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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JOHN M. KOCHENASH,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 82-0141-A
)
 MORTON S. SWIRSKY, et al.,)
)
 Defendants.)

ORDER

This matter comes before the court on three motions made by the defendants. First, the defendants move to dismiss a portion of the plaintiff's federal security claims on the ground that the court does not have subject-matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). In particular, the defendants contend that some of the common stock in question does not qualify as a "security" for purposes of the Securities Exchange Act of 1934. See 15 U.S.C. § 78c(10) (1976). Second, the defendants move to dismiss the pendent Virginia blue-sky counts on the ground that they are barred by the applicable statute of limitations. See Fed. R. Civ. P. 12(b)(6). Third, the defendants ask, in the alternative, that the court stay proceedings in this case pending resolution of the blue-sky claims in state court. The plaintiff has filed his blue-sky claims in the Circuit Court for the County of Fairfax, as well as in this court.

The defendants' first motion is moot, because the parties have settled the matter. The plaintiff has agreed to dismiss the portion of the federal security claims in question. Thus, the amount of damages that the plaintiff demands in each of his federal security counts decreases from \$150,000 to \$105,000.

The court GRANTS the motion to dismiss the Virginia blue-sky claims as time-barred. Under Virginia law, a plaintiff must file his blue-sky claims within two years of the transaction in question. See Va. Code § 13.1-552(d) (1978). The

parties agree that this statute of limitations governs blue-sky suits brought in federal court. The plaintiff here did not file his federal action within two years of the transaction in question. The fact that he made a timely filing of his blue-sky claims in state court does not toll the running of the statute for purposes of the federal suit. See Yarber v. Allstate Insurance Co., Physical Measurements, Inc., No. 81-1386, Slip Op. at 4-5 (March 19, 1982); Hayden v. Ford Motor Co., 364 F. Supp. 398, 401-02 (N.D. Ohio 1973), rev'd on other grounds, 497 F.2d 1292 (6th Cir. 1974). The two-year limitation, therefore, bars the plaintiff's blue-sky claims.

The court DENIES the defendants' motion to stay federal proceedings in this case. The court's decision to dismiss the Virginia blue-sky counts obviates any need for a stay in this action.

UNITED STATES DISTRICT JUDGE

Date: _____