



California Corporate & Securities Law

Section 25501.5 – “A Riddle, Wrapped In A Mystery, Inside An Enigma”

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Last December, I wrote this [post](#) about Corporations Code § 25501.5 that asked “What do it mean?”. In general, the statute authorizes an action for rescission (or damages, if the security is no longer owned) by any person “who purchases a security from or sells a security to a broker–dealer that is required to be licensed and has not”. However, the statute makes little sense when the security was acquired in transaction in which the unlicensed broker–dealer acted as agent rather than as principal.

Which Statute of Limitations Governs?

More recently, U.S. District Court Judge Dana Sabraw struggled with another unanswered question involving Section 25501.5 – what is the applicable statute of limitations?

[T]here is little case law regarding the statute and it is unclear what statute of limitations applies to claims brought under it. Playground [the alleged unlicensed broker–dealer] argues one of two statutes of limitations applies: a two–year discovery statute of limitations under California Corporations Code § 25506 or an absolute three–year statutory bar under California Code of Civil Procedure § 338(a). However, the Court need not decide which statute of limitations applies because, as discussed above, Plaintiffs’ claim for violation of § 25501.5 would be time–barred no matter which limitations period applies.

Salameh v. Tarsadia Hotels, 2011 U.S. Dist. LEXIS 30375.

Are Condominium Units Securities?

The case also makes for some interesting reading concerning the court’s analysis of whether ownership interests in individual units of the Hard Rock Hotel San Diego constitute securities under either the investment contract test enunciated by the U.S. Supreme Court in *S.E.C. v. Howey*, 328 U.S. 293 (1946)) or the “risk capital” test described by the California Supreme Court in *Silver Hills Country Club v. Sobieski*, 55 Cal.2d 811 (1961).

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A Note on the Quote

The quotation above is from Sir Winston Churchill's October 1, 1939 BBC broadcast which began as follows:

I cannot forecast to you the action of Russia. It is a riddle wrapped in a mystery inside an enigma; but perhaps there is a key. That key is Russian national interest. It cannot be in accordance with the interest of the safety of Russia that Germany should plant itself upon the shores of the Black Sea, or that it should overrun the Balkan States and subjugate the Slavonic peoples of south eastern Europe, That would be contrary to the historic life-interests of Russia.

When Sir Churchill gave this address Great Britain and France had declared war on Germany only a month before on September 1, the Soviet Union had invaded Poland on September 17, and Poland had capitulated on September 27.

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