

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Kenneth Lee, an individual
Plaintiff/Petitioner - Appellant,

v.

U.S. Commodity Futures Trading Commission;
Oklahoma Department of Securities ex rel.
Irving L. Faught
Defendant/Respondent - Appellee.

Case No. 10-6276
(D.C No. 5:09-CV-01284-R)
(W.D. Okla)

Appellant/Petitioner's Opening
Brief

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NOTICE AND INSTRUCTIONS

If you proceed on appeal pro se, the court will accept a properly completed Form A-12 in lieu of a formal brief. This form is intended to guide you in presenting your appellate issues and arguments to the court. If you need more space, additional pages may be attached. A short statement of each issue presented for review should precede your argument. Citations to legal authority may also be included. This brief should fully set forth all of the arguments that you wish the court to consider in connection with this case.

New issues raised for the first time on appeal generally will not be considered. An appeal is not a retrial but rather a review of the proceedings in the district court. A copy of the completed form must be served on all opposing counsel and on all unrepresented parties and a proper certificate of service furnished to this court. A form certificate is attached.

APPELLANT/PETITIONER'S OPENING BRIEF

1. Statement of the Case. (This should be a brief summary of the proceedings in the district court.)

The District Court froze all assets before serving complaint forcing the Lee family to never be able to attend any preliminary hearing, or trial. The District Court refused to change the venue to South Carolina because the Plaintiffs didn't want the Lee family to have legal representation, or a voice in Court. That was the basis of the Plaintiffs' answer when the District Court asked during a hearing, in June, that we could not afford to attend. The District Court changed the trial from a non-jury trial, to a jury trial, and then the final pretrial report stated that it was changed back to a non jury trial without notifying any of the appellants. Meanwhile, the District Court refused to grant two different continuances knowing that the Plaintiffs had refused to disclose documents during the discovery process, the Receiver refused to turn over any accounting that was ever complete, and allowing a government agency to destroy a United States Citizen's rights of due process. James Holl's answers to the interrogatories was laughable at best, and the Court allowed this to stand.

2. Statement of Facts Relevant to the Issues Presented for Review.

On November 20, 2009, the Plaintiffs filed the Complaint in District Court. On March 3, 2010, the Plaintiffs froze all assets of Kenneth Lee before serving the amended Complaint on March 6, 2010 naming Relief Defendants in the suit. April 21st, 2010, Judge Russell questioned the Plaintiffs during a hearing that Kenneth Lee could not afford to attend these actions were "a stretch of due process." Fifty days after the District Court granted the motion that ignored my 5th amendment rights.

A week before trial the Receiver, ODS and CFTC admitted to Kenneth Lee that there is an amount of \$1,300,000 that they cannot account for as to where it came from or whose funds it is. Kenneth Lee had submitted several different account statements that showed the Lee family with approximately that amount of money in accounts over the span of 2002-2004. The District Court was also notified of those accounts, those amounts and those statements in several motions and answers that were submitted to the District Court. Copies of Cashiers Checks showing that The Lee Family did make investments was available to The Court was ignored by the Court and Plaintiffs.

The Receiver failed in his duties to file the proper documents in South Carolina about the properties in question. The Receiver failed to do that in the 10 day time frame and failed in

regards to filing the proper document. 28 USC § 754. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district. The Receiver was anything but indifferent from the beginning, the Receiver should be indifferent to both parties. *Liberte Capital Group, LLC v Capwill*, 462 F. 3d 543, 551 n. 6(6th CIR 2006). By the Receiver not filing the required documents in Charleston County, SC, and the illegal act of seizing Social Security money from my personal bank account the Receiver again showed and proved his incompetence and bias toward Defendant.

The Court and Plaintiffs as well as Receiver ignored the fact that there is a homestead law in South Carolina and only commented that the proceeds that purchased the properties they were taking were paid for with funds received illegally. Evidence was submitted showing this was not the case but was ignored again by The Court, Receiver and Plaintiffs.

The funds that purchased the properties for Kenneth Lee and Sheila Lee as well as Darren Lee and David Lee including the boat were family funds that were invested before 2002 and before any investments from others. These funds are being ignored by the Court and Plaintiffs and no credit being given the Lee Family for having any funds invested. A life time of work by The Lee Family is being ignored by the Court and Plaintiffs and for all practical purposes being stolen from this family.

During the third deposition Kenneth Lee had to endure, the Receiver shouted at Kenneth Lee during his cross examination and demanded that I say that I should change some investment numbers that the Lee Family had made. The Receiver was not impartial but was showing his aim to please the CFTC and be a team player in their cases. I felt intimidated, and had this person been in the room, would have feared for my safety.

3. Statement of Issues.

- a. **First Issue:** Rights of Due Process were denied throughout the process.

Argument and Authorities:

The 5th amendments Procedural Due Process clause (*Bolling vs. Sharpe* 347 US 497) (1954) added the equal protection element that the 14th amendment offers. (*Barron v Baltimore*). In 1934, the United States Supreme Court held that due process is violated, “if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamentals.” It includes an individual’s right to be heard at the preceding, and that the person, or panel, making the final decision over the preceding be impartial in regards to the matter before them.

By freezing all assets before our voice was heard in Court is a blatant misinterpretation of what protected rights are. Commodity Futures Trading Commission

(CFTC) Administrative Law Judge George H. Painter made serious allegations regarding fellow CFTC judge Bruce Levine in announcing his retirement. Judge Levine, "in the cynical guise of enforcing the rules, forces pro se complainants to run a hostile procedural gauntlet until they lose hope, and either withdraw their complaint or settle for a pittance, regardless of the merits of the case," Judge Painter wrote.

This is the same tactic from their play book that the Plaintiffs used against Kenneth Lee and Relief Defendants to break their spirit and force them to accept their terms and surrender to their demands. Plaintiff Holl said, "we do not negotiate with ourselves" when he tried to entice Kenneth Lee to agree to a settlement that was refused by Kenneth Lee. This is his preconceived notion that everyone is going to give up to them and let them have their way with them and their assets. The Lee Family is not your typical roll over and play dead family and will never surrender to their heavy handed thug tactics.

The CFTC seems to have adopted Judge Levine's standard of practice by manipulating the Courts into forcing citizens from their homes, taking all monies before proving anything in Court, and violating several protected rights of an American family, in the United States of America. It is impossible to have a fair trial when the Plaintiffs use so many lawyers that ignore facts just because they don't weigh in their favor. Ethics must not be important to any of the government agencies that are involved because it is perfectly clear that none of the lawyers involved have used any ethics throughout this process.

When the Prosecutor in the Duke Lacrosse players rape case proceeded to prosecute the players with the knowledge that they were innocent, he was disbarred due to ethical reasons. There is absolutely no difference in what that Prosecutor did and what the Receiver and Plaintiffs have done in this case and the Lower Court allowed to happen. Suppressing evidence from the Court is what the Defendant and Relief Defendants came to expect from the Receiver and Plaintiffs. That is why Kenneth Lee submitted the evidence to Judge Russell where it was ignored again. No questions were ever asked by the Court of Defendant or Relief Defendants about investments we had made.

b. Second Issue: Failure of the Discovery Process

Argument and Authorities:

The discovery process was due to expire on September 31, 2010. On September 15th, 2010 the Plaintiffs (CFTC) objected to answering any of the admissions and objected to turning over documents in their possession. James Holl answered for the CFTC in the Plaintiffs' objections. The Receiver failed to turn over the requested completed analysis and then the Plaintiffs disclose at the end of October the extra \$1,300,000 that they cannot account for as to where it came from.

The Plaintiffs and Receiver had the documents that Defendant Kenneth Lee and Relief Defendants turned over throughout the discovery process and they refused to participate in the crucial phase of civil litigation. The District Court was notified of their refusal and did not act upon compelling the Plaintiffs to answer a Pro Se litigants Admissions, Interrogatories, and Document Requests.

Federal Rule of Civil Procedure 26(e)(1) states: A party who has made a disclosure under Rule 26(a) — or who has responded to an interrogatory, request for production, or request for admission — must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing;
or

(B) as ordered by the court.

Federal Rules of Civil Procedure 37© states:(1) Failure to Disclose or Supplement.

1. If a party fails to provide information or identify a witness as required by Rule 26(a) or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

© may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(I)-(vi).

(2) Failure to Admit.

If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

© the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

c. Third Issue: Personal Jurisdiction

Argument and Authorities:

The District Court should have known that Kenneth Lee was not in a proper jurisdiction due to the fact of Kenneth Lee's personal jurisdiction. That is based on the fact that Kenneth Lee has no residence in Oklahoma and Plaintiffs acknowledge that Kenneth Lee resided in South Carolina. The District Court, ODS, CFTC and Receiver denied Kenneth Lee's voice to be heard in court. Fair play was denied by the District Court from the very beginning of the case. Rights of due process were unjustly denied by the Receiver on 12/14/2009. The results have proven catastrophic. The District Court asked about jurisdiction and even indicated that it should be in South Carolina, but went along with the Plaintiffs and Receiver in denying Kenneth Lee's right to have the case in his jurisdiction.

Kenneth Lee did not ever go to Oklahoma and visit with anyone about investing in Federated Management or Prestige Ventures. Kenneth Lee did not have any agents, employees, partners, advisors or anyone acting in any capacity for Kenneth Lee in Oklahoma. Anyone who invested came to Kenneth Lee and asked to be able to invest funds into these programs, no one was ever asked by Kenneth Lee to invest any funds in any programs. Kenneth Lee advised any and all who ever invested that he was going to be moving to South Carolina in February 2003, this was done even before enough funds had been invested by customers to afford the home Kenneth Lee purchased in South Carolina. This should have shown the Lower Court, Receiver and Plaintiffs that Kenneth Lee had knowledge of funds available to him for this purchase, but any information pertaining to this was ignored by the Court and only the false testimony of the Receiver and Plaintiffs were considered to be worthy of hearing and ruling on.

4. Do you think the district court applied the wrong law? If so, what law do you want applied?

Yes. The District Court placed a permanent injunction on Kenneth Lee from ever having a trading account or having the opportunity to have the right to choose employment in any field that is related. Kenneth Lee does not have any knowledge of laws the Court should have applied, but knows that Kenneth Lee did not break the laws alleged by Plaintiffs. Kenneth Lee never solicited anyone to invest anything in Federated Management or Prestige Ventures. All investors came to Kenneth Lee and asked to invest and agreed to the terms of such investments.

5. Did the district court incorrectly decide the facts? If so, what facts?

1. The Prestige Enterprise received at least \$10,656,921 from investors between March 5, 2003 and November 30, 2009 ("The Relevant Time Period").

The District Court incorrectly gave all of the Lee family money to the investors. That amount of \$10,656,921 is highly exaggerated and was never a figure until the Lee family could not afford to attend the trial. The Receiver's analysis conflicts with this apparent fact to show that nobody is on the same page with this trial and my family was unjustly punished for actions the Plaintiffs and Receiver subjected them to.

2. The Prestige Enterprise received only a small amount from Kenneth Lee and disbursed much more to or for the benefit of Kenneth Lee during the Relevant Time Period.

Kenneth Lee has submitted to the Receiver, Plaintiffs and the District Court many documents that showed the amounts that were deposited and the accrument over the years before purchasing my house on Jorrington Street.

3. Kenneth Lee's residence, ("Kenneth Lee Residence"), was purchased with the funds received by the Prestige Enterprise from investors and is an asset of Prestige Enterprise.

Kenneth Lee has submitted to the Receiver and the District Court several documents that showed the amounts that were deposited and the accrument over the years before purchasing my home on Jorrington Street. Also evidence that added funds were invested by the Lee Family after 2004. These were only given a passing mention and down played as trivial amounts by the Court and Plaintiffs.

Prestige Ventures transferred funds from customer accounts to many others who were not an account holder, this was done according to the instructions of the true account holder,

does that mean the property purchased with these transfers if the property of Prestige Ventures or considered to be the property of the intended recipient. This is the same procedure that Kenneth Lee used to purchase his home.

6. Did the district court fail to consider important grounds for relief? If so, what grounds?

Kenneth Lee's proper personal jurisdiction does not lie in Oklahoma and therefore the District Court should have changed the venue to Charleston, SC where Kenneth Lee resides in Charleston County, South Carolina. The Court failed to consider any of the exhibits and evidence that was submitted throughout the process that showed the monies were enough to purchase the homes in question. The Plaintiffs nor Court never acknowledged that Kenneth Lee was to be paid a percent of earnings by investors and that Kenneth Lee did in fact earn profits and was entitled to the agreed upon percent of earnings.

The Plaintiffs never proved that Kenneth Lee or any of the Relief Defendants were not entitled to the monies made available to them, they only alleged that these were monies that were deposited by others and that none of the funds were from the Lee Family. The Plaintiffs and Court did not admit that the funds the Plaintiffs experts could not identify were or even could have been from the Lee Family. This did not serve the agenda of the Court or Plaintiffs.

7. Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what?

The District Court denied every motion submitted by the Defendant and Relief Defendants through the entire case before the Court. Every motion or request submitted by the Plaintiffs was approved without acknowledging the Defendant and Relief Defendants evidence or facts provided. Again this statement applies: (Judge Levine, "in the cynical guise of enforcing the rules, forces pro se complainants to run a hostile procedural gauntlet until they lose hope, and either withdraw their complaint or settle for a pittance, regardless of the merits of the case.")

All motions for a stay on execution of having to vacate our homes was denied and no consideration for any evidence from Defendant and Relief Defendants. Kenneth Lee personally sent evidence to Judge Russell, via USPS, as the evidence was not being presented to the Court by any of the Plaintiffs or Receiver. Judge Russell did nothing with this evidence. Nothing being presented by Defendant and Relief Defendants was ever considered by The Court or Plaintiffs and certainly not the Receiver. I also sent directly to the Receiver evidence showing that The Lee Family did invest funds into the early stages of

Federated Management and Prestige Ventures, but this evidence has never been seen by anyone.

The District Court heard testimony from Receiver and Plaintiffs where their testimony was statements like "we feel," "we thought," "we think" "we believe" and "it could be" that there may be funds hidden from the Court but could never produced any hard evidence that supported their "feelings", "thoughts" and "beliefs." The District Court allowed this testimony to stand and accepted it as fact rather than just personal rambling by a party with a mission as described by Judge Levine of the CFTC. Had Defendant and Relief Defendants had funds surly an attorney would have been retained to defend this case.

This was done as they had no evidence that would prove their allegations or back their testimony. The Court accepted this type testimony, but would not accept evidence and documents from Defendant and Relief Defendants. Had the Plaintiffs had evidence that there were funds hidden elsewhere they would have presented it to the Court, but they could not, so they only thought, guessed, imagined and other such means to sway the Court to believe their false testimony.

To accept Plaintiffs "feelings", "thoughts" and "beliefs" as evidence and proof but not accept real evidence from Defendant and Relief Defendants is not in keeping with fairness and justice.

8. What action do you want this court to take in your case?

Dismiss the case and reverse the Lower Courts ruling as the Receiver failed to file proper documents in Charleston, SC and the failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district, force Receiver to return all properties, force Receiver and Plaintiffs to personally pay all expenses for being forced to vacate premises and grant compensation from the Receiver, ODS, and CFTC for the loss of homes, boat and bank accounts, and to have all the Plaintiffs and the Receiver barred from practicing law, and to ensure that this never happens to any other family by a government agency and a District Court railroading a family out of their rightfully owned residence.

Sanction CFTC that they must consider all evidence or information presented by Defendants and Relief Defendants in any future cases and halt all heavy handed tactics they presently use.

Defendant will file a lawsuit against Receiver and Plaintiffs for \$40,000,000 in damages and compensation for emotional stress, loss of affection from family, financial stress and

mental pain and suffering.

9. Do you think the court should hear oral argument in this case? If so, why?

Defendant Kenneth Lee cannot afford to travel to Denver, Co for any oral arguments due to unjust Lower Court ruling. Kenneth Lee and Family have been rendered destitute by the United States District Court of Western Oklahoma.

<u>March 16th, 2011</u>	<u>Digitally Signed</u>
Date	/s/ Kenneth Lee
	Signature

CERTIFICATE OF SERVICE

I hereby certify that on March 16th, 2011 I served a
(date)
copy of the Appellant/Petitioner's Kenneth Lee's Opening Brief to:

Katherine Driscoll~CFTC kdriscoll@cftc.gov
Terra Bonnell~ODS tbonnell@securities.ok.gov
Stephen Moriarty~Receiver smoriarty@fellerssnider.com

(Opposing Party or Attorney) (Email Address)

, the last known address/email address, by Email.
(state method of service)

March 16th, 2011 **Digitally Signed**
Date /s/ Kenneth Lee
Signature

CERTIFICATE OF COMPLIANCE

I certify that the total number of pages I am submitting as my Appellant/Petitioner's Opening Brief is 30 pages or less or alternatively, if the total number of pages exceeds 30, I certify that I have counted the number of words and the total is 3,773, which is less than 14,000. I understand that if my Appellant/Petitioner's Opening Brief exceeds 14,000 words, my brief may be stricken and the appeal dismissed.

March 16th, 2011 **Digitally Signed**
Date /s/ Kenneth Lee
Signature