

CHAPTER 3

AN ACT concerning civil liability for the fraudulent sale of securities and amending P.L.1967, c.93.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 24 of P.L.1967, c.93 (C.49:3-71) is amended to read as follows:

C.49:3-71 Action for deceit; liability.

24. (a) Any person who

(1) Offers or sells a security in violation of section 8(b), 9(a) or 13 of this act, or
(2) Offers or sells a security in violation of subsection (a) or (c) of section 5 of P.L.1967, c.93 (C.49:3-52) or by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), is liable to the person buying the security from him, who may sue to recover the consideration paid for the security, together with interest at 12% per year from the date of payment and costs, less the amount of any income received on the security, upon the tender of the security and any income received on it, or for damages if he no longer owns the security; provided, however, that the person buying the security must sustain the burden of proof that the seller knew of the untruth or omission and intended to deceive the buyer, and provided further that the buyer has suffered a financial detriment. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at 12% per year from the date of disposition;

(b) Every person who directly or indirectly controls a seller liable under paragraph (a), every partner, officer, or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable;

(c) Any tender specified in this section may be made at any time before entry of judgment;

(d) Every cause of action under this law survives the death of any person who might have been a plaintiff or defendant;

(e) No person may sue under this section more than two years after the contract of sale, or within two years of the time when the person aggrieved knew or should have known of the existence of his cause of action, whichever is later. No person may sue under this section (1) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid, together with interest at 12% per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within 30 days of its receipt, or (2) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within 30 days of its receipt;

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this law or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract;

(g) Any condition, stipulation or provision binding any person acquiring any security to waive compliance with any provision of this law or any rule or order hereunder is void;

(h) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist at law or in equity, but this law does not create any cause of action not specified in this section or section 10, paragraph (e).

2. This act shall take effect immediately.

Approved January 24, 1997.