

1990

Johnson-Bowles Company INC., and Marlen Vernon Johnson v. The Division of Securities and the Utah Department of Commerce, the State of Utah : Errata

Utah Court of Appeals

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R. Paul Van Dam; Attorney General; David N. Sonnenreich; Assistant Attorney General; Attorneys for the Appellees.

Recommended Citation

Legal Brief, *Johnson-Bowles Company v. The Division of Securities and the Utah Department of Commerce*, No. 900558 (Utah Court of Appeals, 1990).

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DOCKET NO. 900558CA

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ATTORNEYS FOR PETITIONERS

ORIGINAL PROCEEDING

IN AND BEFORE THE UTAH

COURT OF THE APPEALS

JOHNSON-BOWLES COMPANY, INC., and
MARLEN VERNON JOHNSON,

Petitioners,

v.

The DIVISION OF SECURITIES and
the UTAH DEPARTMENT OF COMMERCE,
STATE OF UTAH,

Respondents.

ERRATA

Case No. 900558-CA

PLEASE TAKE NOTICE THAT footnote 1 on page two of the Johnsons' Petition for Rehearing dated December 13, 1991, should be corrected as follows. Such correction is italicized for the convenience of the Court:

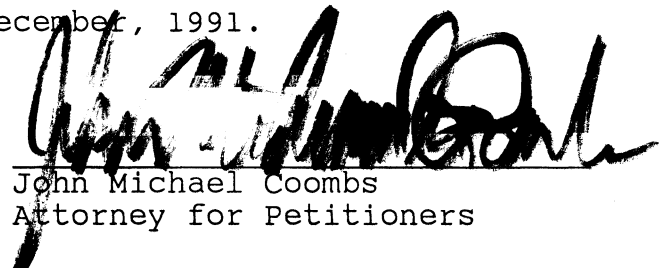
The confusion over §12 of the Utah Uniform Securities Act was addressed by the Johnsons in their May 30, 1991, Reply Brief, discussion which was ignored. *Regardless, there is no basis for any confusion. Section 12 of the Utah Act, a provision exclusively applicable to securities registered in Utah, is the state counterpart to §8(d) of the Securities Act of 1933 (the "'33 Act"), an Act*

which governs the registration of offers and sales of securities. Such Act neither addresses nor governs "trading." On the other hand, §14(2) of the Utah Act is the state counterpart to §4 of the '33 Act. Significantly, there is nothing in either the '33 Act or the Securities Exchange Act of 1934 which is analogous to §14(3) and which allows the SEC to engage in "merit regulation" by suspending all '33 Act exemptions from registration. This is one of the bases upon which the Johnsons contend that §14(3) is unconstitutional (i.e., it allows a permanent *restraint on alienation* by a state agency without due process). The Court should also realize that the SEC was able to suspend "trading" only because -- after March 1, 1989 -- several broker-dealers (a group which excludes Johnson-Bowles) were continuing to make an interstate market in U.S.A. Medical under Rule 15c2-11(a)(5) of the General Rules and Regulations of the Commission. See Reg. §240.15c2-11, Vol. 3, Fed. Sec. L. Rep. (CCH) ¶125,116 at p. 18,255-6. See also Addendum Exhibit "P."

For the convenience of the Court, a true and correct copy of §8(d) of the Securities Act of 1933 is attached hereto and its contents incorporated by reference.

RESPECTFULLY SUBMITTED,

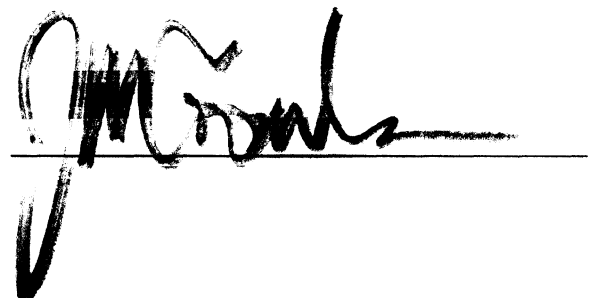
DATED this 17th day of December, 1991.



John Michael Coombs
Attorney for Petitioners

PROOF OF SERVICE

The undersigned hereby certifies that on the 17th day of December, 1990, (s)he mailed, postage prepaid, a true and correct copy of the foregoing ERRATA to Paul Van Dam, Attorney General, and David N. Sonnenreich, Assistant Attorney General, Fair Business Enforcement Unit, 115 State Capitol Building, Salt Lake City, Utah 84114.



1000.01A:ERR.1

[¶ 601] TAKING EFFECT OF REGISTRATION STATEMENTS AND AMENDMENTS THERETO

Sec. 8. (a) Except as hereinafter provided, the effective date of a registration statement shall be the twentieth day after the filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of the information respecting the issuer theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except that an amendment filed with the consent of the Commission, prior to the effective date of the registration statement, or filed pursuant to an order of the Commission, shall be treated as a part of the registration statement.

[As amended by Act of August 22, 1940, 54 Stat. 857]

[¶ 602] [Amendments to Registration Statement Before Effective Date]

(b) If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order. When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later.

[¶ 603] [Amendments to Registration Statement After Effective Date]

(c) An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Commission not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

[¶ 604] [Stop Order Suspending Effectiveness of Registration Statement]

(d) If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such stop order the Commission shall so declare and thereupon the stop order shall cease to be effective.

[¶ 605] [Examination Preceding Stop Order]

(e) The Commission is hereby empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

[¶ 606] [Service of Required Notice]

(f) Any notice required under this section shall be sent to or served on the issuer, or, in case of a foreign government political subdivision thereof, to or on the underwriter, or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the