ORIGINAL

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CORPORATE SECURITIES GROUP, INC.,

Petitioner,

vs.

SHIRLEY LIND,

Respondent.

_____/

CASE NO. SC-00-931
L.T. CASE NO. 99-01394

APPEAL FROM THE FOURTH DISTRICT
COURT OF APPEAL, FLORIDA

JURISDICTIONAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

For purposes of identification, Petitioner, Appellant Corporate Securities Group, Inc. shall be referred to as "Petitioner." Respondent, Appellee Shirley Lind shall be referred to as "Respondent". The Fourth District Court of Appeal, Florida shall be referred to as the "Appellate Court." The Honorable J. Leonard Fleet shall be referred to as the "Trial Judge."

STATEMENT OF THE CASE AND FACTS

On or about December 17, 1998, the Appellee initiated the subject lower court action against the Appellant by filing an Amended Complaint and adding Appellant as a new party to said action. The Amended Complaint asserted causes of action against Appellant for breach of fiduciary duty and negligence.

In response to the Amended Complaint, Appellant filed a Motion to Compel Arbitration. The basis for the Motion to Compel Arbitration was a July 15, 1994, Customer's Agreement that Appellee had signed with Appellant's clearing firm agreeing to arbitrate "any and all controversies" with Appellant and/or Appellant's clearing firm.

On March 22, 1999, the Trial Judge held a non-evidentiary hearing on Appellant's Motion to Compel Arbitration. Subsequently, on March 25, 1999, the Trial Judge entered an Order

Denying Motion to Compel Arbitration. The Trial Judge refused to compel arbitration in that the relevant rule of the National Association of Securities Dealers, Rule 10304, requires that an action be brought in the NASD arbitration forum within six years and because the Appellee did not bring her arbitration action within that time period she may proceed with her claims in court. Subsequently, the Trial Judge entered an Agreed Order Granting Motion to Stay Pending Appeal. Petitioner filed a Notice of Appeal of a Non-Final Order on April 21, 1999. On February 16, 2000, the Appellate Court issued its opinion wherein it affirmed the trial court's decision. A Motion for Rehearing or Clarification was filed on February 18, 2000, but was denied on March 29, 2000. A timely Notice to Invoke Discretionary Jurisdiction was filed on April 25, 2000.

SUMMARY OF ARGUMENT

The decision of the Appellate Court in Corporate Securities Group, Inc. v. Lind, 753 So. 2d 151 (Fla. 4th DCA 2000) directly conflicts with the opinion rendered in Pembroke Industrial Park Partnership v. Jazavri Constr., Inc., 682 So.2 26 (Fla. 3d DCA 1996) as to whether it is the arbitrator or the courts that decide issues of arbitrability. Due to the increased use of arbitration as a means of dispute resolution, such issue will undoubtedly reappear before the Florida appellate courts again and thus the need for uniformity in addressing and resolving the issue among the appellate courts is imperative.

ARGUMENT

THE RECENT OPINION RENDERED BY THE FOURTH DISTRICT COURT OF APPEAL WHEREIN IT HELD THAT THE ISSUE OF ARBITRABILITY IS TO BE DECIDED BY THE COURT AND NOT THE ARBITRATORS DIRECTLY CONFLICTS WITH AN OPINION OF THE THIRD DISTRICT COURT OF APPEAL AND WILL RESULT IN INCONSISTENT RESULTS THROUGHOUT THE STATE IF NOT ADDRESSED BY THIS COURT

Section 3(b)(3) of Article V of the Constitution of the State of Florida provides that the Supreme Court "[m]ay review any decision of a district court of appeal that . . . expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." See also Dodi Publishing Co. v. Editorial America, S.A., 385 So. 2d 1369 (Fla. 1980). The purpose behind such provision is to ensure that the law announced in the various appellate courts of Florida shall be uniform throughout the state. N&L Auto Parts Co. v. Doman, 117 So. 2d 410, 412 (Fla. 1960). To determine whether conflict exists between the courts of appeal, the Court does not look to the facts of each case, but rather looks to see if the principle of law announced in the various courts conflict. Id.

In the underlying appellate action, the Appellate Court announced that its prior decision in Wylie v. Inv. Management & Research, Inc., 629 so. 2d 898 (Fla. 4th DCA 1994) (wherein the

Appellate Court announced en banc that the arbitrators, not the court, should determine the issue of arbitrability), was overruled by controlling federal law and as such, it is the courts, not the arbitrators, that decide arbitrability issues. Corporate Securities Group, Inc. v. Lind, 753 So. 2d 151(Fla. 4th DCA 2000). However, the Appellate Court's opinion directly conflicts with the Third District Court's opinion in Pembroke Indus. Park Partnership v. Jazavri Constr., Inc., 682 So. 2d 226 (Fla. 3d DCA 1996)which held that the issue of whether a demand for arbitration is timely is to be decided by the arbitrator and not the court.

The Appellate Court reasoned that its prior holding, that the arbitrator and not the court determined arbitrability, was overruled by the Supreme Court's decision in First Options of Chicago v. Kaplan, 514 U.S. 938 (1995). Corporate Securities Group, Inc. v. Lind, 753 So. 2d 151, 152-153 (Fla. 4th DCA 2000). The Appellate Court noted that in Kaplan the Court asserted that the question of whether the arbitrators or the courts have the primary power to determine arbitrability depends on whether the parties agreed to submit the question of arbitrability itself to arbitration. Id. at 152. The Court further noted that the question "who determined arbitrability" is treated differently from the entirely separate question "whether there is an agreement to arbitrate" since a party can be forced to arbitrate

only those issues it specifically has agreed to submit to arbitration; thus, silence or ambiguity in an agreement as to who should decide arbitrability should not be assumed unless there is clear and unmistakable evidence that the parties agreed to have arbitrators rather than a court decide the arbitrability or eligibility issue. Id.

However, in Pembroke Indus. Park Partnership, the Third District Court of Appeal was also presented with the issue of whether the court or the arbitrators were to decide if a demand for arbitration was timely, and thus arbitrable. 682 So. 2d at 226. Despite the fact that such issue was presented to the Third District Court of Appeal subsequent to the decision in Kaplan, the Third District Court of Appeal expressly held that such issue was for the arbitrator to decide, not the trial Court. Id. at 226.

In reliance on this principle of law, the Third District Court of Appeal cited to Victor v. Dean Witter Reynolds, Inc., 606 so. 2d 681, 682 (Fla. 5th DCA 1992) to support its position. Victor, which was decided by the Fifth District Court of Appeal, is factually similar to the instant action; however, Victor was decided prior to the Court's decision in Kaplan. The Third District Court of Appeal's reliance on Victor, despite the fact that Kaplan had already been decided, is contrary to the

Appellate Court's position and will result in contradictory holdings within the State of Florida.

Moreover, should the Fifth District Court of Appeal continue to uphold the principle of law announced in Victor, namely that the arbitrators, not the courts decide arbitrability, this holding would also conflict with the Appellate Court's recent decision.

CONCLUSION

For the foregoing reasons, Appellant Corporate Securities Group, Inc. respectfully requests that this Court acknowledge jurisdiction and invoke its discretionary authority to review the direct conflict existing between the appellate courts of Florida.

HOWARD A. TESCHER
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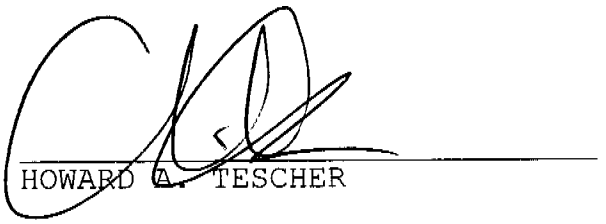
CERTIFICATE OF SERVICE

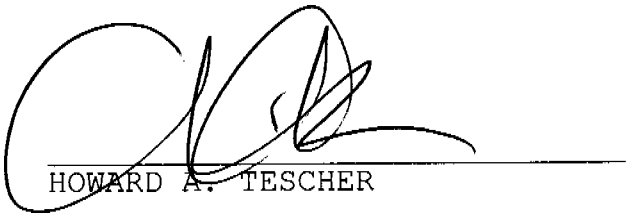
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail this 12th day of May, 2000 upon: Thomas Lardin, Esq., 1901 West Cypress Creek Road, Suite 415, Fort Lauderdale, Florida 33309 and Leonard Bloom, Esq., 200 South Biscayne Boulevard, Suite 4750, Miami, Florida 33131.



HOWARD A. TESCHER

ATTESTATION

In order to comply with the font requirements of Fla. R. App. P. 9.210(a)(2), the undersigned hereby certifies that the size and style of the type used in the preparation of this brief was 12 point Courier New, as recommended by the Court.



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