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## Article 8: Investment Securities

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ment and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.

*Stone & Webster Eng'r Corp. v. First Nat'l Bank & Trust Co. of Greenfield*, — Mass. —, 184 N.E.2d 358 (1962).

See case note, *infra*, for a summary and full discussion of this case.

## ARTICLE 8: INVESTMENT SECURITIES

### SECTION 8-319. Statute of Frauds.

A contract for the sale of securities is not enforceable by way of action or defense unless

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

*Kessler v. Green Co.*, 28 Pa. D. & C.2d 186 (1962).

Defendant made an oral contract with plaintiff whereby the latter agreed to exert his best efforts to promote and obtain a public offering of defendant corporation's stock. As consideration for plaintiff's work, he was to receive an option to purchase 7,500 shares of defendant corporation's stock at the book value as of the date plaintiff secured a broker ready, willing and able to handle a public sale of the securities. Plaintiff secured such a broker, and defendant refused to consummate an underwriting agreement with him and refused to give the purchase option to defendant. Plaintiff brought suit in equity for specific performance of the oral contract. Defendant alleged that plaintiff's suit was barred by the Statute of Frauds.

The court held that the Statute of Frauds which pertained to investment securities did bar plaintiff's suit. Section 8-319. Had there been delivery, payment, confirmation or an admission of the sale, the contract would have been enforceable, but under these facts, it had to be in writing to be so.

[Annotator's Comment: The Statute of Frauds in Section 8-319 is similar in content to the Statute of Frauds for sales of goods in Section 2-201. In a case which involved a contract analogous to the one in the instant case, the Federal District Court in Pennsylvania held Section 2-201 did not bar enforcement of the contract for it was an employment contract and fully performed by the aggrieved party. *Stone v. Krylon, Inc.*, 141 F. Supp. 785 (E.D. Pa. 1956). In this case, the court could have construed the contract as an employment contract with full performance by plaintiff which would place the contract outside the scope of Section 8-319, and it would be therefore enforceable. The court's other alternative would have been to find that the parties had entered into two separate contracts: the first was plaintiff's obtaining a selling agent in consideration for defendant's giving plaintiff an option to purchase stock; the option (agreement to transfer the shares) would be the second. Under this construction there would be little doubt that if plaintiff could prove his allegations, the contract would not be unenforceable because of either Section 8-319 or Section 2-201. The option itself would not be involved in the action.

From the facts it also seems that plaintiff had alleged that full payment was made to defendant in the form of services rather than money which satisfied the performance exception to the requirement of a writing under Section 8-319(b). Plaintiff would be entitled to specific performance of the contract if he could prove his allegation.]

ARTICLE 9: SECURED TRANSACTIONS; SALES OF ACCOUNTS,  
CONTRACT RIGHTS AND CHATTEL PAPER

**SECTION 9-103. Accounts, Contract Rights, General Intangibles and Equipment Relating to Another Jurisdiction; and Incoming Goods Already Subject to a Security Interest.**

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the juris-