



ARS NEWSLETTER

June 20, 2008

Your securities are your personal property and no one can prevent you from disposing them in whatever manner you see fit. We are in no way advocating that anyone sell at a discount on the secondary market. An ARS purchaser's case is equally as strong whether he or she holds the security and seeks rescission (undoing of the transaction) or sells the security, sustains damages and seeks the difference from the brokerage firm.

Strictly from a personal opinion, if I needed the money, I would sell because the idea of borrowing my own money would be too distasteful to handle. If I did not need the money I would likely hold and seek rescission from the brokerage firm.

However, the most important issue to address is the right of a security holder to dispose of said security if he or she wants to do so. I have heard from many clients who have indicated that their brokerage firm "refused" to let them sell their ARS through the one of the existing secondary markets. **The brokerage firms cannot do that!** A brokerage firm that houses your securities (whether they are stocks, bonds or ARS) is in legal terms a "bailee." A bailee is a type of agent to whom something is committed in **trust** for another. The bailee holds the goods for a specific purpose pursuant to an agreement with parties.

For example, if you held shares of stock for a particular company in certificate form in a lock box at a bank, though they have possession of the stock certificates, you would have every right to access those certificates and dispose of them as you wish. The bank would have no right to refuse your access to your certificates (assuming all fees are paid for the lock box rental) because they feel you may be selling your shares at a loss. The analogies can go on and on; you entrust your vehicle to a valet service, furniture to a storage service etc. You have a right to access your property and do with it as you please.

The brokerage firms are simply trying to stop you from sustaining damages that can be recovered from them in a legal proceeding. However, you have a right, or perhaps a duty, to mitigate your damages if you choose.

Brokerage firms often argue that they owe no fiduciary duties to their clients. (Literally, they have argued this in the thousands of cases we have arbitrated over the years.) However, one thing is clear, and brokerage firms admit this in arbitration and court cases, they have an absolute fiduciary duty to enable their clients to sell their securities at the best price available at the time. The brokerage firms' actions in preventing their clients' access to their own money is as reprehensible as their action in deceiving them regarding the liquidity of ARS.

If anyone has any questions, feel free to contact us at 800-259-9010, or at ksmith@sselaw.com or sedwards@sselaw.com

I would also like to announce that we have formed a consortium with a large law firm, Williams Kherkher Hart Boundas, LLP, that specializes in handling large scale voluminous cases. You may have seen our ads on television or the Wall Street Journal. They have the resources and the assets to take on Wall Street. This arrangement allows us to help our clients and prospective clients undertake the weighty task at hand.

We would also like to announce the addition of a new partner, Mr. Robert Kantas. He has been with our firm for a few years now, and will help the firm grow to better protect the public from Wall Street's misdoings.