submit the Chapter 517 count to arbitration unless it somehow construed Count V to be a federal securities act count. The portion of the record cited to at page 5 of Appellee's

---

1. At page 42 of Appelles' Brief, it asserted that Mrs. Melamed "attempts to embarrass the Fourth District for a typographical error by professing not to know what the [Fourth District] Court refers to by the statement that Merrill Lynch had asserted arbitration as an affirmative defense to the 'second-amended complaint'. Plaintiff knows full well that the Fourth District refers to the amended complaint". Yet, the Answer to the Amended Complaint filed over certificate date of May 12, 1981 asserts as a tenth affirmative defense that the Defendants previously filed a Motion to Compel Arbitration on May 4, 1981. (A37). A review of the previously filed Motion, however, clearly discloses that it specifically excepted the federal and Florida Securities Act counts from the demand for arbitration. (A45). The subsequent Motion of May 14,

Brief does not bear out that assertion. Firstly, Count V very clearly stated that it was being brought under Fla. Statute Chapter 517 and not under any federal securities law. (A6). Secondly, although on May 13, 1981 Mr. Falk indicated that the Florida Securities Count "would be submitted to arbitration under the Federal Arbitration Act" (PSA20), his subsequently filed Motion to Compel Arbitration of May 14, 1981 specifically excepted this count of the complaint from the Motion to Compel Arbitration. It would appear that the Defendants could not seem to make up their minds as to the position they wished to take. It should be noted that in the Amended Motion to Compel Arbitration filed May 21, 1981 the Florida Securities Act count was again excepted. (A54). At the hearing held two years later on August 18, 1983, Mr. Falk admitted that his motions to compel arbitration all excepted the Florida Securities Act count, but asserted "our Motion to Arbitrate that is pending before this Court right now is to arbitrate everything that there is." (A213). In fact, no new motion had indeed been filed to encompass the Florida Securities Act count. Essentially, the Fourth District reversed the trial court for not granting arbitration on the Florida Securities Act count despite the fact that at no time was any pleading ever filed and called up for hearing in which the Defendants sought arbitration on that count.[2/]

Pages 9 and 10 of Appellee's statement of the case and facts is a classic in double-talk:

> "Defendants did state that a viable 1933 Act claim is not arbitratable and that it posed an impediment to arbitration... Defendants certainly never conceded that even if any 1933 claim was viable, that it would bar arbitration of other claims." (Brief

(Footnote No. 1 continued)

1981 similarly excepted the federal and Florida Securities Act counts. (A47).

2. Furthermore, at no time did any party ever challenge the constitutionality of Florida Statute §517.24 which would prohibit arbitration on this count. In short, the Fourth District reversed the trial court for not granting the Defendants that which they never requested.

of Appellee, pages 9 and 10).

Assuming that all concerned have a reasonable capacity to appreciate and command the English language, it would seem the Defendant, through Attorney Falk, clearly led the trial court to the conclusion that the Motion to Compel Arbitration was impeded by the pending 1933 Securities Act count. Clearly, Attorney Falk conceded that this impediment to an arbitration order existed as long as the 1933 Securities Act remained viable. It was for that reason Defendants' counsel suggested that he be allowed to submit a Motion for Summary Judgment to the Court "in prompt fashion" so that this conceded impediment could be removed. (A213-220 and specifically 218 and 219). The Motion for Summary Judgment was filed and denied and has withstood a petition for certiorari to the Fourth District Court of Appeal. The acknowledged impediment has yet to be removed. Yet, again, the Defendants would have the trial court reversed for following the very position taken by their own cousel at the trial court level.[3/]

POINT I

THE DISTRICT COURT ERRED IN HOLDING FLORIDA STATUTE §517.241 (2) INVALID AND ORDERING ARBITRATION.

Dean Witter Reynolds v Byrd, supra, does not apply retroactively where Defendants previously did not seek arbitration on any counts of the complaint as long as the federal securities act count remains viable. In Byrd, it is pointed out that Dean Witter promptly filed a Motion for Arbitration of all pendent state claims. Herein, Merrill Lynch and Brian Sheen specifically stated that they sought no arbitration on the federal or Florida Securities

---

3. At page 18 of the brief of Appellee, footnote 9, it is stated:

> "Apparently, the construction the Young case gives to the Wilco doctrine is based in part on Oppenheimer's mistaken concession that they could not have gotten arbitration of any of the claims asserted therein in Federal Court." [Emphasis supplied.]

In the instant case, Merrill Lynch specifically conceded that none of

Act counts. Moreover, at the last hearing from which the trial court delivered its order which gave rise to the Melamed III decision, the Defendants announced their agreement that the trial court could not order arbitration at all so long as the 1933 securities act count remained viable. Byrd does not breathe life back into a clear waiver - even if it were made based upon a miscalculation of the law which might later be created by subsequent court decisions.

Moreover, in Byrd, the United States Supreme Court was dealing with a 1934 (not 1933) securities act claim which vests jurisdiction exclusively in the federal courts and with pendent state common law claims. Herein, Mrs. Melamed has filed a 1933 securities act count which has associated with it the jealously guarded federal policy of allowing injuried parties redress in a court of law. Wilco v Swan, 346 U.S. 427(1953). Byrd refused to pass on whether the Wilco doctrine would extend to a 1934 securities act case. See Justice White's concurring opinion. By the passage of Florida Statute §517.241, this state's legislature clearly intended to retain for its citizens all rights and remedies under Chapter 517 which citizens of the United States had under any of the securities laws of the United States - including the right to access to the courts. Byrd does not authorize preemption of statutory created rights under state law which are consistent with, not incompatible with, federally-created rights.

In passing Florida Statute §517.241, the Florida Legislature cooperated under the policy of "federal and state cooperation in securities matters, including...maximum effectiveness of regulation." 15 USC §77s(c)(2). In Wilco, the United States Supreme Court acknowledged that the effectiveness

---

(Footnote No. 3 continued)

of the counts in the complaint were subject to arbitration as long as the federal 1933 securities act count remained pending. Now, it asserts that as a mistake.

of regulatory provisions and protection for individuals "is lessened in arbitration as compared to judicial proceedings" id. page 435. The Florida Legislature similarly recognized these facts. There is nothing incongruous between Florida Statute Chapter 517 and the overriding federal policy of protecting investors' rights. If any perceived imcompatibility between Florida Statute §517.241 FSA and the Federal Arbitration Act is to be found, then even so, one must recognize that any such conflict has already been judicially resolved, and the federally-announced policy of protecting investors' rights has been held to be paramount. Wilco v Swan supra. Thus, if the Florida Statute is deemed to be in conflict with one of two conflicting federal policies, it must be read compatably with the paramount federal policy. It would be illogical to hold it unconstitutional and preempted by the subordinate federal policy and thus prohibit the Florida Legislature and its courts from cooperating under the paramount doctrine.

The notion of preemption must not be taken lightly. The state's law must be read in connection with "the full purposes and objectives of Congress". Jones v Rath Packing Co., 430 U.S. 519,526 (1977).

The police powers of the state are as pervasive as any reserved power and should be respected unless there is a clear and unequivocal collision with national law. Kesler v Department of Public Safety, Financial Responsibility Division, State of Utah, 369 U.S. 153,82 S.Ct. 807,7L.Ed2d 641 (1962). Any unexpressed purpose of Congress to set aside state statutes may not lightly be inferred, and preemption should be undertaken only when there is clearly a manifest purpose of Congress to do so. Penn Dairies v Milk Control Commission of Pennsylvania, 318 U.S. 261,63 S.Ct. 617,87L.Ed 748 (1943); Younger v Jensen, 605 P2d, 813,161 Cal.Rptr. 905 (1980); Pacific Legal Foundation v State Energy Resources Conservation and Development Commission, 659, F2d, 903 (9th Cir. 1981), cert. granted

457 U.S. 1132, cert. den. 457 U.S. 1133, aff. 103 S.Ct. 1713.

The presence of the interlocking policy of cooperation between the state and federal governments is the overriding distinction between the instant case and Southland Corp. v Keating, U.S. , 104 S.Ct. 852, 79L.Ed2d 1 (1984). In Southland, the United States Supreme Court held that a provision of the California Franchise Investment Law was preempted by federal policy. However, the California Franchise Investment Law had no federal counterpart with an overriding and paramount federal policy attached to it which had been judicially determined to supplant the Federal Arbitration Act. Wilco v Swan supra. In Oppenheimer v Young, 456 So2d 1175 (Fla. 1984) this Court merely applied Chapter 517 so as to read it consistently with the paramount and overriding federal policy under the federal securities laws and in the spirit of cooperation between the state and federal governments.[4/]

In Southland Corporation v Keating, supra, it is stated:

> "We do not hold that §§3 and 4 of the arbitration act apply to proceedings in state courts". Id page 861, Footnote 10.

Indeed, the Merrill Lynch contract appears to indicate that Merrill Lynch will not attempt to apply federal law at all. Rather, it indicates that it relies exclusively upon New York law. Except as the Federal Arbitration Act may require in view of Southland, arbitration agreements incorporating laws other than those of the State of Florida will not be enforced by Florida courts. Knight v H.S. Equities, Inc., 280 So2d 456 (1973, Fla. App. D4); Shearson, Hemmill and Co. v Vouis, 247 So2d 733 (1971, Fla. App. D3), cert den. 253 So2d 444; Miller v AAACon Auto Transport, Inc.,

---

4. Plaintiff is not unmindful of Sagar v District Court, (Colo., April 16, 1985). Plaintiff simply states that the decision is erroneous and certainly is not binding on this Court. The Court's rationale in Oppenheimer is still valid, notwithstanding Byrd. As post-Byrd decisions begin to evolve, courts from other jurisdictions may also be confronted with this issue. This Court should distinguish Byrd and Southland and follow it's rationale in Oppenheimer.

434 F.Supp. 40 (D.C. Fla. 1977); Damora v Stresscon International, Inc., 324 So2d 80 (Fla. 1975); Romar Transports Ltd., Inc. v Iron and Steel Company of Trinidad and Tobago, Ltd., 386 So2d 572 (1980 Fla. App. D4). But, by contrast, Merrill Lynch has agreed to rely exclusively upon New York Law and not the Federal Arbitration Act.

POINT TWO

THE DISTRICT COURT ERRED IN ORDERING ARBITRATION WHERE THE COMMON LAW CLAIMS INCLUDED CLAIMS FOR FRAUD AND PUNITIVE DAMAGES AND ARE TIED FACTUALLY TO NON-ARBITRATABLE CLAIMS.

The trial court recognized that fraud and punitive damage claims, standing alone, are often subject to arbitration. However, the trial court relied upon established judicial precedent and denied arbitration because "they are coupled with complex issues and proceedings and there are other parties not part of the arbitration proceeding (Brian Sheen) and the Court has already assumed jurisdiction in a substantial sense, and there have been acts of waiver and estoppel on some of the issues". (A232).

The cases cited by the Defendants fail to come close to the factual situation noted in the trial court's order. Moreover, Raiford v Buslease, Inc., 745 F2d 1419 (11th Cir. 1984) presented a situation where the District Court was asked to stay non-arbitratable federal claims under the doctrine of intertwining. The District Court declined to do that and the 11th Circuit affirmed. At page 1422, the 11th Circuit reaffirmed its judicially-created doctrine of intertwining, which was later rejected by the Byrd court. In Tamari v Bache and Company, 565 F2d 1194 (7th Cir. 1977) a claim was asserted under the Commodities Exchange Act. No federal securities act was pending. The only fraud allegation was that the agreement to arbitrate was induced by fraud. The Court held that the arbitrators could determine that issue. Compare that holding with Merrill Lynch Pierce Fenner and Smith, Inc. v Falowski, 425 So2d 129 (1982 Fla. App. D4). Moreover, the Tamari court stated at page 1119:

"The Commodities Exchange Act, however, has no provisions comparable to §14 of the Securities Act of 1933 [upon which Wilco v Swan was founded]."

In view of the unusual circumstances including complexity of the litigation, the fact that Brian Sheen is not a party to the contract, the fact that the trial court assumed jurisdiciton in a substantial sense without objection by any party and in view of the other acts of waiver and estoppel, it is respectfully submitted that the trial court was correct in declining to refer the fraud and punitive damage claims to arbitration.

POINT THREE

THE DISTRICT COURT ERRED IN ORDERING ARBITRATION ON THE CLAIMS AGAINST BRIAN SHEEN.

At page 35, Defendants rely upon language from Melamed III for the proposition that it would be "unreasonable" to construe the agreement in such a manner as to send certain of the claims against Merrill Lynch to arbitration while allowing the Plaintiff to proceed in litigation against Brian Sheen. Yet, at page four, footnote one of Merrill Lynch's supplemental brief, it acknowledges, as it must, that under Byrd, Plaintiff will be free to proceed simultaneously in arbitration and litigation anyway.

The distinctions between the instant case and Berman v Dean Witter and Co., Inc., 44 Cal. App. 3d 999,199 Cal.Rept. 130 (Ct. App. 1975) are discussed in Plaintiff's initial brief. Brown v Dean Witter, 601 F.Supp. 641 (SD Fla. 1985) cited in Defendants' answer brief is a pre-Byrd decision. Its holding was reach "with some reluctance", id. page 651, and would undoubtedly be different today in view of Byrd. Although Judge Gonzales also concludes that an account executive is entitled to the benefits of the arbitration agreement, at least one other Federal District Judge in this state would apparently hold otherwise. In Starkenstein v Merrill Lynch Pierce Fenner and Smith, Inc., CCH ¶ 99,519 (No. 81-298 Orl. Civ. R Oct. 5, 1983-copy of opinion filed as supplemental appendix herewith) Judge Reed held that the failure of Merrill Lynch itself to

execute the agreement meant that the contract lack mutuality and was, therefore, unenforceable. In the case sub judice, there is no question that Brian Sheen did not sign the agreement. Moreover, the agreement attached to the Amended Motion to Arbitrate (A59) demonstrates that Merrill Lynch never executed the agreement as well. Under Starkenstein, Merrill Lynch, as well as Brian Sheen, would not be entitled to rely upon the agreement. The Plaintiff and Defendants argued this point at the trial court level but it was never passed on by the trial court. (A239). Assuming this Court agrees with Plaintiff's position on the other point, this Court need not reach the issue as well. On the other hand, if this issue becomes paramount, then this Court may wish to remand the issue to the trial court for a decision, or this Court may properly rule that because the agreement lacks mutuality, even with Merrill Lynch, then it is unenforeable.

Merrill Lynch Commodities, Inc. v Richal Shippping Corp., 581 F.Supp. 933,940 (SD NY 1984) held that a guarantor was bound by the contract to arbitrate based on the broad language of the agreement chosen by the contracting parties. In reaching this decision, the District Court cited to McAllister Bros., Inc. v A & S Transportation Co., 621 F2d 519,523-24 (2d Cir. 1980) and quoted with approval the following language:

> "We are aided in our contruction of the language by prior decisions which make it clear that where an arbitration clause is applicable by its own terms to all disputes and is not limited to those arising between the [contract signatories], the agreement to arbitrate binds 'not only the original parties, but also all those who subsequently agree to be bound by [the terms of the contract.]'" [Emphasis supplied.]

Under McAllister, Brian Sheen would not be entitled to the benefits of the arbitration agreement because the agreement in question clearly limits itself to disputes between the contracting signatories and, secondly, Brian Sheen did not ever consent to be bound by its terms, subsequently or

otherwise.[5/]

At page 38, Merrill Lynch argues that to not allow Brian Sheen the benefits of its contract with the client "does not comport with common sense". Merrill Lynch conveniently ignores the fact that this is a contract of adhesion drafted by itself and any ambiguities in the contract must be read in favor of Mrs. Melamed.

POINT FOUR

THE DISTRICT COURT SUBSTITUTED ITS VIEW OF THE FACTS FOR THAT OF THE TRIAL COURT AND ERRED IN HOLDING ITS RIGHT TO SEEK ARBITRATION HAD NOT BEEN WAIVED.

At page 45, footnote 20 of Appellees' brief, it is asserted that Plaintiff should have known that Defendants wanted more than that for which they actually pled at the trial court level "through the petitions and responses filed in the two previous appeals." It would seem that a review of all three appeals demonstrates that once a position is taken by the Defendants at the trial court level, they immediately assert a new position on appeal. That hardly replaces the need for filing a specific pleading to appraise both the Plaintiff and the trial court of the Defendants' actual position.

At any rate, Merrill Lynch cannot deny that for three years all of its pleadings consistently advise the trial court and counsel that it sought no arbitration on the Florida or federal securities act counts. Nor can it deny that only after the last hearing had been held before the trial court did it file file its "Supplemental Motion" of August 22, 1983 (Merrill

---

5. Space does not allow the Plaintiff to discuss each case cited in Defendants' answer brief. Nor does Plaintiff have space to discuss all of the Circuit Court decisions which are clearly contrary holdings. See, for instance, Washington Metropolitan Area Transit Authority ex real. Noralco Corp. v Norair Engineering Corp., 553 F2d 233,180 U.S. App. D.C. 1977 (D.C. Cir. 1977); ATSA of California, Inc. v Continental Insurance Co., 702 F2d 172 (9th Cir. 1983); Laborer's International Miner of North America, Local Union #309, AFL-CIO v W.W. Bennett Const. Co., 686 F2d 1267 (7th Cir. 1982); Interocean Shipping Co. v National Shipping and Trading Corp., 523 F2d 527,539 (2d Cir. 1975). See also

Lynch's Appendix in Fourth District Court of Appeal, page 150). That "Supplemental Motion" was never noticed for hearing. Nor can Brian Sheen deny that he never even bothered to file such a supplemental motion and has never asked the trial court for arbitration on the Florida or federal securities act counts.

The law of Florida is clear that when a party files an answer without asserting the right to arbitration, the party waives that right. Klosters Rederi A/S v Arison Shipping Co., 280 So2d 678,681 (Fla 1973); Lapidus v Arlen Beach Condominium Assoc., Inc., 394 So2d 1102,1103 (1982 Fla. App. D3); Hansen v Dean Witter Reynolds, Inc., 408 So2d 658,659 (1982 Fla. App. D3), cert. den. 417 So2d 328 (Fla. 1982).

Merrill Lynch's citation to Merrill Lynch Pierce Fenner and Smith v Westwind Transportation, Inc., 442 So2d 414,417 (1983 Fla. App. D2) is totally inapplicable to the facts of the instant case. In Westwind, the Defendants filed their answer only after the trial court had denied their initial and timely Motion to Compel. Obviously, there was no waiver under those circumstances.

Merrill Lynch's citations to Federal authorities on the waiver issue is misplaced. A reading of Belk v Merrill Lynch Pierce Fenner and Smith, Inc., 693 F2d 1023 (11th Cir. 1982) serves to emphasize the somewhat more lenient standard which federal law has developed on the issue of waiver. Yet, waiver of a right to arbitrate is a procedural matter dealing with the manner in which the Motion to Compel Arbitration should be made and the time within which it should be made. In Southland, supra, it was held that federal procedures would not apply in state court enforcement proceedings. Id. page 861, footnote 10. Clearly, a contract may be valid and enforceable and yet a party may have procedurally waived his right to demand compliance

(Footnote No. 5 continued)

Martin K. Eby Const. Co., Inc. v City of Arvada, Colo., 522 F.Supp. 449 (D.C. Colo. 1981); Al-Haddad Bros. Enterprise, Inc. v. M.S. Agapi, 551 F.Supp. 956 (D.C. Del. 1982).

with an arbitration provision therein. 4 Fla. Jur. 2d Arbitration and Award §13. The issue of waiver is controlled under the procedural nuances of state law. Alternatively, if Defendants believed that the Federal Arbitration Act controlled the procedural manner in which arbitration should be requested, then clearly under §4 of the Act, they had a responsibility to move for arbitration in a United States District Court.

Finally as Plaintiff stated in her initial brief on the merits, whichever standard applies, the trial court clearly utilized common sense and found that a three-year delay occasioned by failure to be prepared and failure to cite pertinent case citations as well as the taking of inconsistent positions obviously prejudiced the Plaintiff. (A233-234).

CONCLUSION

The Melamed III decision must be reversed for a number of reasons:

1. The direction to stay litigation on the federal claim pending arbitration (A246) has been conceded to be erroneous under Dean Witter Reynolds, Inc. v Byrd. Supplemental Brief of Appellee, page four, footnote one.
2. The Defendants did not timely plead for arbitration on the Florida Securities Act count or the federal securities act count.
3. The Defendants announced to the trial court their concession that arbitration could not be ordered as long as the federal securities act count remained viable, which it still does.
4. The Florida Securities Act was intended to be a cooperative measure with the federal securities laws to protect investors and there is nothing inconsistent with the Florida act and the Federal Arbitration Act in view of the overriding and parmount national policy as judicially noticed in Wilco v Swan of allowing aggrieved investors redress in a court of law with all its procedural protections.
5. The Defendants inconsistent and dilatory tactics were calculated to, and have, in fact, deprived the Plaintiff of her right to resolution of

her claims as the trial court so found. The District Court erroneously substituted its judgement for that of the trial court on this issue.

6. The fraud and punitive damage claims are non-arbitratable.

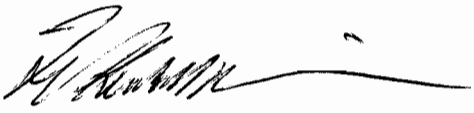
For the reasons set forth herein and in Plaintiff's Initial Brief on the Merits, it is respectfully submitted that the District Court's decision must be reversed as erroneous and the cause remanded to the trial court with directions to proceed on all counts.

Respectfully submitted,

F. KENDALL SLINKMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Appellant/Petitioner's Reply Brief on the Merits has been furnished by mail this 16th day of May, 1985 to Michael Easley, Esquire, 800 Forum III, 1675 Palm Beach Lakes Blvd., West Palm Beach, Florida 33401 and to Patricia E. Cowart, Attorney at Law, 2020 One Biscayne Tower, Two South Biscayne Blvd., Miami, Florida 33131.



F. KENDALL SLINKMAN
Attorney for Appellant/Petitioner
Suite 501 Forum III
1665 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33401
(305) 686-3400