

Corporate & Financial Weekly Digest

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District Court Grants Motion for Summary Judgment in Case Involving the Sale of Unregistered Securities

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Defendant Great American Broadcasting, Inc. (GAB) purchased all of the shares of plaintiff Supernova Systems, Inc. (Supernova) through a Stock Purchase Agreement in July 2008. GAB agreed to issue Supernova 53,350 shares of GAB in addition to cash and a promissory note. Supernova alleged that GAB violated the registration requirements of the Indiana Uniform Securities Act (IUSA). GAB moved for summary judgment, arguing that the transaction was exempt from the IUSA's registration requirements and that it was therefore entitled to judgment as a matter of law.

IUSA makes it unlawful to sell unregistered securities unless the security or transaction is exempted or it involves a federal covered security. GAB asserts that although it sold Supernova unregistered stock, the sale was lawful because it fell under the IUSA's private placement exemption.

The case turned on a condition that requires the issuer to provide an offering statement and that the securities commissioner not disallow the exemption. The issuer does not have to fulfill this requirement if certain other conditions are met, including all Indiana purchasers qualifying as "accredited investors." Despite the fact that one of Supernova's shareholders did not qualify as an "accredited investor," GAB argued that it reasonably believed that all of Supernova's shareholders were "accredited investors" based on Supernova's representation and warranty in the Stock Purchase Agreement that it was an "accredited investor" as that term is defined in Regulation D of the 1933 Securities Act.

Supernova argued that in order for GAB to hold a "reasonable belief" that Supernova was an "accredited investor," GAB should have relied on other objective evidence such as shareholder financial questionnaires and reviews of shareholder financials. The Court, however, concluded that Supernova's representation and warranty in the Stock Purchase Agreement was sufficient to cause GAB to reasonably believe that Supernova was an "accredited investor," and granted GAB's summary judgment motion.

Supernova Systems, Inc. v. Great American Broadband, Inc., 2012 WL 425552
(N.D.Ind. Feb. 9, 2012).

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