

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

STANLEY J. SULEK,	)	No. 533 736
	)	
Plaintiff,	)	STATEMENT OF DECISION
	)	(Code of Civil Procedure
vs.	)	§ 632)
	)	
BONNETT, SOSCIA & ASSOCIATES, INC.)	)	
Partnership No. 108; BONNETT,	)	
SOSCIA & ASSOCIATES, INC.; PATRICK)	)	
BONNETT; ROBERT J. SOSCIA; BYRON )	)	
BONNETT; AND DOES I through XX, )	)	
inclusive,	)	
	)	

This is an action brought by plaintiff Stanley J. Sulek (herein "plaintiff") to recover compensatory and punitive damages based upon allegations that the defendants who had undertaken to advise and assist plaintiff with respect to certain investments were guilty of fraud and deceit, negligent misrepresentations, breach of fiduciary duty, negligence and had violated California's Corporate Securities Law of 1968.

Plaintiff, employed by the American Broadcasting Company as an electronics technician and apparently a man of considerable frugality had by November of 1980 managed to accumulate approximately \$95,000.00 which he had invested in

1 United States Treasury Bills plus approximately \$33,000.00  
2 which he had accumulated in a savings account. He was  
3 interested in increasing the yield on these savings in the hope  
4 and anticipation that he might be able to retire by the end of  
5 1984 with an income sufficient to maintain him. He was 55  
6 years of age at the time. A friend at work recommended an  
7 organization know as "Triangle Investments" which was one of  
8 the business entitites operated by the defendants Patrick  
9 Bonnett (herein "Bonnett") and Robert J. Soscia (herein  
10 "Soscia"). Bonnett and Soscia did business both in their  
11 individual capacities and in a corporate form under the name of  
12 Bonnett, Soscia and Associates, Inc. (herein "BSA"). BSA acted  
13 as the general partner of the entity known as Triangle  
14 Investments, which was a limited partnership. The defendant  
15 Byron Bonnett is the father of Patrick Bonnett. Insufficient  
16 evidence was introduced to justify imposition of any liability  
17 upon him to plaintiff. Therefore, he is not included in  
18 references hereafter made to the "defendants".

19 In the latter part of November 1980 plaintiff called  
20 Triangle Investments and spoke with a Mr. Dennis Ray (herein  
21 "Ray"). Ray was, at all times material to the issues herein,  
22 an agent of BSA, Bonnett and Soscia. Thereafter, substantially  
23 all of plaintiffs dealings with the defendants was through  
24 Ray. Plaintiff had no experience with investments generally  
25 and specifically had had no investment experience with stocks,  
26 bonds or real estate. He had never invested in a deed of  
27 trust. He was not a sophisticated investor and relied entirely  
28 upon the advice and recommendations of Ray, Bonnett and Soscia

1 with respect to the investments which he thereafter made. It  
2 was clear from the testimony of both plaintiff and Ray that  
3 plaintiff relied entirely upon the purported expertise and  
4 experience of Ray, Bonnett and Soscia with respect to the  
5 investments which they recommended to him. The relationship  
6 which was established between plaintiff on the one hand and the  
7 defendants Bonnett, Soscia and BSA on the other was one of  
8 trust and confidence which imposed upon said defendants the  
9 highest duties of good faith and fiduciary responsibility.

10 One of the first investments which was recommended to  
11 the plaintiff was the purchase of a fractional interest in a  
12 limited partnership being formed to make a real estate loan to  
13 the owners of a nine unit income producing apartment building  
14 in the Balboa area of Orange County. As a result of  
15 discussions with Ray and upon the advice and recommendations of  
16 Bonnett, plaintiff agreed to invest \$14,000 in such limited  
17 partnership and with that investment acquired approximately a  
18 6.7 percent interest in the limited partnership being formed.  
19 The formation of limited partnerships to make such real estate  
20 loans was the type of business in which the defendants BSA,  
21 Bonnett and Soscia frequently engaged. The name assigned to  
22 this particular partnership was Bonnett, Soscia and Associates,  
23 Inc. Partnership No. 108 (herein "No. 108").

24 There is no dispute that the interest which plaintiff  
25 purchased in No. 108 was a security within the meaning of  
26 California Corporations Code Section 25019. The total amount  
27 of money which was to be loaned to the borrower by No. 108 was  
28 \$208,500.00 and the evidence demonstrated that the defendants

1 located a total of at least nine investors, including  
2 plaintiff, to contribute the funds necessary to accumulate the  
3 \$208,500.00. None of the defendants put any of their own money  
4 into No. 108.

5 The defendants received, apparently sometime in  
6 November 1980, an inquiry from a mortgage loan broker known as  
7 Courtesy Financial (herein "Courtesy"). Courtesy was a company  
8 which was not particularly known to the defendants. They had  
9 either had no prior dealings with Courtesy or possibly one  
10 transaction. Courtesy inquired as to whether the defendants  
11 had any investors with money available to make a third trust  
12 deed loan to a client of Courtesy. What Courtesy proposed was  
13 a six month loan in the sum of \$208,500.00 at an interest rate  
14 of 19 percent with interest only payable for the first five  
15 months of the loan. At the expiration of the six month the  
16 remaining interest and the entire principle balance were to be  
17 repaid. The defendants did not recall what information, if  
18 any, they received from Courtesy with respect to how the  
19 borrower intended to obtain the funds to repay this loan within  
20 six months but, since they understood the money was to be used  
21 for certain "rehabilitation" work, they expected that the  
22 borrower would either refinance or sell the property upon the  
23 completion of the rehabilitation work and repay the loan from  
24 such sale or refinancing loan proceeds.

25 The evidence is undisputed, and defendants conceded,  
26 that they relied entirely upon Courtesy's "evaluation" of this  
27 loan. They made no independent investigation or check on any  
28 of the material facts before recommending this investment to

1 plaintiff and their other investors. Specifically:

2 1. The defendants did not make any investigation or  
3 inquiry as to the condition of the property. None of the  
4 defendants, or any of their agents, ever visited the property  
5 to examine its condition. In fact, the condition of the  
6 property was run down and poor;

7 2. The defendants did not make or obtain any  
8 independent appraisal or evaluation of the property which was  
9 to secure the repayment of the loan. Courtesy advised the  
10 defendants that Courtesy had received two "certified"  
11 appraisals which reflected that the value of the property was  
12 in excess of \$2,000,000. Defendants received a copy of these  
13 appraisals and they were inadequate, on their face, to support  
14 the claimed opinions of value expressed therein. Neither  
15 showed any analysis of the income or expenses of the borrower's  
16 property or described exactly how or in what manner the  
17 \$2,000,000 valuations had been calculated. One of the  
18 appraisals was, in fact, prepared by a person who turned out to  
19 be one of the general partners of the borrower and thus had a  
20 very substantial interest in the matter, contrary to the usual  
21 disclaimer required of all independent appraisers. The  
22 defendants received such appraisals as well as a copy of the  
23 loan escrow instructions which reflected the conflicting  
24 interest of one of the appraisers, at or before the time that  
25 they parted with the \$208,500.00 obtained from their  
26 investors. Nonetheless they did not question the matter and  
27 permitted the loan escrow to close and No. 108 to pay over the  
28 funds.

1           3.    The defendants did not make any inquiry as to the  
2 terms of the leasehold which was the nature of the "ownership"  
3 interest of the borrower in the property being used to secure  
4 the loan.   One of the appraisals (the one written by the  
5 general partner of the borrower) expressly stated that the  
6 property was held on a long term lease which had an unexpired  
7 term of 34 years and that the annual rental was \$1,050.00.  
8 Defendants made no effort to obtain a copy of that lease.   Had  
9 they done so they would have discovered that the lessor  
10 apparently had the right, which he had theretofore asserted, to  
11 increase the rental from \$1,050.00 per year to \$24,000.00 per  
12 year.   Defendants conceded that had they known such fact the  
13 loan would not have been a good one and it would not have been  
14 made.

15           4.    The defendants did not make any independent  
16 inquiry into the financial condition of the borrower nor did  
17 they attempt to examine the financial records of the borrower  
18 which related to the property.   All that defendants received  
19 was an unaudited financial statement of one of the general  
20 partners of the borrower together with a resume of his  
21 background and experience.   Substantially all of the assets of  
22 that particular partner of the borrower consisted of land  
23 located in the State of Indiana.   Defendants made no effort to  
24 inquire as to whether the values assigned by the borrower to  
25 the Indiana property in that financial statement were realistic.

26           With respect to all of these matters defendants took  
27 the position that this was the responsibility of Courtesy and  
28 that they had acted reasonably in relying upon Courtesy with

1 respect to Courtesy's apparent valuation of the land and the  
2 financial condition of the borrower. Defendants did not at any  
3 time disclose to plaintiff the shallow nature of their  
4 investigation but simply recommended this investment to  
5 plaintiff and characterized it as "safe". In addition, it was  
6 not disclosed to plaintiff that Courtesy and the defendants  
7 shared a 15 point loan fee in the sum of \$31,275. Of these 15  
8 points, 9 points (\$18,765) was paid to the defendants. The net  
9 amount of money actually received by the borrower on the loan  
10 of \$208,500 was \$176,025. When the net loan proceeds are  
11 divided into the total cost to the borrower, including both  
12 points and the six months interest, it is clear that the actual  
13 interest cost to the borrower for the six months loan was 29.7  
14 percent. This results in an effective annual rate of 59.4  
15 percent. This actual rate of interest was not disclosed to the  
16 plaintiff.

17 Subsequently, the loan went into default on the  
18 payment of interest even before the principal came due. The  
19 two general partners of the borrower went into bankruptcy.  
20 Whatever foreclosure proceedings were commenced by No. 108 with  
21 respect to the note have either been abandoned or at least not  
22 concluded. The defendants have commenced litigation in the  
23 Superior Court for the County of Orange against the borrower  
24 and its general partners and against Courtesy. Substantial  
25 compensatory and punitive damages are claimed. While it is not  
26 yet clear whether or not any recovery will be realized on the  
27 promissory note to No. 108, it is clear that the  
28 representations made by the defendants to plaintiff that his

1 investment would be safe and that he would receive back his  
2 principal at the end of six months, together with the 19  
3 percent interest has not been performed. By this action, and  
4 in testimony during trial, the plaintiff tendered back his 6.7  
5 percent interest in No. 108 to the defendants.

6 On these facts the court concludes that the plaintiff  
7 is entitled to recover from the defendants on four separate and  
8 distinct theories: (1) sale of a security upon material  
9 misrepresentations and omissions of material fact in violation  
10 of Corporations Code Section 25401, (2) breach of fiduciary  
11 duty, (3) negligent misrepresentations, and (4) negligence.  
12 Plaintiff also sought to recover on the theory of common law  
13 fraud and deceit claiming that the misrepresentations made to  
14 him were made for the purpose of cheating and deceiving him.  
15 However, the evidence presented was insufficient to sustain  
16 plaintiff's burden with respect to this claim.

17 Corporations Code Section 25401 makes it unlawful for  
18 any person to offer or sell a security in California by means  
19 of "any written or oral communication which includes an untrue  
20 statement of a material fact or omits to state a material fact  
21 necessary in order to make the statements made, in light of the  
22 circumstances under which they were made, not misleading". In  
23 this case there were substantial nondisclosures of facts which  
24 can only be characterized as very material to the decision  
25 which plaintiff was called upon to make regarding his  
26 investment in No. 108. There should have been disclosed to  
27 plaintiff information regarding (1) the condition of the  
28 property, (2) the terms of the leasehold under which the



1 property was held which had such a substantial and adverse  
2 impact upon the value of the property, (3) the personal  
3 interest in the transaction by one of the appraisers upon which  
4 reliance was placed for the valuation, (4) the fact that  
5 defendants had failed to conduct any kind of investigation into  
6 the matter and (5) that defendants were receiving fees in  
7 excess of plaintiff's investment. All of these facts were  
8 clearly material and were either known or could have been  
9 easily discovered by the defendants prior to the time that the  
10 loan was funded.

11 Violation of Corporations Code Section 25401 imposes a  
12 liability upon the defendants for either rescission or damages.  
13 Plaintiff made a tender during trial and since Section 25501  
14 provides that such tender may be made at any time before entry  
15 of judgment it is accepted as such by the court. Plaintiff is  
16 thus entitled to recover the consideration he paid for the  
17 security, \$14,000.00, plus interest at the legal rate, 7  
18 percent per annum, less the amount of any interest he was  
19 paid. Plaintiff received three monthly interest payments of  
20 \$221.50 for a total of \$664.50. He is entitled to the return  
21 of his \$14,000.00, plus interest thereon at 7 percent per annum  
22 from and after December 10, 1980 (the date on which he paid for  
23 his interest) to and including the date of judgment, May 12,  
24 1983. This totals \$2,370.80 which, after subtracting the  
25 \$664.50 which he received in interest payments, leaves a  
26 balance due him on account of interest of \$1,706.30. Thus, the  
27 total amount due to plaintiff from the defendants on his claim  
28 for violation of Corporations Code Section 25401, principal and

1 interest through May 12, 1983, is \$15,706.30.

2 Quite apart from plaintiff's right to recover  
3 rescissory damages under the provisions of Corporations Code  
4 Section 25401 and 25501, he is entitled to recover on the  
5 theory of breach of fiduciary duty. The fiduciary obligation  
6 owed by the defendants to plaintiff are no less that which  
7 exists between a real estate broker and his client. The  
8 California Supreme Court in Wyatt v. Union Mortgage Company,  
9 (1979) 24 Cal.3d 773, 782 discussed the burdens of that  
10 relationship in the context of an action for breach of  
11 fiduciary duty brought by a borrower against a mortgage loan  
12 broker. That this case involves, in effect, a relationship of  
13 lender dealing with an investment advisor (or loan syndicator)  
14 presents a distinction without a difference. The principles  
15 announced in Wyatt clearly control. There, the court noted  
16 that the law imposes "the same obligation of undivided service  
17 and loyalty that it imposes upon a trustee in favor of his  
18 beneficiary. This relationship not only imposes upon him the  
19 duty of acting in the highest good faith toward his principal  
20 but precludes the agent from obtaining any advantage over the  
21 principal in any transaction had by virtue of his agency  
22 [citation]". Defendants clearly violated this obligation. Not  
23 only did they make an undisclosed profit of over \$18,000.00 on  
24 the transaction, they also failed to disclose to plaintiff the  
25 very poor quality of the inquiry and investigation which they  
26 knew plaintiff was relying upon them to make. Defendants'  
27 conduct also violated Civil Code Sections 2228 and 2230. As a  
28 result, the transaction resulting from defendants' breach was

1 entered into without sufficient consideration and was the  
2 product of undue influence (Civil Code Sections 2234 and  
3 2235). See also, Toomey v. Mitchem, Jones & Templeton, (1968)  
4 262 C.A.2d 690. For these same reasons, defendants also have  
5 liability to plaintiff on the theory of negligent  
6 misrepresentation. See Civil Code Section 1710 and Roberts v.  
7 Ball, Hunt, Hart, Brown & Baerwitz (1976) 57 C.A.3d 104,  
8 110-111.

9 Finally, the defendants owed a duty to the plaintiff  
10 to exercise reasonable care in the discharge of the duties  
11 which they undertook to advise and assist him with his  
12 investment goals. This obligation is based upon well settled  
13 common law principles of negligence which required them to make  
14 reasonable use of their superior knowledge, skills and  
15 experience which they represented to plaintiff they possessed.  
16 As noted above, this obligation would, at a minimum, have  
17 required the defendants to have conducted the inquiry and  
18 investigation which they failed to conduct and which, if  
19 conducted, would have indicated that this loan should not have  
20 been made or, at least, should not have been recommended to  
21 plaintiff. In addition, defendants had a special statutory  
22 burden. Civil Code Section 3372 applies to any person engaged  
23 in the business of "advising others for compensation" with  
24 respect to purchasing, holding or selling property for  
25 investment or who holds himself out as a person with special  
26 expertise in the field of investment decisions. Under Section  
27 3372 defendants are liable to plaintiff for all damages he  
28 sustained by reason of reliance upon their services, unless

1 defendants prove that such services were performed with due  
2 care and skill reasonably to be expected of a person who is  
3 such an expert. For all the reasons noted above, defendants  
4 did not meet that burden.

5 But for the jurisdictional limit of this court,  
6 plaintiff would be entitled to recover judgment against the  
7 defendants in the sum of \$14,000.00 together with interest in  
8 the sum of \$1,706.30 through the date of this judgment, May 12,  
9 1983. The total of this sum, \$15,706.30, exceeds said  
10 jurisdictional limit. Plaintiff, by his complaint has agreed  
11 to remit the excess over that limit. Plaintiff is therefore  
12 entitled to judgment against the defendants Bonnett, Soscia &  
13 Associates, Inc. Partnership No. 108, Bonnett, Soscia &  
14 Associates, Inc., Patrick Bonnett and Robert J. Soscia in the  
15 sum of \$15,000.00. Plaintiff is also entitled to recover his  
16 costs against said defendants. The defendant Byron Bonnett is  
17 entitled to judgment against the plaintiff on the complaint.

18  
19 DATED: MAY 12 1983  
20  
21  
22

23 H. WALTER CROSKY

24 

---

JUDGE PRO TEM