BEFORE THE EMPLOYMENT APPEAL BOARD Lucas State Office Building Fourth floor Des Moines, Iowa 50319

ROBERT T VOLK	: HEARING NUMBER: 09B-UI-00426
Claimant,	EARING NOWBER. 09B-01-00420
and	EMPLOYMENT APPEAL BOARD
DIAMOND SHINE MANAGEMENT SVCS	:

Employer.

NOTICE

THIS DECISION BECOMES FINAL unless (1) a request for a REHEARING is filed with the Employment Appeal Board within 20 days of the date of the Board's decision or, (2) a PETITION TO DISTRICT COURT IS FILED WITHIN 30 days of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is AFFIRMED.

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant testified that the employer asked the claimant to short-cut and indicate 'not applicable' on the due diligence check list when the employer was in negotiations to sell his business. The claimant walked away from a \$25,000 severance and \$15,000 bonus package (claimant's salary was \$114,000/year) because of what he perceived to be an ethics violation. (Tr. 15) In addition, the employer's testimony was not forthcoming with regard to the Jose Jimenez situation, which I find questionable.

I would also find the claimant's testimony more credible and that the claimant believed he was being asked to falsify records. The court in <u>O'Brien v. Employment Appeal Board</u>, 494 N.W.2d 660 (Iowa 1993) held that the claimant need not prove that the employer's actions that triggered the quit were, in fact, illegal. Rather, the court used the reasonable person standard, which indicates if a reasonable person would believe the employer's actions were illegal, then there is good cause to quit. Based on this record, I would conclude that the claimant's quit was with good cause and benefits should be allowed.

John A. Peno

AMG/fnv