MINNESOTA COURT OF APPEALS

In re the Registration of DiVall Insured Income Properties 2 Ltd. Partnership

445 N.W.2d 856 (Minn. Ct. App. 1989) · Decided September 26, 1989

SUMMARY

The Minnesota Court of Appeals upheld the Minnesota Commissioner of Commerce’s denial of effectiveness of a securities registration statement for DiVall Insured Income Properties 2 Limited Partnership. The court held that the offering’s title, particularly the phrase “Insured Income,” could mislead investors into believing that their investment or returns were insured, and that supplemental disclosures did not cure the misleading title. The court concluded that the agency decision was supported by substantial evidence, was not affected by legal error, and was not arbitrary or capricious.

CASE DETAILS

COURT	Minnesota Court of Appeals
WRITING FOR THE COURT	Randall, Judge; Huspeni; Randall; Wozniak
JURISDICTION	Minnesota
DECIDED	September 26, 1989
DISPOSITION	affirmed
PROCEDURAL POSTURE	The appellant sought judicial review by writ of certiorari under the Minnesota Administrative Procedure Act of the Minnesota Department of Commerce Commissioner's order denying effectiveness to its securities registration statement.
STANDARD OF REVIEW	Under Minn. Stat. § 14.69, the court could reverse or modify the agency decision if substantial rights were prejudiced by error of law, lack of substantial evidentiary support, or arbitrary or capricious action. Agency decisions receive a presumption of correctness, and courts defer to agency expertise; where evidence conflicts or permits more than one inference, the agency's findings are upheld if supported by substantial evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	DiVall Insured Income Properties 2 Limited Partnership v. Minnesota Department of Commerce

TOPICS

judicial review of agency action · administrative procedure act · agency adjudication · administrative law · appellate procedure

PRACTICE AREAS

Administrative law · Securities regulation · Appellate procedure · Real estate investment

QUESTIONS PRESENTED

1. Whether the Commissioner of Commerce properly determined that the offering title "DiVall Insured Income Properties 2 Limited Partnership" was misleading as to a material fact under Minn. Stat. § 80A.13, subd. 1(b)(1).
2. Whether the Commissioner's denial of effectiveness was reversible under Minn. Stat. § 14.69 as affected by legal error, unsupported by substantial evidence, or arbitrary or capricious.

HOLDINGS

1. The title's reference to "insured income" was misleading as to a material fact because it could imply to prospective investors that the investment or its return was insured, even though only limited portions of some rental income were covered by rent guaranty insurance.
2. Additional disclosures that disclaim, explain, or qualify an initially misleading statement do not necessarily bring a securities prospectus into compliance with Minn. Stat. § 80A.13 when the title itself remains misleading.
3. The Commissioner's denial of effectiveness was not affected by legal error, unsupported by substantial evidence, or arbitrary or capricious.

KEY QUOTATIONS

> *"However, under Minnesota law, a registration statement which "contains any statement" which under the circumstances is misleading as to a material fact, may be denied by the Commissioner of Commerce."* (860)

> *"Contrary to appellant's assertions, additional disclosures which disclaim, explain or qualify an initially misleading statement do not bring the prospectus in compliance with Minn.Stat. § 80A.13."* (860)

> *"We conclude that the Commissioner's findings of fact were supported by substantial evidence and he did not err as a matter of law in concluding that the title of appellant's securities offering is misleading as to a material fact under Minn.Stat. § 80A.13, subd. 1(b)(1)."* (861)

FACTUAL BACKGROUND

DiVall sought to register interests in a Wisconsin limited partnership formed to acquire and operate commercial real estate. The proposed offering's name included the word "Insured," referring to rent guaranty insurance covering some lease payments on some properties, but the insurance did not cover the investment, all income, appreciation, operating expenses, or necessarily all lease payments. DiVall declined to remove the word and instead proposed a prominent supplemental disclosure explaining that the investment itself and returns were not insured. The Commissioner nevertheless found that the title could lead investors to believe that their investment or its return was insured.

PROCEDURAL HISTORY

DiVall submitted an application to register limited partnership interests for sale to Minnesota investors. The Commissioner of Commerce denied effectiveness to the registration statement because the offering's title, which included the word "Insured," was misleading as to a material fact under Minn. Stat. § 80A.13, subd. 1(b)(1). An administrative law judge had recommended approval with a supplemental disclosure, but the Commissioner rejected that recommendation. The Minnesota Court of Appeals obtained review under Minn. Stat. § 14.63 and affirmed.

DISPOSITION

affirmed

CASES CITED

- Markwardt v. State Water Resources Board, 254 N.W.2d 371, 374 (Minn. 1977)
- Reserve Mining Co. v. Herbst, 256 N.W.2d 808, 824 (Minn. 1977)
- Crookston Cattle Co. v. Minnesota Department of Natural Resources, 300 N.W.2d 769, 777 (Minn. 1980)
- Minnesota Life & Health Insurance Guaranty Association v. Department of Commerce, 400 N.W.2d 769, 773 (Minn. Ct. App. 1987)
- State v. Gopher Tire & Rubber Co., 146 Minn. 52, 55, 177 N.W. 937, 938 (1920)
- Logan v. Panuska, 293 N.W.2d 359, 362 (Minn. 1980)
- Boyum v. Massachusetts Investors Trust, 215 Minn. 485, 488, 10 N.W.2d 379, 381 (1943)
- State ex rel. Kerr-Hull v. Department of Commerce, 178 Minn. 623, 228 N.W. 162 (1929)
- Bunge Corp. v. Commissioner of Revenue, 305 N.W.2d 779, 784-85 (Minn. 1981)
- State v. Coin Wholesalers, Inc., 311 Minn. 346, 355, 250 N.W.2d 583, 588 (Minn. 1976)
- State v. Investors Security Corp., 297 Minn. 1, 7-8, 209 N.W.2d 405, 408-09 (Minn. 1973)
- State ex rel. Hardstone Brick Co. v. Department of Commerce, 174 Minn. 200, 219 N.W. 81 (1928)