

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: July 1, 2015

Re: ENFORCEMENT REPORT

Attached is the report of the enforcement activities of the Department for the months of March through June, 2015.

Attachment

h/home/londonb/EnforcementReports/15_Enf-Reports_Mar-Jun_2015.doc

**OKLAHOMA DEPARTMENT OF SECURITIES
ENFORCEMENT ACTIVITIES
MARCH THROUGH JUNE 2015**

		FY-15		FY-14
		YTD		YTD
I.	Enforcement Files			
	a. Enforcement Files Opened during the reporting period	74		78
	1. Securities Act	72		69
	2. Business Opportunity Sales Act	1		8
	3. Other	1		1
	b. Enforcement Files Closed during the reporting period	78		128
	c. Active Enforcement Files	184		202
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	7		8
	1. Securities Act-Notices	6		8
	i. Hearing Set	1		1
	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		23	30
1. Securities Act		22	30
2. Business Opportunity Sales Act		1	0
e. Public Undertakings/Agreements		6	11
1. Securities Act		6	11
2. Business Opportunity Sales Act		0	0
f. Confidential Settlement Agreements		0	2
1. Securities Act		0	2
2. Business Opportunity Sales Act		0	0
g. Letters of Caution		8	9
1. Securities Act		8	9
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		\$228,690.11	\$46,337
1. Securities Act		\$228,690.11	\$46,337
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	10	4
	ii. Civil Petitions Filed	2	5
	iii. Civil Trials Held	0	0
	iv. Criminal Referrals	1	0
	v. Civil Appeals Filed	1	0
	vi. Administrative or other Court Appearances (including pleadings filed)	93	54
	2. Business Opportunity Sales Act		
	i. Subpoenas Issued	0	0
	ii. Civil Petitions Filed	0	0
	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	0
	k. Miscellaneous Activities		
	1. Public Information/Press Releases (copy attached)	0	1
	2. Trainings/Seminars Attended	10	17
	3. Coordinated Activities	0	0
III.	Inquiries and Complaints		
	a. Inquiries	48	58
	b. Referrals from Other Oklahoma Agencies	7	6
	c. Referrals from Out of State Agencies	2	3

Administrative Actions

SUMMARY

In the Matter of: John Johanning, Inc. and John Arnold Johanning
ODS File No. 15-061

On May 27, 2015, the Administrator issued an order to cease and desist, and a notice of opportunity for hearing, to John Johanning, Inc. (JJI) and John Arnold Johanning (Johanning) (collectively, "Respondents") of Oklahoma City, Oklahoma. JJI and Johanning were not registered in any capacity under the Act and were ordered to cease and desist from transacting business in this state as an unregistered investment adviser and an unregistered investment adviser representative, respectively, in violation of the Oklahoma Uniform Securities Act of 2004 (Act). On February 5, 2015, JJI, by and through Johanning, entered into an agreement with a public trust for an Oklahoma municipality in connection with a revenue bond refunding project. Under the Agreement, JJI was employed by the trust for the purpose of assisting the trust in its refinancing project. The Agreement further provided that JJI would be paid 1.75% of the principal amount of each issue of said indebtedness incurred by the trust and reimbursed for out-of-pocket expenses incurred.

On June 19, an agreement was entered into by Respondents and the Administrator of the Department wherein Respondents consented to the entry of a final cease and desist order and agreed to discontinue all investment advisory services to governmental entities and any other client. On June 24, the Administrator issued a Final Order and Respondents were ordered to pay a civil penalty in the amount of \$7,000 to the Department.

In the Matter of: Pentecost Capital Management, Inc. and Claude Daniel Pentecost
ODS File No. 15-030

On June 19, 2015, the Administrator issued a notice of opportunity for hearing on an Enforcement Division Recommendation (Recommendation) against Pentecost Capital Management, Inc. (PCM) and Claude Daniel Pentecost (Pentecost) (collectively, "Respondents") of Jenks, Oklahoma. The Department alleged that Respondents violated the Act and the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules) by failing to post to its general ledger at least once a month, prepare trial balances within fifteen business days after the end of each accounting period, prepare financial statements, and keep bills or statements (or copies thereof) relating to their investment advisory business.

In the Matter of: Tonya M. White
ODS File No. 15-064

On June 19, 2015, the Administrator issued a notice of opportunity for hearing on an Enforcement Division Recommendation (Recommendation) against Tonya M. White (White) of Oklahoma City, Oklahoma. The Department alleged that White engaged in dishonest and unethical practices while registered under the Act as an agent and investment adviser representative of Edward Jones from February 7, 2011, through March 26, 2015. White was terminated from Edward Jones on March 5, 2015, after she admitted to calling third parties and impersonating clients in order to facilitate retirement account rollovers from third parties to Edward Jones.

In the Matter of: Green Building Solutions, Inc. and Young, David Allen
ODS File No. 14-038

The Enforcement Division opened this file to determine whether notes offered and sold by Respondents are securities under the Act. The matter was closed on May 20, 2015, with letters cautioning Respondents to assure compliance with all provisions of the Act and the Rules in connection with its activities in and/or from the state of Oklahoma.

In the Matter of: DonRay Petroleum, LLC and Ray Corbitt Jr.
ODS File No. 06-116

The Enforcement Division opened this file involving the offer and sale of oil and gas related interests as well as rescission offers applicable to those interests. The matter was closed on June 30, 2015, with a letter cautioning Respondents to assure compliance with all provisions of the Act and the Rules in connection with its activities in and/or from the state of Oklahoma,

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 Oklahoma Uniform Securities Act of 2004 (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 a 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 its reply. The Department filed an application to expand the length of its motion for a summary judgment. The application was granted.

On January 5, 2015, Arrowood filed his preliminary list of witnesses and exhibits. On January 7, the Department filed its final list of witnesses and exhibits. On January 16, the Department filed its Motion for Partial Summary Judgment requesting the Court to find that the notes at issue are securities; that the securities were not properly registered under the Act; and that Arrowood offered and sold the securities without benefit of registration under the Act.

On February 10, Arrowood filed a request for an extension of time to respond to the Department's motion. Arrowood's request was granted. On February 23, Arrowood filed his response and an objection to the Department's motion for partial summary judgment.

On May 7, the Department filed its reply to Arrowood's response and objection to the Department's motion for partial summary judgment. On May 15, Judge Stuart granted the Department's motion for partial summary judgment finding the notes at issue to be securities.

**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 was set.

On January 20, 2015, Scambler filed his objection to the Department's Motion for Summary Judgment. On January 30, the Department filed a notice striking the hearing scheduled for February 6.

On March 6, a hearing was held on the Department's motion to strike the affidavit of Scambler that was submitted to the Court as "Exhibit A" to the *Objection to Plaintiff's Motion for Summary Judgment* filed by Defendant on January 20. Judge Stuart found Defendant's affidavit to have been submitted in bad faith and ordered 1) that the Department's motion to strike be sustained; 2) that Defendant's objection be stricken in its entirety; 3) that Defendant be permitted to file a second response; and 4) that Scambler pay the Department's reasonable expenses, including attorney fees, in an amount to be determined by the Court at a future hearing. A hearing on the motion for summary judgment was scheduled for May 1, 2015. On March 24, Defendant entered his *pro se* appearance. Defendant, acting *pro se*, filed a second response to

the motion for summary judgment and a motion to reconsider the Court's ruling of March 6th. On March 26, the Department filed an application for attorney fees pursuant to the March 6th order. A hearing was set for May 1. Defendant, acting *pro se*, subsequently responded to the application and the Department filed a reply thereto.

On April 7, Defendant, acting *pro se*, served discovery requests on the Department. On April 8, Jeffrey Black filed a motion to withdraw as counsel of record. The hearing on his motion was set for May 1. During the month of April, Defendant, acting *pro se*, made multiple filings to include: a second motion to reconsider the Court's March 6th ruling and a supplement thereto; a supplemental response to the motion for summary judgment; a demurrer motion; and a motion to resubmit his response to the summary judgment motion. The Department filed responses to each of the filings.

On May 1, a hearing was held. Judge Stuart granted Jeffrey Black's motion to withdraw as counsel of record. The judge struck the filings made by Defendant acting *pro se*, finding the filings to be inappropriate, and permitted Defendant to file an additional response to the Department's motion for summary judgment on or before June 15, 2015. On May 27, Chad C. Taylor, of Riggs Abney Neal Turpen Orbison & Lewis PC, filed his entry of appearance as counsel for Scambler.

On June 18, Scambler consented to the entry of a permanent injunction and waived any right to appeal the order. On June 23, Judge Stuart issued an order enjoining Scambler from transacting business in and/or from Oklahoma as an agent, issuer, broker-dealer, investment adviser, and/or investment adviser representative, or otherwise engaging in the offer and/or sale of securities in and/or from Oklahoma for a period of ten (10) years. Scambler is also enjoined from serving as an officer, director, manager or control person of an issuer offering or selling any security in and/or from the state of Oklahoma.

**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.

On January 9, 2015, Defendants' motion for an order permitting Eric D. Fein, of Addison, Texas, to appear on their behalf was granted.

On April 6, the Department dismissed NUCO as a defendant.

**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, 2014, the Court approved the Receiver's fee application for the month of September and the Receiver filed an application for the approval of his October

2014 fees. An agreed order was entered for the sale of the Cherry Hill Apartments located at 4708 S.E. 44th Street, Oklahoma City, Oklahoma (Cherry Hill Apartments). The Department filed a motion to retain the commission from the receivership sale of the Cherry Hill Apartments. The Defendants filed an objection to the Department's motion to retain the commission and the Department filed a reply. An agreed order was entered for the sale of property located at 2528 N.W. 12th Street in Oklahoma City, Oklahoma. An order was issued memorializing a September 2014 decision of the Court approving compensation to Tom and Karyn Seabrooke.

During the month of December, 2014, the Receiver filed a motion for contempt and for a declaratory order against First Commercial Bank (FCB) regarding the release of funds escrowed in connection with the sale of the Cherry Hill Apartments. 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 claims procedure for creditors and/or investors. First National Bank of Weatherford (FNB-Weatherford) filed a motion for the release of the Oakbrooke Lawton Property from the Receivership estate. The Court approved the Receiver's October fee application and the Receiver filed an application for an order approving fees and expenses for the month of November.

During the month of January 2015, FNB-Weatherford filed a motion for the release of the Oakbrooke College Park Property from the Receivership estate and a supplement to its motion for the release of the Oakbrooke Lawton Property. An agreed order was entered releasing the property from the Receivership estate. Quail Creek Bank (QCB) filed a motion to disburse escrowed funds to QCB. Bricktown Capital LLC (Bricktown Capital) filed a motion to disburse escrowed funds to Bricktown Capital and for the payment of expenses of hotel vendors, and an objection to QCB's motion for disbursement. QCB filed an objection to Bricktown Capital's motion for disbursement of escrowed funds and for the payment of expenses of hotel vendors. The Department and the Receiver filed responses to QCB's motion. The Department also filed a response to Bricktown Capital's motion. QCB filed a response to all parties' objections to its motion. Wayne Doyle, a non-party, filed a motion for leave to intervene. An agreed protective order was issued relating to certain information requested from Wayne Doyle. The Court approved the Receiver's November fee application. An agreed order was entered establishing a claims procedure and setting a March 15, 2014 deadline for the filing of claims.

During the month of February, agreed orders were entered authorizing conditional intervention by FCB and Wayne Doyle. FCB filed its response to the Receiver's contempt motion and the application for an order to disburse escrowed attorney's fees relating to the Cherry Hill Apartments. Ilana D. Sharpe filed her entry of appearance as counsel for the Defendants. The Receiver filed a response to Bricktown Capital's motion for payment to hotel vendors. A hearing was held on February 6, wherein the Court granted, in part, QCB's motion to disburse escrowed funds. The Court ordered the payment of \$6,064.20 to QCB and the payment of the remaining escrowed funds to the Receiver. At the hearing, the Court postponed a decision on the Defendants' motion to pay hotel vendors. An order was issued memorializing the February 6 rulings. Bricktown Capital filed a motion to strike the order and to substitute a corrected order. Agreed orders were entered releasing the Oakbrooke College Park Property from the Receivership estate and continuing the hearing on the FNB-Weatherford intervention

motion. Alicia Holtslander-Petrone filed an emergency application to intervene and a motion for an emergency order for the disposition of assets relating to Receivership properties on 17th Street in Oklahoma City, Oklahoma. The Receiver filed a fee application for December 2014 and January 2015. Defendants filed an objection to this fee application. An agreed order was entered for the sale of property located at 1609 N.W. 15th Street, Oklahoma City, Oklahoma.

During the months of March and April, an agreed order was entered for the sale of properties located on 17th Street in Oklahoma City, Oklahoma. The Receiver's fee application for December 2014 and January 2015 was granted. The Receiver, Intervenor Wayne Doyle, and Defendant Bricktown Capital filed a Joint Motion for Interpleader requesting that the Court authorize the deposit with the court clerk of the balance of the proceeds from the sale of the Bricktown Hotel (\$187,585.90). The motion was granted. Doyle filed a motion asking for disbursement of the interpled funds plus an additional \$11,733.74 as payment on the secured indebtedness owed him. The Receiver filed a fee application for February 2015. Defendants filed an objection to this fee application. The Receiver's fee application was granted. The Department and the Receiver filed responses to FCB's application for an order to disburse escrowed fees. Both parties requested the release of the escrowed funds to the Receiver, while preserving the right of FCB to seek reimbursement of attorney fees in the claims process.

During the months of May and June, the Receiver filed a fee application for March 2015 to which Defendants filed an objection. The Court granted the application, as revised. Agreed orders were entered for the sale of the Briargate Plaza Apartments and properties located on Indiana Avenue and Northwest 11th, Northwest 17th and Northwest 21st Streets in Oklahoma City, Oklahoma. An application to intervene and a motion for an order to determine the right to proceeds from the sale of real estate were filed by Peggy Johnston and HPJ Family LP. A hearing is set for August 5th. The Department and Receiver filed responses to Doyle's motion asking for disbursement of the interpled funds. Doyle filed a reply to the Department's response. The Receiver filed notice of his *in camera* submission to the Court relating to his objection to Doyle's motion to disburse interpled funds and the Receiver's motion to retain the interpled funds as a receivership asset. Doyle filed a reply to the Receiver's objection and motion. An evidentiary hearing date is set for August 5th on Doyle's motion to disburse. The Receiver filed fee applications for April and May 2015.

**Southeast Investments, N.C., Inc. and Frank H. Black v.
The State of Oklahoma *ex rel.* The Oklahoma Securities Commission
Case No. CV-2015-86**

On January 20, 2015, Southeast Investments, N.C., Inc., and Frank H. Black (collectively, "Petitioners" and, individually, "SEI" and Black") petitioned the District Court for review of the Final Order entered by the Oklahoma Securities Commission (the "Commission") on December 22, 2014.

On February 10, the Department filed its response to the petition.

On April 8, the Department filed a Notice of Completion of Record for Appeal from the Commission.

**The State of Oklahoma *ex rel.* The Oklahoma Securities Commission v.
Secure Operations Group, LLC and George Conner
Civil Case No. CJ-2015-568**

On March 31, 2015, the Department filed an Application to Enforce Subpoena Compliance in the District Court of Oklahoma County, against Secure Operations Group, LLC (SOG) and George Conner (Conner) (collectively, the “Defendants”).