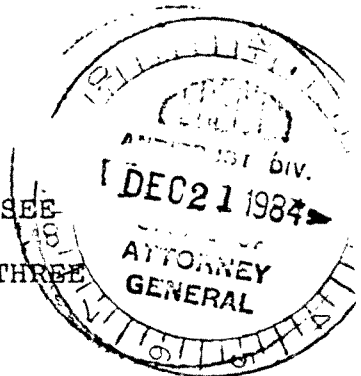


*Clayton*



IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART THREE

IN THE MATTER OF: TENNESSEE )  
DIVISION OF CONSUMER AFFAIRS )  
REQUEST FOR INFORMATION FROM )  
STIFEL, NICHOLAUS & CO., INC. )

*copy*  
No. 84-1723-III  
ORDER FILED & ENTERED 12-19-84  
MINUTE BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

ORDER

Stifel, Nicholas & Company, Inc. has moved that this Court vacate those portions of this Court's order of September 7, 1984, relating to the scope of the Tennessee Consumer Protection Act, T.C.A. § 47-18-101, et seq. In that order, the Court held that the plaintiff had not demonstrated that the act or transaction which is the subject of inquiry is exempted from the Tennessee Consumer Protection Act by T.C.A. § 47-18-103(a).

In the case of Maurice and Helen Driver v. J.C. Bradford Co., et al., No. 84-1500, the question of whether the sale of single premium deferred annuities are exempted from coverage by the Consumer Protection Act was fully litigated. This Court has held that the transactions are not exempted. Accordingly, the Court denies the motion of Stifel, Nicholas & Company, Inc. to vacate part of the September 7, 1984 order.

*Robert S. Brandt*  
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ROBERT S. BRANDT  
CHANCELLOR

December 19, 1984

cc: Randall D. Noel  
Thomas E. Douglass  
Douglas Berry

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART THREE

IN THE MATTER OF: TENNESSEE )  
DIVISION OF CONSUMER AFFAIRS' )  
REQUEST FOR INFORMATION FROM )  
STIFEL, NICHOLAUS & CO., INC. )

ORDER FILED & ENTERED 9-7-84  
MINUTE BOOK PAGE  
No. 84-1723-III

ORDER OVERRULING APPLICATION FOR PROTECTIVE ORDER

This case is before the Court upon an application for a protective order pursuant to the Tennessee Consumer Protection Act, T.C.A. § 47-18-106(b) by which the plaintiff seeks to be relieved from providing information under the Act. The Court concludes that the application for protective order should be denied.

The State asserts that the plaintiff's contentions that the Act does not apply to it and that its activities are exempt from the Act's coverage are premature. From a reading of the Act itself, one could conclude that the question of coverage could be litigated in an application for protective order. However, under the authority of the Court of Appeals decision in Windsor Towers, Inc. v. Eaden, (unreported January 1983), this Court concludes that the issue of coverage by the Consumer Protection Act cannot be litigated in this application for a protective order.

Additionally, the Court is unable to conclude that the transactions are not covered by the Act. The definition of consumer includes people who purchase or acquire intangible property or anything of value. T.C.A. § 47-18-103(a) It would appear that the Act is broad enough to cover the sale of annuities.

The plaintiff asserts that its conduct is exempted by T.C.A. §47-18-111(a). It is important to note that the section does not say conduct is exempted if the business is regulated by another agency. Hardly any business is not regulated by some agency to some degree and the mere fact that the plaintiff's business is regulated by some agency other than the Division of Consumer Affairs does not exempt it from

the Act. What the section seems to mean is that when a business does something required by law or does something which might otherwise be a violation of the Consumer Protection Act but which is specifically authorized by law, then the transaction is not covered by the Consumer Protection Act. It must be noted that the very state agencies which the plaintiff contends regulate the transactions have joined the Consumer Affairs Division in seeking the information. Moreover, the exemption speaks of "acts or transactions", not business enterprises. The plaintiff has not demonstrated that the act or transaction which is the subject of inquiry is required or specifically authorized by some other law.

Finally, the plaintiff contends that the Financial Records Privacy Act of 1983, T.C.A. § 45-10-101, et seq., prohibits the release of the information to the Attorney General. Based upon the scant record, this Court concludes that the plaintiff is not a financial institution as defined by T.C.A. § 45-10-102(3) and, therefore, is not covered by the Act. In addition, under T.C.A. § 45-10-103(8), the furnishing of information to the Attorney General or the Division of Consumer Affairs is not governed by the Act.

For the above reasons, the plaintiff's application for a protective order is denied.

  
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ROBERT S. BRANDT  
CHANCELLOR

September 4, 1984

cc: Randall D. Noel  
Thomas E. Douglass  
Douglas Berry