

IRVING L. FAUGHT
ADMINISTRATOR



MARY FALLIN
GOVERNOR

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES

MEMORANDUM

To: Irving L. Faught, Administrator

From: Melanie Hall, Deputy Administrator

Date: January 6, 2015

Re: ENFORCEMENT REPORT

Attached is the report of the enforcement activities of the Department for the months of November and December, 2014.

Attachment

h/home/londonb/EnforcementReports/14_Enf-Reports_Nov-Dec_2014.doc

**OKLAHOMA DEPARTMENT OF SECURITIES
ENFORCEMENT ACTIVITIES
NOVEMBER AND DECEMBER 2014**

		FY-15		FY-14
		YTD		YTD
I.	Enforcement Files			
	a. Enforcement Files Opened during the reporting period	43		37
	1. Securities Act	42		32
	2. Business Opportunity Sales Act	0		5
	3. Other	1		0
	b. Enforcement Files Closed during the reporting period	60		68
	c. Active Enforcement Files	171		207
II.	Actions Taken during the reporting period			
	a. Orders Initiating Investigation	0		1
	1. Securities Act	0		1
	2. Business Opportunity Sales Act	0		0
	b. Summary Orders	0		0
	1. Securities Act	0		0
	2. Business Opportunity Sales Act	0		0
	c. Notices of Opportunity for Hearing Served	4		4
	1. Securities Act-Notices	3		4
	i. Hearing Set	1		0
	ii. Hearings Held	0		0
	2. Business Opportunity Sales Act Notices	1		0
	i. Hearing Set	0		0
	ii. Hearings Held	0		0

		FY-15	FY-14
		YTD	YTD
d. Other Orders		20	14
1. Securities Act		19	14
2. Business Opportunity Sales Act		1	0
e. Public Undertakings/Agreements		5	3
1. Securities Act		5	3
2. Business Opportunity Sales Act		0	0
f. Confidential Settlement Agreements		0	0
1. Securities Act		0	0
2. Business Opportunity Sales Act		0	0
g. Letters of Caution		5	2
1. Securities Act		5	2
2. Business Opportunity Sales Act		0	0
g. Appeals from Final Orders		1	0
1. Securities Act		1	0
2. Business Opportunity Sales Act		0	0
h. Civil Penalties - Amounts Collected		\$216,690.11	\$25,000
1. Securities Act		\$216,690.11	\$25,000
2. Business Opportunity Sales Act		\$0	\$0
i. Administrative Costs - Amounts Collected		\$0	\$0
1. Securities Act		\$0	\$0
2. Business Opportunity Sales Act		\$0	\$0

		FY-15		FY-14
		YTD		YTD
	j. Civil Enforcement Activities			
	1. Securities Act			
	i. Subpoenas Issued	0		0
	ii. Civil Petitions Filed	2		3
	iii. Civil Trials Held	0		0
	iv. Criminal Referrals	0		0
	v. Civil Appeals Filed	0		0
	vi. Administrative or other Court Appearances (including pleadings filed)	40		18
	2. Business Opportunity Sales Act			
	i. Subpoenas Issued	0		0
	ii. Civil Petitions Filed	0		2
	iii. Civil Trials Held	0		0
	iv. Criminal Referrals	0		0
	v. Civil Appeals Filed	0		0
	vi. Administrative or other Court Appearances (including pleadings filed)	0		4
	k. Miscellaneous Activities			
	1. Public Information/Press Releases (copy attached)	0		1
	2. Trainings/Seminars Attended	8		9
	3. Coordinated Activities	0		0
	III. Inquiries and Complaints			
	a. Inquiries	20		28
	b. Referrals from Other Oklahoma Agencies	1		2
	c. Referrals from Out of State Agencies	2		1

Administrative Actions

SUMMARY

In the Matter of: Hammons, Jim J.
ODS File No. 14-017

On April 30, 2014, the Administrator issued a notice of opportunity for hearing on an Enforcement Division Recommendation (Recommendation) against Jim J. Hammons (Hammons) of Tulsa, Oklahoma. The Department alleged that Hammons, an agent and investment adviser representative registered under the Oklahoma Uniform Securities Act of 2004 (Act), offered and/or sold a security in the nature of an investment contract to an Oklahoma resident, in violation of Sections 1-501 and 1-502 of the Act. The Department alleged that Hammons breached his fiduciary duty to the Oklahoma resident and made false statements to his associated broker-dealer and investment adviser, thereby engaging in dishonest or unethical practices in the securities business.

On June 30, Hammons filed his answer and requested a hearing.

On July 9, a hearing date was set by order of the Administrator.

On August 6, a Scheduling Order was issued.

In September, the Enforcement Division filed a motion for leave to supplement its Recommendation. The motion was granted and a supplement to the Recommendation was filed on October 8.

An Agreement was entered between Hammons and the Administrator wherein Hammons agreed to withdraw his registrations under the Act by filing, or causing to be filed, a completed Uniform Termination Notice for Securities Industry Registration (Form U-5) on CRD. Hammons further agreed not to reapply for registration under the Act for two (2) years from the Effective Date of the Agreement and upon retaking and passing the applicable examination(s) for the desired categories of registration. Any future application for registration by Hammons may be denied by the Administrator and any future registration may be conditioned or limited by order of the Administrator.

In the Matter of: National Mining Corporation and Curt Fischer
ODS File No. 12-030

An investigation was conducted by the Department into the activities of National Mining Corporation (NMC) and Curt Fischer (Fischer) (collectively, the "Respondents"), both of Norman, Oklahoma. The investigation revealed that Respondents offered and sold unregistered securities in the nature of units in the National Mining Brown #1 Joint Venture and the National Mining Brown #2-3-4 Joint Venture in violation of Section 1-301 of the Act. Fischer acted as an

unregistered agent and NMC employed an unregistered agent in violation of Section 1-402 of the Act. In resolution of this matter, an Agreement was entered between and among Respondents and the Administrator wherein Respondents agreed to imposition of a cease and desist order. On November 10, the Administrator ordered that Respondents cease and desist from engaging in an act, practice or course of business constituting a violation of the Act or doing any act in furtherance thereof.

In the Matter of: Joseph T. Pappalardo
ODS File No. 13-052

On September 26, 2014, FINRA accepted a Letter of Acceptance, Waiver and Consent (“AWC”) submitted by Joseph T. Pappalardo (Pappalardo). The AWC contains findings that demonstrate that Respondent violated Sections 1-406(B) and 1-501 of the Act, and 660:11-5-42(b)(1) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (“Rules”), during his association with Financial Network Investment Corporation. An Agreement was entered into between Pappalardo and the Administrator wherein Pappalardo consented to the issuance of an order barring him from registration under Oklahoma securities laws in any capacity and from employment or association with a broker-dealer, investment adviser or federal covered investment adviser registered or otherwise operating in this state. Respondent is also barred from employment or association, for the purpose of engaging in an activity related to securities transactions in this state, with an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state. On November 25, the Administrator issued an order implementing the provisions of the Agreement.

Appellate Actions

SUMMARY

**Southeast Investments, N.C. Inc., and Frank H. Black v.
Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator,
OSC 15-001**

On October 10, 2014, the Administrator issued a final order against Southeast Investments, N.C. Inc. (Southeast) and Frank H. Black (Black) (Administrator's Order). The Administrator ordered Southeast and Black to cease and desist from violations of the Act, to wit: failing to establish, maintain and/or enforce supervisory procedures to enable Southeast to assure compliance with applicable securities laws. The Administrator further ordered Southeast and Black to pay a monetary penalty in the amount of \$5,000 to the Department within ninety (90) days of the date of the Administrator's Order.

On October 24, Southeast and Black (collectively, the "Appellants") filed a petition for review by the Oklahoma Securities Commission (Commission) of the Administrator's Order pursuant to Section 1-609 of the Act and 660:1-5-1 of the Rules (Petition). On November 20, 2014, Appellants filed their brief in support of the Petition and requested oral argument before the Commission. The Administrator filed his brief on December 5, 2014. The Commission heard oral argument by Appellants and the Administrator on December 18, 2014.

After reviewing the Petition, the record on which the Administrator's Order was issued, and the written briefs submitted by the Appellants and the Administrator, the Commission issued a final order, on December 22, wherein Appellants were ordered to cease and desist from their violations of failing to establish, maintain and/or enforce supervisory procedures to enable the firm to assure compliance with applicable securities laws, and to pay a monetary penalty in the amount of \$5,000 to the Department, by cashier's check or money order, within ninety (90) days of the date of the Administrator's Order.

Civil Actions

SUMMARY

**Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v.
2001 Trinity Fund, L.L.C. and Robert Arrowood
Civil Case No. CJ-2012-6164**

On October 10, 2012, the Department filed a Petition for Permanent Injunction and Other Equitable Relief in the District Court of Oklahoma County against 2001 Trinity Fund, L.L.C. (2001 Trinity Fund) and Robert Arrowood (Arrowood) (collectively, the “Defendants”) of Norman, Oklahoma, alleging violations of Sections 1-301, 1-402 and 1-501 of the Act, in connection with the offer and sale of promissory notes to investors. Investor proceeds, totaling over \$450,000, were to be used to buy oil and gas leases for eventual resale. The proceeds were not used as represented. On October 23, L. Win Holbrook, bankruptcy trustee, filed his entry of appearance as counsel for 2001 Trinity Fund and requested an extension of time to file an answer. During November 2012, answers to the Department’s petition were filed by the Defendants.

On June 5, 2013, Arrowood filed a motion for summary judgment. On August 6, Judge Roger Stuart entered orders denying Arrowood’s motion.

On September 10, Arrowood filed a notice to take the deposition of the Administrator. On September 17, the Department filed a motion to quash Arrowood’s deposition notice and to request a protective order. On September 20, Arrowood filed a motion for a protective order.

On November 13, Judge Stuart granted the Department’s motion to quash the deposition notice and denied Arrowood’s motion for a protective order.

On December 12, Arrowood filed a second motion for summary judgment thereby renewing his request to dismiss the case against him.

On January 3, 2014, the Department filed its response to Arrowood’s renewed motion.

On May 30, 2014, a hearing was held on Arrowood’s renewed motion for summary judgment. Judge Stuart denied the motion.

On August 5, Arrowood filed a Third Party Petition in this matter against Irving L. Faught and Shaun M. Mullins, in their individual capacities, alleging defamation, invasion of privacy, and intentional interference with business relations. On August 21, the Department filed a motion to strike the Third Party Petition.

On September 8, Arrowood filed notice to withdraw the Third Party Petition.

On November 19, the Department filed a motion to bifurcate the trial issues and to establish a claims procedure.

During the month of December, Arrowood filed his response in opposition to the Department's motion to bifurcate the trial issues and to establish a claims procedure. The Department filed a reply.

Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v. Timothy P. Hamilton, Jr. *aka* T.J. Hamilton, Timothy P. Hamilton, and Gena C. Hamilton Civil Case No. CJ-2013-6974

On December 20, 2013, the Department filed a Petition for Permanent Injunction and Other Equitable Relief in the District Court of Oklahoma County against Timothy P. Hamilton Jr., Timothy P. Hamilton, and Gena C. Hamilton (collectively, "Defendants"), alleging violations of Sections 1-301, 1-402 and 1-501 of the Act, in connection with the offer, and/or sale of securities in and/or from Oklahoma. Investors were solicited to fund a purported sports apparel and accessories company and two nutritional supplement companies. Investor proceeds of approximately \$900,000 were not used as represented.

On February 14, 2014, Defendants filed their answer to the Department's Petition.

On December 1, Defendants consented to the entry of a permanent injunction and waived any right to appeal the order. Judge Lisa Davis issued an order against Defendants permanently enjoining them from offering and/or selling securities in and/or from Oklahoma.

Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v. Bruce J. Scambler Civil Case No. CJ-2014-1346

On March 7, 2014, the Department filed a Petition for Permanent Injunction and Other Equitable Relief in the District Court of Oklahoma County against Bruce J. Scambler (Scambler), of Nichols Hills, Oklahoma, alleging Scambler and an issuer under his control had offered and sold securities in and from Oklahoma in violation of a Cease and Desist Order issued by the Administrator on June 11, 2009. On March 13, Jeffrey D. Black, of the Bonham & Howard law firm, filed his entry of appearance as counsel for Scambler.

On December 31, the Department filed a Motion for Summary Judgment against Scambler. A hearing date of February 6, 2015, has been set.

**Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v. Nicholas P. Yukich, III, Nick’s Oil & Gas Corporation and NUCO Energy, LLC
Civil Case No. CJ-2014-2093**

On November 5, 2014, the Department filed an Application to Enforce Subpoena Compliance, in the District Court of Oklahoma County, against Nick’s Oil & Gas Corp. (“NOG”) and Nicholas P. Yukich, III (“Yukich”), and NUCO Energy, LLC (“NUCO”) (collectively, the “Defendants”).

On December 17, Defendants NOG and Yukich filed their answers. Defendant NUCO filed a motion to dismiss the Department’s application alleging insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, and lack of jurisdiction. On December 23, Defendants filed a motion with the Court for an order permitting Eric D. Fein, of Addison, Texas, to appear on their behalf in this matter. On December 31, the Department filed its response to Defendant NUCO’s motion to dismiss.

**Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v. Seabrooke Investments, LLC; Seabrooke Realty, LLC; Oakbrooke Homes, LLC; Bricktown Capital, LLC; KAT Properties, LLC; Cherry Hill, LLC *dba* Cherry Hill Apartments; Tom W. Seabrooke; and Judith Karyn Seabrooke
Civil Case No. CJ-2014-4515**

On August 11, 2014, the Department filed a Petition for Permanent Injunction and Other Equitable Relief in the District Court of Oklahoma County against the above-named Defendants, all of Oklahoma City, Oklahoma, alleging violations of Sections 1-301, 1-402 and 1-501 of the Act. The Department also filed an Application for a Temporary Restraining Order, Order Freezing Assets, Order Appointing Receiver, Order for Accounting and Temporary Injunction. On the same date, Judge Patricia G. Parrish issued a Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets, and Order for Accounting. Judge Parrish appointed Ryan Leonard as Receiver. On August 18, Robert Edinger filed his entry of appearance as counsel for the Receiver. On August 19, the Defendants filed a motion to vacate the temporary restraining order. On August 19, a hearing was held on the Department’s application for a temporary injunction and Defendants’ motion to vacate the temporary restraining order. Judge Parrish ordered the entry of a temporary injunction and ordered that the asset freeze, with the exception of one bank account, and the receivership remain in effect.

On September 9, a hearing was held on the Receiver’s emergency motion to release the Bricktown Hotel and Convention Center as an asset of the Receivership. The Receiver believed that the value of the hotel was less than the value of its existing mortgages. The Court ordered that the Bricktown Hotel and Convention Center be released from the asset freeze and receivership. Upon oral motion by the Seabrookes’ counsel, the Court considered compensation from the receivership estate for Tom and Karyn Seabrooke. The Court authorized a one-time \$4,000 payment to Tom Seabrooke for his prior services in management of the hotel. The Court further authorized Karyn Seabrooke to receive a monthly payment of \$2,500 for property management services so long as the Receiver continues to utilize her services and one-half of all

real estate commissions earned by Seabrooke Realty, LLC so long as she is licensed to sell real estate, employed by Seabrooke Realty, LLC, and utilized by the Receiver in that regard.

After the Court's September compensation ruling, the Department filed a motion to remove Tom and Karyn Seabrooke from employment by the receivership. This motion was heard on October 14. The Court denied the Department's motion and ruled that Karyn Seabrooke would continue to receive monthly compensation in the amount of \$2,500.

During the month of November, the Department filed a motion to retain the commission from the sale by the receivership of the property at 4708 S.E. 44th Street, Oklahoma City, Oklahoma, known as the Cherry Hill Apartments. The Defendants filed their objection to the Department's motion. The Department filed a reply to the Defendants' objection.

During the month of December, the Receiver filed a motion for a declaratory order against First Commercial Bank regarding the release of escrowed funds. Judge Parrish ordered the commission from the sale of the Cherry Hill Apartments to be escrowed. The Receiver filed an application for the Court to establish a procedure to notify the creditors and/or claimants to make their claims. First National Bank of Weatherford filed a motion for the Court to release the Oakbrooke Lawton Property from the Receivership estate. The Receiver filed an application for an order approving his fees and expenses for the month of November.